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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

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

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

House of Lords

Wednesday 25 April 2018

3 pm

Prayers—read by the Lord Bishop of Norwich.

High Street Retailers

Question

3.06 pm

Asked by ***Lord Naseby***

To ask Her Majesty's Government what policies they have implemented to assist high street retailers to prevent further closures and job losses.

Lord Naseby (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare an interest in that a member of my family works in the retail trade.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, we understand that some high street retailers are facing difficulties in a changing retail environment. We shall work closely with the newly established Retail Sector Council to bring government and industry together to support the sector.

Lord Naseby: Is my noble friend aware that this is the 12th Question I have asked on this broad area? Is he further aware that the rates review was a singular tragedy for the retail trade and, even worse, the rates appeal system today is sadly shambolic?

Secondly, I have asked Questions previously about the unfair competition from online trade, particularly with Amazon now controlling 40% of that trade—worth over £1 billion. Is not it time that that unfair situation was corrected?

Finally, I have raised Questions on providing parking for our shoppers two hours a day, 365 days a year in every local authority. I am pleased to report that Northampton Borough Council provides two hours every day for a whole year. Against that background, with chain after chain failing, will my noble friend sit down with colleagues, look at the crisis and recognise that action is needed and a review of rates in 2021 is not acceptable?

Lord Henley: My Lords, I was not aware that it was my noble friend's 12th Question, but it appears that the House was. I appreciate that the rates review affects quite a number of businesses, but our estimation is that some 70% of businesses will see either no change or a reduction. Obviously, it affects different areas differently; in London it has affected businesses more severely, whereas in the north-west, where I come from, there have been some considerable gainers.

As for the unfair competition my noble friend talked about, particularly in relation to the wider question of taxing the digital economy, as he is aware, my right honourable friend the Chancellor is looking at that issue to make sure that things are fair between different types of retailer, whether they are digital or store-based.

On his final point, about parking, I note what he says and hope that other local authorities note what he says. From my personal experience, I have noticed that some local authorities reduce their parking charges, which has a beneficial effect on retail in that area. I have similarly noticed that in other areas the effect of parking charges can be to the detriment of the high street.

Lord Watts (Lab): My Lords, I know that the Government like reviews, but may I suggest that this problem has been with us for some time now and it is action we want, not reviews? Secondly, would the Government consider helping local authorities to downsize some of their town centres, because empty shops just make the situation even worse?

Lord Henley: I agree that empty shops make the situation worse. It is up to local authorities to look at what can be done, but we are in a changing environment. Some 10 years ago, 4.5% of retail was online; it is now 17%. That is what the consumer wants and, in the end, the consumer has to be king in a sector such as retail. It is up to the sector itself—that is why the Government want to talk to the sector—to look at the changing nature of what is happening and adapt to that change.

Lord Fox (LD): My Lords, it is not just about empty shops in the high street; it is about people. We are seeing a migration of good retail jobs, some of which had pensions and many of which had long-term prospects. It is an erosion of people's lives. The replacement jobs are warehouse jobs on zero-hour contracts. The Minister mentioned that his right honourable friend the Chancellor is conducting a review of the situation. Given that shops are going out of business every day, when might we hear the result of this review?

Lord Henley: I will leave that to my right honourable friend and he will respond as is appropriate. The point I want to stress—as I did in my original Answer and in the one I just gave—is that this is a changing environment. The noble Lord no doubt buys things online. There is an increase in people buying things online; that is quite simply what is happening. I cited the figures: 4.5% of retail was online 10 years ago and the figure is now 17%. That trend will continue. The retail sector must look at ways of adapting. Having said that, the noble Lord should not think that all online trade is necessarily going to Amazon and other warehouses; a lot of online business is conducted by the shops themselves. It is a varied picture, but it is up to the sector itself to adapt to those changes.

Lord Skelmersdale (Con): My Lords—

Baroness Rebuck (Lab): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it is the turn of the Conservative Benches.

Lord Skelmersdale: My Lords, we all know that this country is short of housing, especially affordable housing. Many years ago, there was a campaign to live above the shop. Is it not time for a campaign to live in the shop?

Lord Henley: My Lords, this is something that local authorities, which are best placed to look at these issues, can do. I would commend them to look at all possible uses for spare retail space, if there is such space.

Baroness Rebuck: My Lords, none of us wants our high streets to become ghost towns. I declare an interest, but bookshops, through activities such as book festivals, World Book Day for kids and signings, drive up footfall that benefits all retailers. Bookshops are also cultural hubs and play a vital role as community and learning spaces. Will the Government now consider giving bookshops the same rate relief that is given, rightly, to many community pubs, and thus avoid an estimated one in four closures in future?

Lord Henley: I do not have precise figures for sales of books. I think the noble Baroness probably does, and she will find that book sales are increasing again. Whether the sales are happening in the shops is another matter, because obviously a lot of those sales will be online. That is how people want to buy books, as often as not. I note what the noble Baroness said about the successes that part of the sector is achieving through book fairs and other means, and I commend pursuing that type of thing to other sectors. Her final point is one that can be considered.

Commonwealth Summit: Freedom of Religion or Belief

Question

3.14 pm

Asked by ***Baroness Berridge***

To ask Her Majesty's Government what action they took to promote freedom of religion or belief as part of the human rights agenda discussed at the Commonwealth Summit.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, last week the Heads of Government from the Commonwealth pledged to work together to foster a fairer future for all Commonwealth citizens. During the summit, my right honourable friend the Foreign Secretary announced a £4 million accountable democracy programme, working with Commonwealth organisations and the Westminster Foundation for Democracy. The programme will focus on the political participation of marginalised groups, including religious minorities and women. While we are chair-in-office, we will continue to raise freedom of religion or belief with Commonwealth members as a core value of the Commonwealth charter.

Baroness Berridge (Con): My Lords, I thank the Minister for his Answer and declare my interest in relation to a Commonwealth initiative on freedom of religion or belief. While it is unfortunate that Her Majesty's Government's priority of freedom of religion or belief did not find its way into the communiqué, especially bearing in mind that the communiqué makes reference to the Rohingya population in Bangladesh who have fled religious persecution, I would be grateful if the Minister could outline how the two-year chairmanship-in-office will be used to highlight the freedom of religion or belief aspects of issues such as the Rohingya Muslim population.

Lord Ahmad of Wimbledon: First, I pay tribute to my noble friend's work in this area. Let me assure my noble friend, and indeed all noble Lords, that this continues to be a key priority for Her Majesty's Government. During the course of the Commonwealth summit, various announcements were made on the broader human rights agenda, including a financing proposal in support of this. As a further assurance, I am sure that she has read the Written Ministerial Statement from my right honourable friend the Prime Minister, which was laid in this House by my noble friend the Leader of the House. It talks specifically about the values agenda, ensuring that all people's rights, wherever they are in the Commonwealth, are fully protected. I also offer to work with my noble friend Lady Berridge on key priorities as we plan for our two years in office.

Lord Collins of Highbury (Lab): My Lords, I congratulate the Minister on his efforts at CHOGM to ensure that these issues were raised. Of course, he is quite right to point out the importance of freedom of religious belief in terms of combating extremism and promoting democracy. Is there not now a case for ensuring that freedom of religious belief is mainstreamed across all Westminster departments, because it is not just simply the Foreign Office that needs to be responsible for this? Is there not a case for a champion who can work across government departments?

Lord Ahmad of Wimbledon: The noble Lord makes an important point. Let me assure him that we are working across Whitehall on this important priority as with other areas, particularly with our colleagues in the Department for International Development. The other notable feature is that, on taking this office, I wrote to all our diplomatic missions—not just in the Commonwealth but throughout the world— prioritising this issue. We have champions within key priority countries as well, who are focusing on the very issues of freedom of religion or belief and the protection of minority rights, guaranteeing their rights as citizens of those countries.

Lord Chidgey (LD): My Lords, the Heads of Government emphasised the importance of promoting and strengthening good governance for all of our democratic principles. It was subsequently reported—I think the Minister has already confirmed this—that the Government are going to contribute further funds, some £4 million, towards these aims. In that event, can the Minister commit to clarifying the Government's plans in the context of engagement with other agencies, both in the UK and overseas, to deliver on those objectives? Do they plan to include parliamentary oversight of such programmes, drawing on the expertise of both Houses?

Lord Ahmad of Wimbledon: I am sure that the noble Lord knows that I regard parliamentary expertise across parties and across both Houses as something that I personally value. I thank the noble Lord and

others for their contributions to the events last week. Let me assure him that we are working with partners: I mentioned the Westminster Foundation for Democracy, and we also work with the accredited Commonwealth organisations and institutions to ensure that we deliver on the key priorities of that values agenda.

Lord Singh of Wimbledon (CB): My Lords, can the Minister explain why, despite regular reports about the ill-treatment of women and religious minorities in India, that country has been left off the list of Commonwealth countries where we have concerns about human rights. Could that be because India is an important trading partner?

Lord Ahmad of Wimbledon: We foster positive engagement with India, and it is right that we do so. Our diasporas here in the UK reflect the strength of our relationship with India. On the specific point about human rights, I assure the noble Lord that, while we prioritise, for example, 30 priority countries in the human rights report, that in no way reflects the fact that we raise these issues with other countries in the world. Whether with India or with other parts of the Commonwealth, we will continue to raise the issue of human rights.

Lord Howell of Guildford (Con): My Lords, I declare my interests, and I congratulate the Minister on the role he played in the success of the Commonwealth summit last week. Would he accept that, in addition to a number of government initiatives that were announced in the communiqué, the real force and value of the Commonwealth network nowadays lies increasingly in civil society and the private sector, and the massive and growing data connectivity between the younger generation throughout the whole 53 members of the Commonwealth? The future value of the Commonwealth network lies in those areas and in the huge and new consumer markets of Asia and Africa.

Lord Ahmad of Wimbledon: I agree with my noble friend, and as I am sure everyone saw, we put the issue of young people at the heart of the Commonwealth summit last week, as well as the issue of civil society. We had record numbers of civil society organisations—representative of all aspects of civil society, whether on issues such as youth or LGBT issues or religious freedom—represented across the four fora. That underlines our commitment as a Government and as chair-in-office for two years, to take forward the very priorities my noble friend put forward.

Academies: Gender Pay Gap

Question

3.21 pm

Asked by ***Lord Storey***

To ask Her Majesty's Government what assessment they have made of gender pay gaps in academy schools and trusts.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, we are one of the first countries in the world to require all large employers to publish their gender pay gap and bonus data. Reporting will help to shine a light on where women are being held back and where employers can take action to support their whole workforce. These figures will mean that academy trusts, as with all other large employers, can start to analyse the data and take action to close the gap.

Lord Storey (LD): I thank the Minister for that helpful and important reply. In answer to a Written Question that I put to him about the gender pay gap he said:

"Academy trusts are free to set their own salaries".

This is of course taxpayers' money, and when in 471 multi-academy trusts the median pay gap was 31.7%, that is not a proper use of taxpayers' money. Where some chief executives of multiacademy trusts now earn upwards of £400,000 a year, that is not a proper use of taxpayers' money. Surely it is time for the Government to use their financial clout and to realise that with trust comes responsibility.

Lord Agnew of Oulton: My Lords, the noble Lord, Lord Storey, is correct that academy pay is set by the trusts themselves. However, we have taken action on high-end pay. One of the first things I did when I took on this job in September was to ask officials to write to 29 single-academy trusts where there was high pay. Since then, we have resolved that 16 of them no longer pay the levels that were indicated in their returns. We have now also written to a number of multiacademy trusts, and in the last couple of weeks we have written to all trusts which pay more than £100,000 or which have more than two people in their trust who are paid more than £100,000. So we are alert to it, I am bearing down on it where we see excesses, and I will continue to do so.

Lord Watson of Invergowrie (Lab): My Lords, we have known for some time that senior pay in multiacademy trusts is out of control. Now we have evidence that, as the noble Lord, Lord Storey, said, women working in academy chains suffer some of the worst gender pay gaps. Is this not public funding, which is being used to entrench inequality in the education system? I have to say that the Minister is personally associated with this issue. The website for the Inspiration Trust, which runs 14 academies in East Anglia, lists him as a trustee and a person with significant control. Noble Lords may wonder why, seven months after being appointed as an Education Minister, he is allowed to continue to hold those posts. But for now, can the Minister say that, despite the fact that trusts have the right to set their own salaries, the size of those gender pay gaps is a scandal, and are he and his department prepared to give advice to trusts to begin to close those gaps?

Lord Agnew of Oulton: My Lords, perhaps I should address the Inspiration Trust first, as I was indeed its founder. The chief executive took on 14 schools, seven of which were in special measures when we took them on. All are now out of special measures. Thousands of

[Lord Agnew of Oulton]
children are getting a better education than they were five years ago, and that is the essence of what autonomy of pay is all about. Where we have excess pay and there is poor performance, as I said to the noble Lord, Lord Storey, I am bearing down on that. No one is more messianic about the misallocation of taxpayers' money, but we need to strike a balance between autonomy, where good teachers and good leaders are given the chance to develop and improve schools, and those who are not good are held to account.

Baroness Watkins of Tavistock (CB): My Lords, how does the Minister think that some of the questions that we have heard so far address the gender pay gap? I believe that the gender pay gap in academy schools—I declare my interest, having been a chair of two and currently a trustee of one—is associated with the subjects that each gender teaches; in other words, people who teach physics are traditionally paid significantly more than those who teach arts. That shows that we undervalue some subjects in these schools.

Lord Agnew of Oulton: My Lords, unfortunately there is a market in different skills and professions. We know that we have a shortage of good physics teachers, and in order to bring physics teachers into the profession we need to offer additional incentives. However, looking more broadly across the gender pay gap, academies do not look as bad as people might suggest. For example, while in the top quartile men occupy 23% of the total workforce but have 32% of the jobs, the situation in the middle quartile is almost even, with men occupying 23% of the workforce and only 25% of them having upper-middle jobs. Therefore, I think that we are seeing great progress on this. It is also worth pointing out more generally that in 1997 the gender pay gap stood at 17.4%. Today, it has been reduced to 9.1%. I do not suggest that that is enough but it shows that we are making progress across our economy.

Baroness Symons of Vernham Dean (Lab): My Lords, will the Minister be kind enough to clarify whether he is a director of the Inspiration Trust while holding the office that he holds at the moment?

Lord Agnew of Oulton: My Lords, I am a director and a trustee. I stood down as the chairman. That matter was discussed with the Propriety and Ethics Team in the Cabinet Office. It was fully disclosed and is in my ministerial declaration.

Lord Forsyth of Drumlean (Con): My Lords, will my noble friend accept congratulations from the House for the work he has done in enabling children's education to be improved? Can he get one of his excellent teachers to perhaps teach the noble Lord, Lord Watson of Invergowrie, the difference between pay inequality and the gender pay gap? Is it not the case that men and women doing the same job in schools are paid on the same basis, and the gender pay gap is about the relative numbers of men and women in particular jobs? That is something which, from his question, it seems the opposition spokesman did not understand.

Lord Agnew of Oulton: My Lords, my noble friend is quite correct. It is not about any disparity between a man and a woman doing a job—that was outlawed in this country 40 years ago. I take my noble friend's thanks for the achievements of the Inspiration Trust. Most of the credit must go to my chief executive, who is a woman—Dame Rachel de Souza. We have other exceptional women running trusts: Lucy Heller of ARK and Maura Regan of the Carmel Education Trust. Indeed, at the primary level, 65% of head teachers are women, which shows that there is every opportunity for women in the education system.

Baroness Burt of Solihull (LD): My Lords, I am very grateful to the Minister for the very helpful answers that he has given my noble friend Lord Storey and others. However, is not the real problem here that disproportionately high pay is being channelled up to a tiny number of male-dominated posts at rates far higher than the local authority-run schools can pay? How does the Minister justify that, especially to the 74% of the teaching profession who are hard-working, highly professional women?

Lord Agnew of Oulton: The noble Baroness asks a very interesting question. The pay in maintained and academy schools is actually very close. For example, the data to November 2016 shows that a maintained secondary school head teacher earned £88,300, compared to an academy secondary school head teacher who earned £92,500. However, the maintained head teacher had a 1% increase in that year, whereas the academy head teacher had a 0.4% decrease. In the primary sector, the comparisons are even closer, at £62,400 for a local authority school and £65,500 for an academy. I do not accept that money is being drawn up to mostly male teachers. As I mentioned in my earlier answer, 65% of primary heads are women. If we look at the starting pay for teachers, we see that, for a graduate teacher between the ages of 21 and 30, the average pay is £27,000, compared to £25,000 for all graduates. That does not include the very generous pension scheme that exists in the teaching profession, which has a 16.4% contribution and is underwritten by the Treasury.

Domiciliary Home Care Support

Question

3.30 pm

Asked by ***Baroness Wheeler***

To ask Her Majesty's Government what action they are taking to ensure the provision of domiciliary home care support, in the light of the decision by Allied Healthcare to file for a company voluntary arrangement.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, the law is clear that, if services may be disrupted due to business failure, the Care Quality Commission will notify local authorities so that they

can put appropriate contingency plans in place. In respect of Allied Healthcare, no such notification has been made to date. The public should be reassured that the Care Quality Commission has been monitoring closely the situation at Allied Healthcare and will continue to do so.

Baroness Wheeler (Lab): My Lords, Allied Healthcare is the latest hedge-fund-owned care provider to have to take drastic action to keep up the huge burden of paying off loans to its creditors. The precarious finances of many domiciliary care companies has already led to large-scale provider closures and to companies handing back contracts in almost half of councils, and we know that residential care is in a similar position. The CVA means that Allied Healthcare has four weeks to come to an arrangement with its creditors. Its closure would have serious consequences for continuity of care and the safety of its 13,500 clients, including many vulnerable older people and people with learning difficulties, and for its 8,700 staff. With local authorities unable to pay fees that cover the actual cost of care or meet the implementation costs of the national minimum wage, let alone address the potential £400 million of deserved back-pay costs for staff sleep-in payments, what reassurances can the Minister give that councils will be able to discharge their statutory duty to deliver care if Allied Healthcare collapses? Does he really think that this is the way to fund the care that people in need of support in their homes deserve?

Lord O'Shaughnessy: I thank the noble Baroness for the opportunity to provide that reassurance for people using and benefiting from the care provided by Allied Healthcare. I want to reassure them that the Care Act 2014, passed by the coalition Government, gives local authorities responsibility for continuity of care if a business were to fail. Of course, we are not in that position with Allied Healthcare, because it still has to go through the CVA process. I can reassure people that the LGA has said that councils have "robust"—its word—plans in place to ensure continuity of care if that is required. I put that on record for those who may be worried about it.

We know that extra funding is needed in the sector. Over three years, through a number of means including extra money through the precept and direct funding to local authorities, the Government have increased by about £9 billion the funding available for social care, which we know is required. I also point out that, if you look at domiciliary care provider numbers, you will see that there are 50% more than there were eight years ago. We know that markets have entrants and that providers are exiting, but we have more providers in the market and more packages being delivered than ever before. Ultimately, the backstop is that local authorities have that responsibility to provide continuity of care.

Lord Laming (CB): My Lords, does the Minister understand the importance of this Question? Imagine being a very vulnerable person living in a residential home with no alternative to go to or being dependent on a home help for the basics of daily living. Now imagine living under the shadow that the company that provides that service is going to go out of business at any time. Nothing could be more anxiety-provoking for these residents. The Care Quality Commission telling the local authority that there is a problem here is of no comfort. I hope that he will take this Question rather more seriously.

Lord O'Shaughnessy: I have huge respect for the noble Lord and his expertise in this area. I take this issue very seriously, which is why I used the opportunity in answering the noble Baroness to provide the reassurance that is in law. Local authorities need to step in to provide continuity of care with notice from the CQC, which now has a new responsibility to monitor the financial sustainability of providers and to make sure that that care is provided, whether it is delivered in-house or through contracts with other providers. That reassurance did not exist before it was introduced in the 2014 Act. It ought to provide a degree of reassurance among vulnerable people, who I accept will be anxious. That responsibility is in law.

Baroness Gardner of Parkes (Con): The Minister has said that this is a matter of law. There has been a court judgment that fees should be paid to carers for time spent going between clients, which can be nearly half of their day. They may have one hour to spend with many clients. Is he aware that providers of domiciliary care—run as agencies and used by most local authorities—are not honouring that legal decision that this should be paid as part of their employment?

Lord O'Shaughnessy: My noble friend is right to bring up that issue. They should of course be paid. If she has any specific examples to share with me, I shall be glad to investigate.

Baroness Jolly (LD): My Lords, everyone knows that the social care sector, particularly in domiciliary and care homes, is under great stress at the moment—I declare my interests as in the register—and we look forward to the Green Paper coming up some time in the summer. I hope it takes into consideration that such homes need to pay not only wages and pensions but, for larger ones, an apprenticeship levy. Normally there would be a market for mergers but at the moment the sector is anxious about inheriting sleep-in liabilities. Can the Minister give any guidance about when these issues within the department and the Treasury will be remedied?

Lord O'Shaughnessy: We know that the issue of back-dated pay for sleep-ins has had an impact on this and other sectors. Two aspects of this are, first, that the Government have waived penalties for non-payment prior to July 2017; and, secondly, that there now exists an HMRC scheme that allows providers to work with HMRC and the business department to understand their liabilities and gives them a further year to pay them. That is the support we offer to any organisation affected by the changes to the taxation arrangements of sleep-ins.

European Union (Withdrawal) Bill
Order of Consideration Motion

3.38 pm

Moved by ***Lord Taylor of Holbeach***

That the order of the House of 16 April be vacated, and that amendments for the Report stage be marshalled and considered in the following order:

Clauses 1 to 5, Schedule 1, Clauses 6 to 9, Clause 16, Clause 17, Clause 10, Schedule 2, Clause 11, Schedule 3, Clause 14, Schedule 6, Clause 15, Clause 12, Schedule 4, Clause 13, Schedule 5, Clauses 18 and 19, Schedule 7, 8 and 9, Title.

Lord Taylor of Holbeach (Con): My Lords, I beg to move the Motion standing in the name of my noble friend Lord Callanan on the Order Paper. In doing so, I would like to explain the need for a revised Order of Consideration Motion. Noble Lords will be aware that the Government have been working with the devolved Administrations on amendments to Clause 11. To ensure that the House can consider the amendments in good order and to allow the amendments to be tabled a week before the debate, this Motion moves Schedule 7 to ensure that any consequential amendments to the schedules can be considered alongside the relevant clauses.

Motion agreed.

European Union (Withdrawal) Bill
Report (3rd Day)

3.39 pm

Relevant documents: 12th, 20th and 23rd Reports from the Delegated Powers Committee

Clause 7: Dealing with deficiencies arising from withdrawal

Amendment 31

Moved by ***Lord Lisvane***

31: Clause 7, page 5, line 3, leave out "the Minister considers appropriate" and insert "is necessary"

Lord Lisvane (CB): My Lords, in moving Amendment 31 I shall speak to the other three amendments in the group, which are to the same purpose and are also all tabled in the names of the noble Lords, Lord Tyler and Lord Cormack, and the noble and learned Lord, Lord Goldsmith. The first point to make is that the powers to make regulations proposed to be given to Ministers in Clause 7 and Clause 8—although I am glad to say that Clause 8 is to be removed from the Bill—and Clauses 9 and 17 are heavyweight. With the exception of the matters listed in Clause 7(7), which are to be modestly extended by government amendment, regulations can do anything that an Act of Parliament can do—including, of course, the wholesale amendment or repeal of statutes that have passed through the far more exacting process of primary legislation.

I am grateful to the Minister and his officials for their generosity with their time and explanations, and I know that I speak for other noble Lords—but on this issue I do not think that our points of view have come significantly closer. I see that the Minister is kindly indicating confirmation of that. On Report I must not hark back too readily to what occurred in Committee, but it is worth recalling that when an identical amendment was moved compellingly by my noble friend Lord Wilson of Dinton, out of the 16 noble Lords who contributed to the debate, the only noble Lord who spoke against the amendment was the Minister.

There have been several rounds of detailed exchange between the Government and the Delegated Powers Committee, of which I am a member, and the committee has reported on these issues in its 12th, 20th and 23rd reports. I will spare noble Lords a detailed recapitulation. The issue is this: if a Minister may exercise these powers when he or she thinks it appropriate, I suggest that this subjective test is inadequate. These amendments would not simply replace the word "appropriate" with "necessary"; they would also remove the words, "the Minister considers", so that we would be left with a statement of objective necessity. The Government have argued strongly that this amendment would unduly constrain Ministers so that they might not be able to do things that needed to be done because they would not be confident of being able to demonstrate necessity. I accept that "necessary" is a high bar—but "appropriate" is a bar so low that it would challenge even the most lithe and determined limbo dancer.

The Government have sought to make the use of "appropriate" more acceptable by requiring Ministers to give "good reasons" and show that they are pursuing a "reasonable course of action" via government Amendment 83C. But this does not cure the problem. The good reasons and the reasonableness of a course of action are still only in the opinion of Ministers. In its 23rd report, the Delegated Powers Committee points out:

"The requirement to state good reasons is a very low threshold. We would always expect Ministers to have good reasons before doing anything, and certainly when making new law in secondary legislation".

The committee goes on to say:

"It does not advance matters for Ministers to commit to lay a document that merely confirms their belief that they are acting lawfully".

Finally, the committee said:

"The test for political decision-making is not simply whether there are good reasons. There may be good reasons for doing something and better reasons for not doing it".

There is also the point that under paragraph 22(6) of Schedule 7, if a Minister "fails to make a statement" of good reasons, he or she has only to "make a statement explaining" why this has not been done—so, not a high threshold, then.

I have heard it said that, were your Lordships to agree to the amendments in this group, it would make the Bill unworkable. It is of course a practice of very long standing to describe the likely results of unwelcome

amendments in apocalyptic terms, up to and including the onset of plague and asteroid strike. However, in this case the problem is easily cured. Clause 7 contains a lengthy definition of what constitutes or does not constitute a deficiency in EU retained law. Indeed, the definition runs to 39 lines. With this example before us, it would be a relatively simple matter to gloss "necessary" in order to include the things that Ministers may indeed need to do.

For example, they may want to avoid unnecessary public expenditure, ensure that there is no inert or irrelevant material on the statute book or avoid legal uncertainty, as the Delegated Powers Committee suggested. I would be both surprised and disappointed if parliamentary counsel were not able to draft a form of words so that the common sense things that Ministers will need to do as part of the repatriation process fall—and are clearly seen by Ministers, Parliament and the courts to fall—within the definition of "necessary".

3.45 pm

Let me make two final points. The amendments on delegated powers, including those in this group, are about the balance of power between Ministers and Parliament. Whichever side of the Brexit argument they stand on, people might reasonably believe that taking back control would be under the sovereignty of Parliament, rather than ceding swathes of power to the Executive.

Finally, although we are considering only one exit Bill, it is likely that there will be a dozen, or even more, exit Bills in total. The powers given to Ministers in this Bill will be a powerful precedent for the others. I beg to move.

Lord Cormack (Con): My Lords, I was very glad to add my name to the amendment and the others in this group. I am sure that I speak on behalf of many Members of your Lordships' House in thanking the noble Lord, Lord Lisvane, for moving the amendment so concisely and convincingly.

I suggest that is it necessary that we pass the amendment. Whichever side of the Brexit argument one is on—the noble Lord, Lord Lisvane, has already touched on this point—one can still believe that it is of fundamental importance that the powers of Ministers should be contained in a sensible and democratic manner by Parliament. Ministers are answerable to Parliament for all that they do, and they should not be able capriciously to decide what is appropriate and what is not.

The word "appropriate" is itself extremely unsatisfactory. It may well be that no one in your Lordships' House has any doubt about the way in which Ministers in the present Government would behave—that we can trust them implicitly to exercise judgment and discernment in all issues, just as my noble friend Lord Hailsham did when he was a Minister—and by Jove he needed containing from time to time, as he readily admits.

Seriously, this amendment places no real obstacle in the way of any self-respecting Minister. We were reminded in Committee that we are dealing with well over 100 individuals. It means that he or she will act with regard to what is necessary and not to a subjective analysis, as far as the Minister is concerned, of what is appropriate. If agreed by your Lordships' House, the amendment will not in any way inhibit the overall desires of those who are passionate for Brexit. Nor will it particularly advance the cause of those, like me, who are very sceptical about the benefits of Brexit. What it will do is make every Minister—all 100-plus of them—if given the opportunity to make an executive decision, examine with precision and be able to justify that his or her decision is governed by that word, "necessary". I hope that we will have a brief debate and a conclusive outcome—unless my noble friend rescinds his nodding of a few minutes ago and accepts, as he should, the impeccable logic of the amendment.

Lord Howarth of Newport (Lab): My Lords, as the noble Lord, Lord Lisvane, suggested in his admirable speech, taking back control should not be a licence for the Executive to arrogate to themselves new arbitrary powers, and Parliament should not permit them to do so. It is entirely appropriate that your Lordships' House offers this advice to the other place. No self-respecting MP would think otherwise. I very much hope that the other place will agree with us.

Lord Skelmersdale (Con): My Lords, I have never been a self-respecting MP, nor am I ever likely to be one. The amendment would leave us in total limbo. The noble Lord, Lord Lisvane, in introducing it, made reference to the phrase:

"A Minister of the Crown may by regulations make".

He needs, in this amendment, to change the emphasis on the reason for which he does it. Unfortunately, the amendment would leave out the role of the Minister of the Crown. It is Ministers the Crown who make regulations. They always have and presumably always will. Therefore, who will make these regulations under whatever auspices? How is this supposed to work and improve the Bill?

Lord Spicer (Con): My Lords, I enter one word of caution. The choice might not be between Parliament and Ministers, but between Ministers and civil servants. To change it to "necessary", one has to use judgment about that word just as much as the previous one.

Lord Bridges of Headley (Con): My Lords, I make a small contribution, having been at the birth of the Bill—if one can be a midwife to a Bill. I always saw the purpose of the Bill as delivering the orderly withdrawal of this country from the European Union and ensuring that we have a coherent statute book on the day we leave. I do not want to detain your Lordships, but as I said at Second Reading and as I still believe, it is imperative that we get the balance right between the powers of the Executive and parliamentary sovereignty. As the noble Lord, Lord Lisvane, so rightly said and others have commented, if we take the view that the referendum vote was about Parliament taking back control, it hardly seems right that excessive control be given to Ministers of the Crown.

[Lord Bridges of Headley]

I had many misgivings about this issue, and I am most grateful to noble Lords, including the noble Lord, Lord Lisvane, for sparing the time to talk to me about it. I have considered it. Your Lordships need to consider it in the round—the round being all the other limitations that currently exist on Ministers—and, most importantly, the amendment my noble friend the Minister is making to this point, which I believe addresses many of the concerns. All I ask your Lordships at this point is to consider this: are the Government acting in a reasonable way to ensure they have the powers necessary to deliver a smooth and orderly Brexit? That is the simple question in my mind. I believe that the Minister has moved enough and that he should be given our support. I completely understand the views of the noble Lord, Lord Lisvane, and my noble friend Lord Cormack on this point. I fear we just differ now on how far the Government have moved.

Baroness Falkner of Margravine (LD): My Lords, I chair the EU Financial Affairs Sub-Committee of this House. We have been having a lot of conversations with regulators about appropriateness, as the noble Lord, Lord Bridges, has rightly pointed out. But words matter. The distinction in legal terms between "appropriate" and "necessary" is quite profound if you are a regulator—both EU and UK regulators—that has a duty to put in place a workable legal framework. While I completely agree with most of what the noble Lord, Lord Lisvane, said, and I understand that he rightly wishes to bring power back to Parliament, there are instances where regulators need to adapt and to have legal certainty to adapt.

I will give the House one small example. I should say that I am speaking for myself as the chair of the committee because the committee has not come to a settled view on this, having had discussions very recently. But we are told that the amendment would lead to increased litigation and therefore legal uncertainty in relation to the meaning of "necessary". This would impact a large number of different areas of financial services regulation. It may be hard to argue that it is strictly "necessary" to extend protections but if, for example, you take securities collateral held within the EU, absent an FTA—if we have to revert to WTO rules—we would need to treat collateral held by UK firms in EU systems in the same way as collateral held by UK firms in systems outside the EU. If you took away discretion from the Minister and you had to define this as "necessary", you may have to restrict the protection to collateral held in UK systems only. That would put UK firms at a disadvantage.

Finally—this is slightly technical—redenominating values and thresholds from euros to sterling may be appropriate in a UK regime because most UK firms' balance sheets are denominated in sterling. However, it could be argued that it is not "necessary" to do so ahead of the UK's exit from the EU. Litigation would take time while the courts determined whether the Minister had acted under "necessary" or "appropriate", but in financial crises time is not something regulators have at their disposal. I just ask noble Lords to bear that in mind. I have not come to a definitive view myself but it is important to put that on the record.

Viscount Hailsham (Con): My Lords, I serve as the legal assessor to regulatory panels and in the course of that, we have to address the meaning of the word "necessary". The panels that I work with, as a general proposition, have no difficulty in identifying the meaning of that word. It is also used as useful protection for people because it is a higher threshold than "appropriate", "desirable" or a range of other words that are used. I say to the noble Baroness that in my experience as a regulator, "necessary" does not constitute a difficulty along the lines that she has suggested.

Baroness Falkner of Margravine: I completely accept the long experience that the noble Viscount, Lord Hailsham, has. I referred specifically to time in case there is a financial crisis. That is when regulators have to resolve institutions fairly quickly in co-operation with one another. That is a danger that we face at this point—10 years into the last one.

Lord Bilimoria (CB): My Lords, I want to emphasise and back up what my noble friend Lord Lisvane has said. In essence, this "necessary" versus "appropriate" is about taking back control for Parliament. Since the referendum, we have seen the Government trying to bypass Parliament time and again. Starting with Article 50, Parliament was bypassed until that had to be taken to court. Going back to the Strathclyde review in 2015, we were told very clearly that it is a convention that this House does not challenge statutory instruments. So by agreeing to this "necessary" we are saying that they can be used but only if necessary.

The Government argue that they need the flexibility if it is appropriate to tidy things up. Who is taking the decision on whether something is appropriate? Today it is Theresa May as Prime Minister. Tomorrow it may be Jacob Rees-Mogg, Boris Johnson or Jeremy Corbyn. This is about the Government, the judiciary, the legislature and, without a written constitution, the very delicate balance that needs to be respected. We need to protect that, which is why we need this amendment; otherwise, we will keep hearing threats from Jacob Rees-Mogg saying that we are burning down this House. That is the wrong way to go. This is not about Henry VIII powers or the Government getting power; it is about power coming back to Parliament and actually giving power to the people.

4 pm

Lord Tyler (LD): My Lords, as a signatory to this amendment and the others in this group, I encourage Members to look at the words of the amendment and how they will alter the Bill. The Bill currently reads:

> "A Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate",

and so on, so the Minister still has the initiative. It is the criteria by which he takes that initiative that are important. Our amendment would simply take out a phrase so the Bill would read: "A Minister of the Crown may by regulations make such provision as is necessary".

I shall go back to where the Government led us at the beginning of this process in a moment, but, first, when the Minister responds to the debate, which in

Committee and to some extent this afternoon has been characterised by some support for this group of amendments, I plead with him not to rely on the rather flimsy arguments contained in his correspondence with our Delegated Powers Committee. Frankly, they are not worthy of him.

The same goes for his justification in Committee for government Amendments 83C, 83F and 83G to Schedule 7. We will deal with them in detail later, but they are an attempt to derail the formidable arguments for insisting on the relatively objective "necessary" instead of the blatantly subjective "appropriate" throughout Clauses 7, 9 and 17, which are the subject of this group.

As the noble Lord, Lord Lisvane, set out when moving this amendment, all the amendments in this group would replace "the Minister considers appropriate"—what could be more personal than that, where the Minister personally decides that something is appropriate?—with the strictly more objective test of "necessary". That is the salient difference. That was the subject of much discussion in Committee, and other speakers have emphasised it this afternoon.

Frankly, the Minister's arguments in his correspondence with the committee do not face up to this issue. For brevity, at this stage I will confine myself to just one or two examples. He asked us to explain "necessary for what purpose?". The answer is to be found in his Bill. In Clause 7(1), by substituting "is necessary" for the phrase "the Minister considers appropriate", it is clear what the regulation would do and why it would be necessary. I shall read it in full,

"such provision as the Minister considers",

necessary,

"to prevent, remedy or mitigate … any failure … or … deficiency arising from the withdrawal of the United Kingdom from the EU".

It is absolutely clear. Instead of asking why we think something is necessary, he should look in his Bill. That is precisely what Amendment 31 would secure.

The Government have further suggested that there is no material difference between "appropriate" and "necessary". Why are we having this discussion if there is no difference? Our cross-party, non-partisan committee, which is answerable to your Lordships' House, has unanimously disagreed. "Appropriate" means suitable, proper and apt, and other words which could be used; "necessary" means that it is judged objectively to be needed.

We should recall that the original position of the Government, when they set out what they intended to do with the Bill, was that only changes needed to make retained EU law work after exit day would be implemented. This amendment fulfils their promise. When it comes to the belated attempt to block these amendments, the Government's reliance on a statement of "good reasons" for subjective ministerial decisions is totally inadequate, as the noble Lord, Lord Lisvane, has already said.

I return to my original point: the Minister has failed to persuade the cross-party, non-partisan Delegated Powers Committee, which looks very carefully at these issues on behalf of your Lordships' House, and which has now reported to this effect to your Lordships' House. So far, it would seem that many Members are similarly unpersuaded.

I hope I will be forgiven for sounding a little bit like Little Lord Echo, but speaker after speaker, at every stage of the Bill, has emphasised that this must not be used as an opportunity to turn the Executive into an elective dictatorship. It is the British Parliament that must take back control, not a minority Government. As a former Member of Parliament, I hope that the Commons will concur with your Lordships' House and the Delegated Powers Committee on this point. Are the Government really going to go into the last ditch in defence of this apparently indefensible position?

Baroness Deech (CB): My Lords, I am trying to clarify what the noble Baroness, Lady Falkner, said. I think the issue is not "appropriate" versus "necessary" but "the Minister considers". I believe the point the noble Baroness was making is that, if something has to be "necessary", that leaves it open for a court to say whether or not it was necessary. If you say "the Minister considers it", then the issue is whether the Minister genuinely considers it.

Lord Goldsmith (Lab): My Lords, and what is wrong with that?

In Committee, in a most powerful speech, the noble Lord, Lord Wilson of Dinton, with his vast experience from inside the Civil Service, from knowing just what civil servants and Ministers would like to do, gave your Lordships the advice that,

"in this case, I think the scale of the powers proposed is so extensive that we should lean against giving Ministers plump cushions of legal protection"—

a very telling phrase. He continued:

"it should be the strict discipline of an objective test of what is necessary".—[*Official Report*, 7/3/18; col. 1180.]

I respectfully completely agree with that. It is absolutely the case that, in circumstances where great powers are being given, one needs to be very clear where the discretion lies. Here it is not just Ministers but civil servants. We have been told that there are 109 Ministers, but under the Carltona principle—I have made this point several times and no one has yet contradicted it—many civil servants themselves in effect exercise these powers in the name of the Minister.

So Ministers and civil servants do what they think is appropriate. That is very different from things that are necessary in order to achieve the objectives set out in the clause. As a practising lawyer, I have no difficulty with the concept of what is necessary, but I believe—to use the words of the noble Baroness, Lady Falkner of Margravine, in a different context—that there is a profound distinction between saying, "You can do what you as a Minister consider appropriate", and saying, "You can do only what is necessary to achieve these objectives". If this House has a responsibility, I respectfully suggest that it is to ensure that we do not give the Executive more power than is necessary in order to achieve their objectives. The amendment would achieve that. If the Government want to come back with further clarification on the meaning of "necessary", although I do not believe that is necessary at all, they can do so.

Lord Brown of Eaton-under-Heywood (CB): I intervene to ask the Minister whether he agrees with this. Although —and I support the amendment—it is right to say that "necessary" involves a degree of objectivity, the clause would actually be applied in court on any challenge, and it would be a judicial review challenge to the making of regulation, on the basis that it is, in the reasonable opinion of the Minister, necessary. That is how the clause as amended would be applied on a challenge in court. Would he agree?

Lord Goldsmith: I am delighted to be described as a Minister in that question—not a role that I am eager to take on—but it may be that the question was intended for the Minister himself when he comes to respond.

The important point, as the noble Lord, Lord Tyler, made clear, as did other speakers, is that, as the Bill stands it is subjective and imposes a vague, low test. It is subjective because it is what the Minister considers, and it is a low test because it is what he considers appropriate.

As I told your Lordships previously—I will repeat it just this one last time—as someone who has spent a life as a practising lawyer, a court advocate, advising Ministers and being a Minister, I know that there is all the difference in the world between saying, "You can do this if you consider it appropriate"—nobody can second-guess that—and saying, "You can do this if it's necessary". It introduces an objective test, and that is what matters. This is what we invite the House to say to the Government is necessary in these circumstances. That is the only power they should take, and I hope that when the noble Lord presses the amendment to a vote, it will be supported by many Members of this House.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, I first thank all those who have contributed to today's relatively brief debate, and the many noble Lords I have either spoken to or exchanged letters with between Committee and Report. The scope of the delegated powers in the Bill has, rightly, been one of the most intensively scrutinised areas, and I do not for one moment doubt the best intentions of many of those who have spoken against the Government's position today. However, I hope noble Lords will listen to my remarks with an open mind, as I hope to offer some new content that we did not cover in Committee.

Let me start by addressing the specific proposition of the amendments on the Marshalled List—Amendments 31, 42, 86 and 87, tabled by the noble Lord, Lord Lisvane. As has been said, they would remove from the main powers in the Bill the discretion of ministerial judgment on appropriateness, and permit action only where it "is necessary" in the context of the specific power. This has been touted as a change from a subjective test to an objective one. But I hope to demonstrate that this is not the case, as I would question what exactly "necessary" means.

For example, in the context of Clause 7, would the course of action a Minister takes have to be no more than necessary to correct the deficiency? Or must it be necessary to correct a deficiency for the power to be engaged in the first place—and if so, necessary for what purpose? Let me address these different scenarios in turn. First let us say, hypothetically, that a court interprets the amendments to mean that a course of action taken by Ministers must be necessary to correct an identified deficiency. It might follow that Ministers could follow only the course of action that does no more than is strictly necessary to correct that deficiency, rather than the course of action that is most sensible.

I know the House likes concrete examples, so let me give an example of how I think this would lead to worse policy outcomes. Take, for example, Section 105B of the Communications Act 2003—with which I am sure all noble Lords are completely familiar. This includes an obligation for Ofcom to notify its regulatory counterparts in other member states, as well as the European network and information security agency, when Ofcom is made aware of a security breach that affects a public electronic communications network or service, and Ofcom thinks it appropriate to make such a notification. It could be argued that it is not strictly necessary to delete the obligation at all. Let us assume, however, that a court accepts that some action is needed in this scenario. A test of necessity could then be taken to mean that the Government should take the minimum action possible to address the deficiency. That might be simply to remove the requirement to share information.

However, the Government's preferred policy, which this House would surely support, is to change it into a discretion that makes it explicit that Ofcom may make notifications of this kind if it wishes. This is intended to support proportionate information-sharing about security matters after EU exit. That amendment is appropriate but arguably not strictly necessary, and might fall foul of the increased restriction offered by the amendments tabled by the noble Lord, Lord Lisvane. I understand the notional appeal of permitting Ministers to act only where it is necessary. But here I agree with my distinguished predecessor, my noble friend Lord Bridges, the midwife, as he put it, to the Bill. It should not be the role of a Minister to be a statutory firefighter, dousing deficiencies in the statute book only where it is absolutely necessary. Instead, I would argue that a more proactive role is the only way that we can ensure the best possible outcome for the statute book.

4.15 pm

That is just one interpretation of how this set of amendments might operate. A court could also feasibly interpret the amendments to mean that it must be necessary to correct a deficiency for the power to be engaged. The immediate question that would arise would be: what constitutes true necessity? For example, it might be considered necessary to correct a deficiency to avoid legal uncertainty, to prevent the waste of public authorities' time and money, or to prevent the statute book including inert or otherwise confusing material. But it might not.

We could, as suggested by the Delegated Powers and Regulatory Reform Committee, add provision to Clause 7 to make clear that these scenarios would constitute necessity. I submit, however, that to do so would be to torture the English language beyond its plain meaning. This would redefine "necessary" to mean something much more like "appropriate". This goes

against legal certainty and is hardly the clear, objective test that many have made it out to be. A court might judge that a correction must be necessary to prevent serious disruption to the statute book. If this were the interpretation, the Government could not proceed with many of their planned corrections.

I give another example. The EU regulation on open internet access—another with which I am sure all noble Lords are familiar—regulation EU 2015/2120, refers to national regulatory authorities. The Open Internet Access (EU Regulation) Regulations 2016 designated Ofcom as the UK's national regulatory authority for this purpose. We propose to amend the EU regulation so that references to the national regulatory authority are replaced with references to Ofcom. This change is arguably not strictly necessary but its common sense is surely not in doubt.

If the power in the Bill were narrowed, it would become unclear whether these changes could be made. However, I submit that they are appropriate, because without making them, a cumbersome and confusing legislative picture arises. The point of the amendments is to advance principles of good law by ensuring a clearer statute book.

I understand—and can tell from some murmurings—that these examples might not sound like life or death issues, but the point I would stress is that this kind of policy outcome will be happening on many hundreds of occasions across the statute book as corrections are made. While they might not be critical in every single circumstance, the sum total of all such instances would be a statute book in a far worse state. I am proud of this House's reputation as a promoter of good public policy, and I urge noble Lords to give serious thought to the consequences of the amendments.

Lord Tyler: I am grateful to the Minister for giving way. How can what he is arguing be reconciled with the White Paper, which stated that,

"legal and policy changes would be made under the Bill only when it was necessary to ensure that the law continues to function properly after exit day"?

Lord Callanan: I think I have addressed that in my remarks, but I have some more comments to make which I think will address the noble Lord's concerns.

However, as we have said throughout the passage of this legislation, we will give due consideration to all amendments that do not undermine the fundamental operation of the Bill. That is why we have accepted the recommendation of the Constitution Committee and tabled government amendments to ensure that, where the powers in Clauses 7(1), 9 or 17(1) are used, a statement must be made as to why there are good reasons for the instrument and the provision made is a reasonable course of action. Of course, we are going further with Clause 8 and propose to remove it from the Bill in its entirety. These amendments will be dealt with in a later grouping on Schedule 7, but they are key to set the context of this debate. They demonstrate the Government's willingness to accept additional scrutiny if that scrutiny is appropriate.

Lord Goldsmith: I wonder whether the Minister would kindly consider this question: is he saying that he would want Ministers—and indeed, civil servants—to have the discretion to make policy changes from EU retained law without reference to Parliament?

Lord Callanan: The powers in this Bill cannot be exercised by civil servants; it has to be Ministers who make the decisions. We have said on a number of occasions that defining a policy change is quite hard. A pure correction can involve a slight policy choice—for instance, whether to designate one agency or another. It can still be a technical correction but it is a policy choice about what to do. But we are clear that we are not trying to make substantive policy choices through this secondary legislation power.

I will refrain from making the full case for the government amendments as they are not on the Marshalled List today, but I will quote the Constitution Committee in justifying our position. It said that such amendments,

"will require explanations to be given for the use of the power which can be scrutinised by Parliament. It will also provide a meaningful benchmark against which use of the power may be tested judicially. In this way, the Government can secure the flexible delegated powers it requires while Parliament will have a proper explanation and justification of their use that it can scrutinise".

That, to me, sounds like a sensible solution.

Before I finish, let me add the words of the noble Lord, Lord Pannick, who I am sorry to see is not in his place.

Noble Lords: He is.

Lord Callanan: I do apologise; he is behind the Bar, so he is not quite in his place. I hope he will not mind if I quote him. When comparable amendments were added by the Government to the Sanctions and Anti-Money Laundering Bill, and when speaking in support of government Amendment 9, to which he signed his name, he stated:

"I am satisfied that this will impose a real discipline on the Minister, backed up of course by the prospect of judicial review".—[*Official Report*, 15/1/18; col. 439.]

That amendment passed without a Division—and I am sure the noble Lord will be supporting us in the Division tonight.

I know that I have offered new information in my speech today. In doing so, I hope that I have demonstrated that this is not simply a case of risk-averse Ministers erring on the side of caution. I can say with complete sincerity that the amendments on the Marshalled List today would necessitate a significant review of our secondary legislation programme and would surely lead to worse outcomes. In this, I agree with the noble Baroness, Lady Falkner. To avoid such a situation, I hope that the noble Lord will agree to withdraw his amendment. If, however, as I suspect, he wishes to test the will of the House, I suggest that he do so now, as this is not an issue the Government intend to return to at Third Reading.

Lord Lisvane: My Lords, I thank all noble Lords who have taken part in this debate—especially for their concision and brevity. I am in a position to help

[LORD LISVANE]
the noble Lord, Lord Skelmersdale, as I apprehended that his concern was that if the amendment were agreed, Clause 7(1) would be without a subject. But that subsection begins with the words:

"A Minister of the Crown"—

so it is quite clear who will be exercising the powers.

I listened very carefully to the noble Lord, Lord Bridges, and I hope that the difference of opinion which still remains between us is a demonstration that two reasonable people can disagree without either one being unreasonable.

I also listened very carefully to the noble Baroness, Lady Falkner of Margravine, who had the great courtesy to mention her concerns to me earlier. It seemed to me that her particular concern was the matter of discretion and the amount of time that would be required to make orders. I respectfully suggest that neither "appropriate" nor "necessary" will have an impact on time. There will be a great deal of pressure to produce the delegated legislation in the time required, but I do not believe that whether the word is "appropriate" or "necessary" will impact on that. In terms of ministerial discretion, there is still of course a substantial amount of discretion to be given to Ministers. The debate we are having is about the degree of constraint that there should be on that discretion.

The suggestion I made in moving the amendment, which the Minister was kind enough to recall, was reflected in the Delegated Powers Committee's 20th report: namely, that some form of sensible definition, or at least the parameters of what could be done without going beyond the bounds of "necessary", would be of great help to Ministers. If we are talking about avoiding legal uncertainty—and here I was most grateful for the intervention of the noble Viscount, Lord Hailsham, from his extensive professional experience—I do not think that adopting "necessary" would be necessarily an obstacle.

The Minister played the bowling in a very determined way, but the wicket has worsened substantially since Committee. He actually used the phrase about a course of action being "most sensible"—which seems to me to be at the heart of this. If one has some sort of expanded indication of what "necessary" can encompass, that seems to me to be exactly what is required. Nobody wants to stop Ministers doing things that are sensible—certainly I do not—but let us at least have them doing them on a canvas whose bounds are reasonably clear.

When he got on to "torturing" the English language, I felt that that really was a little hyperbolic. You do not torture a concept simply by telling people how you would like it interpreted. That seems again to me to be at the heart of the amendment.

The Minister's Ofcom example was new material and very helpful, but it started to get into the area of whether there could be more than one solution to "necessary"—and, of course, there can, because, if there is a deficiency, there is not a single solution that is going to assuage that deficiency. There may be several of equal merit, and when they assuage that deficiency they demonstrate their necessity. So I did not really think that that was a particularly compelling example.

Of course, if we are to expect that significant policy changes will be made, the right route for making those changes is primary legislation, and there will be—as with a certain sense of foreboding we are well aware—a number of vehicles for such provision.

So I think that the Minister will not be surprised to hear me say that, despite a dogged defence of his wicket, I shall ask noble Lords to indicate their views, and I wish to test the opinion of the House.

4.27 pm

Division on Amendment 31

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4.46 pm

Amendment 32 not moved.

Amendment 32A

Moved by ***Lord Callanan***

32A: Clause 7, page 6, line 7, leave out "newly established or"

Lord Callanan: My Lords, I shall speak also to the other amendments standing in my name on the Marshalled List relating to the creation of public authorities.

I am pleased to say that the Government have listened to the discussions on this issue and have consequently tabled these amendments, which remove the ability to create public authorities from the Clause 7 power and also from the power in Clause 9. As noble Lords will have seen, the Government intend to remove Clause 8 in its entirety from the Bill.

We explained during Committee that, when Clause 7 was originally drafted, we thought it would be only sensible for the sake of contingency to include within its scope the ability to establish new public authorities to insure—as many amendments in the other place sought to do—against losing any important functions as they are transferred over from the EU, as no such public authority may currently exist in the UK.

Since then, the Government's analysis of the transfer of functions with exit has progressed to a stage where we now consider that the establishment of a new public authority will be necessary only in a very limited number of cases. In the event that no appropriate public authority currently exists in the UK to take on functions transferred from the EU, the Government will instead bring forward the appropriate provisions under primary legislation.

As noble Lords will be aware, at the end of last year the Secretary of State for Environment, Food and Rural Affairs announced plans to create a new environmental body to advise and challenge government and potentially other public bodies on the environment. It is still the Government's clear intention to create this new environmental body but, instead, it will now need to be delivered through a separate legislative vehicle. As I informed the House on Monday evening, the consultation on the environmental body will be published ahead of Third Reading on 16 May.

In order to maintain consistency between the powers given to the UK Government and the devolved Administrations, the restrictions preventing the establishment of public authorities in the UK after

exit will also apply to the devolved Administrations. We discussed this with the devolved Administrations in advance of tabling these amendments and gave them the opportunity to consider what impact this might have on their preparations for exit day. We are not aware of any circumstances where they were anticipating using the power in this way, and they have not raised any concerns about the restrictions applying to the equivalent Schedule 2 powers.

I am grateful to the noble Lord, Lord O'Donnell, for pursuing this issue and I am pleased to say that his Amendments 33 and 35, seeking to remove this ability from the Clause 7 power, are now not necessary, as the Government's amendments cover this and more. I hope the noble Lord feels satisfied by these amendments and will accept them. I also hope that this demonstrates the Government's commitment to narrowing the scope of the powers wherever practical without threatening the Bill's core purpose to deliver a functioning statute book on exit.

I turn to the noble Lord's Amendment 103, which seeks to restrict subdelegating fees powers under Schedule 4 to public authorities taking on new functions. This matter will be discussed further, later on during Report stage, when we will address similar amendments. Therefore, for now, I will remain brief in my response. I hope the noble Lord feels reassured by the amendments on subdelegation tabled by the Government that will ensure that, where a power is exercisable by a public authority without further direct reference to Parliament, that authority must continue to inform Parliament about the exercise of the power. This will allow Parliament to maintain oversight of the use of delegated legislation-making powers. In anticipation of the later discussion, I ask the noble Lord not to press his amendment.

I beg to move the government amendments. In doing so, I want to inform the House that this is not an issue to which we intend to return at Third Reading.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, I have to inform the House that if Amendment 32B is agreed to I cannot call Amendment 33 by reasons of pre-emption.

Lord O'Donnell (CB): My Lords, briefly, I would like to thank the Minister and his officials for their work on this and for their constructive approach. I am very happy to drop my amendment.

Lord Newby (LD): My Lords, I too thank the Minister—I fear that that will not necessarily be very common, so I am pleased to be able to do so now. I am sure he will agree with me that these amendments are sensible, appropriate and necessary.

Baroness Hayter of Kentish Town (Lab): My Lords, I commend the Government for these amendments, which respond to and accept the arguments made in Committee. As I argued then, and there is a reason for me repeating this, the very way that we set up quangos—how they are appointed, funded and run, and particularly their reporting structures and independence from both government and any other organisation they happen to be regulating—is key to how they work, hence the need for primary legislation so that we can interrogate all these things. That is why I very much welcome what has been said.

I am afraid, however, that I am led to make one comment, which is aimed not at the Minister but at friends of his in another place. After the vote last week on the customs union, we read in the *Sun* that the Government were going to remove those Conservative Peers who had voted for a customs union from their various positions on public bodies. I am absolutely certain that those threats, although mere briefings, did not emanate from anyone in this House. That is simply not the way that I have seen those on the Government Benches here work. They recognise the role of the Lords and that it is our job, on occasion, to ask the Commons to think again, even if sometimes that is a bit inconvenient when it comes from their own side. However, it was rather disturbing to learn that there are certain people around No. 10 who could, even for a moment, think that it would be right to undermine the independence and arm's-length nature of such bodies, as is often written into their statutes, simply because Members of the House of Lords voted in a certain way. Everything I know about Ministers in this House means I know that not only were they not involved in this but they were probably as shocked as I was. Perhaps the Minister would like to take the opportunity to distance himself from such threats and reaffirm what I know to be government policy: that any appointment to such bodies is done without fear or favour and nobody would be taken off them for a choice that they made in this House.

On the essence of the amendment, and particularly given the role of the Minister and his officials, we are happy to support the government amendments.

Lord Callanan: My Lords, I am grateful to all noble Lords who have contributed to this debate. There were relatively few but I thank them and I hope these amendments satisfy the concerns that have been previously raised in the many discussions I have had with noble Lords about this matter. It is proof that, despite the accusations that have been made, we are listening and will respond appropriately if we deem something to be necessary and it improves the legislation, which on this occasion we do.

I am not going to comment on every press article. Precise recruitment criteria are set down for these posts. I am sure that those criteria will be followed and that all appointments will be made on merit.

I hope noble Lords welcome the reassurance that these amendments provide and recognise that this reflects the sincerity of the Government's commitment to narrowing the scope of the powers wherever practicable without compromising the purpose of the Bill.

Amendment 32A agreed.

Amendment 32B agreed.

Amendment 33 not moved.

Amendment 33A

Moved by ***Lord Callanan***

33A: Clause 7, page 6, line 15, after "taxation" insert "or fees"

Lord Callanan: My Lords, it is my pleasure to lead on this group of amendments. They are simple, short and, I hope, demonstrate again that the Government are listening to debate in the House.

The Government's clear intention has been to make bespoke provision in relation to all financial matters in the Bill. It was introduced with a specific power to make provision in relation to fees and charges in Schedule 4. I know that that power is not without controversy and we shall debate it in full later on Report.

The powers in clause 7(1) and (9) could never, even if it were appropriate to remedying a deficiency or implementing the withdrawal agreement, make provision for a charge, as such measures contain an element of taxation prohibited in the exercise of these powers. That distinction is the distinguishing feature of a charge and why, at the time of our accession to the EU, specific provision for charges was included in the Finance Act 1973. The Government are tabling these amendments to prohibit the powers in Clause 7(1) and (9) from imposing or increasing fees, so as to provide clarity on the distinct purposes of these powers and those in Schedule 4.

The powers in Clause 7(1) and (9) will still be able to repeal fees regimes that are no longer needed, reduce fees and make amendments to pre-exit powers to provide for fees and charges. An example would be correcting a deficiency in an existing fee-setting power, such as a reference to a directive which is no longer appropriate. They will not, however, be able to impose or increase a fee or charge themselves.

These amendments respond to amendments and questions which were raised in debate in Committee. As I have said, we have reflected on this and taken steps to ensure that the stringent scrutiny provisions we are applying to Schedule 4 cannot be circumvented. This was never our plan but I can feel the mood of the House and I know that the word of a Minister only goes so far. I hope that these amendments demonstrate that we are keen to put questions beyond doubt where we can. I beg to move.

Baroness Kramer (LD): This is another opportunity to thank the Minister because some peace of mind will now be provided about the structure of Clause 7. We understand now that the Government have stepped away from any capability to introduce new or increased fees.

I also thank the Minister for clarifying what a charge is. Many in this House have been trying to understand exactly how it could be framed. I hope the fact that he has now described it in the House will, in effect, put that definition on the record so that no future Government will attempt to use the word "charge" in order to circumvent these various constraints. Again, on this occasion, I thank the Minister.

Baroness Hayter of Kentish Town: To make sure that the Minister blushes fully, we, too, will take the opportunity to say again that we think that this is a good improvement. We thank those who have been involved in the drafting of the amendment and we support it.

Lord Callanan: Again, I thank noble Lords for their brief contributions. As I said in moving the amendment, this group comprises simple amendments and I hope that I have convinced the House to accept them in the spirit in which they have been tabled.

Amendment 33A agreed.

5 pm

Amendment 34

Moved by ***Lord Judge***

34: Clause 7, page 6, line 17, leave out "relevant"

Lord Judge (CB): My Lords, the issue that these amendments give rise to is quite an important constitutional one. This will not be a great moment after having had the excitement of a vote involving 500 or more Peers, but if we could add up to 100 it would be very successful. There are two reasons why there is no great interest in this issue, and one is that we have become habituated to the creation of criminal offences by regulation. It happened under the last Labour Government and the coalition Government, and it happens under this Government. Over the past 20 to 25 years there has been a proliferation of these clauses. Constitutionally, that is an aberration. We should not be creating criminal offences that can lead to an individual being imprisoned by regulation that, for the reasons we have discussed over the past few weeks, is controlled only by negative or affirmative resolution, which, as we have seen, is no sort of control at all.

The constitutional principle was upheld during the debates on the sanctions Bill. Those noble Lords who were here will remember a very significant vote in favour of an amendment to that Bill which would have deleted the ability of a Minister of the Crown to create criminal offences by regulation. There was cross-party support for the amendment and, as I say, the Government were defeated. The end result was that I had a series of meetings with the noble Baroness, Lady Bowles, who is not in her place. We then met with the Treasury Minister, with the Bill team and twice with parliamentary counsel to argue about how best to preserve constitutional certainty in relation to the creation of criminal offences. It was not easy. One significant point was made that certainly affected me: there will be occasions when it may be necessary—to use the word we now have—to allow for an offence to be created by regulation. A compromise was put forward and was accepted. It was put before the other place and, on this particular issue, that Bill will now proceed.

Faced with that, it seemed to me that we had to reflect again on the absolute nature of this amendment. I see that the Government have put forward proposals in government Amendments 83C and 83G which coincide with the suggestions made by the Constitution Committee, of which I am a member. I am speaking today only for myself, of course, not for the committee. The Government have recognised that there needs to be a significant increase in the element of parliamentary scrutiny and, if I may say so, proposals to encourage ministerial hesitation before proceeding by way of regulations to create criminal offences.

I really am not suggesting more than this. This is a start. It is a pullback from a process to which, as I said, we have become habituated. It is a process; it is an advance. It had not been made when the present Bill came before the House. The Bill has now come before the House, and we have discussed it. We have debated it in Committee, we have now discussed it again and ministerial amendments have been made. I welcome those, as I said at the start. I welcome the proposal that these amendments should be made. Ultimately, it is not my decision whether Amendments 83C and 83G should be supported in the House. If they were, that would provide a significant improvement to the current arrangements. There is nothing more I can usefully say. I beg to move.

Baroness Hayter of Kentish Town: My Lords, we have heard from the noble and learned Lord, Lord Judge, an indication of where the Government have arrived on this issue and that there will in future be a document stating why this measure is needed and what necessitated it, according to the Minister.

The Government's changes, which I welcome, do not go as far as Amendment 34 and the others in the group, but they insert an element of both written explanation and scrutiny of the use of these powers. I still doubt the need for these powers. Since the Bill was introduced in the Commons—not even when it came here—I have been asking for examples of where such new offences might need to be created. Finally, after numerous times of asking, the Government this week were able to provide just one example; that is all. It related to the marketing of medicine where it is an offence to produce false or misleading information in applications for approvals. After six months, that was the only example they gave of where such a new criminal offence, imprisonable for up to two years, might be needed, so I am still not entirely persuaded. However, given the new procedure that will come up later in the Bill, it should include the written statement as part of the Explanatory Memorandum and say that such powers will be available only in relation to our exit from the EU anyway. If the Minister could confirm that they are also subject to the timings of sunset clauses, we would see the Government's amendments as a great improvement.

Finally, these will be orders that the House could not simply debate or put down a regret Motion about. However, if necessary, there is a backstop so that if we were not persuaded by the written statement, we would still be able to ensure that the orders did not go ahead. I hope that will never happen. I hope that they will not be used that much; clearly, there is no plethora of examples where the Government feel the need for them. Given where the extra scrutiny has now been inserted, given that there is a sunset on these powers—I think I am right in saying that—and given that they will be used only for the purpose of exiting the EU, we would certainly be content with the noble and learned Lord, Lord Judge, withdrawing his amendment.

Baroness Goldie (Con): My Lords, it is important that we have returned to this issue after our debate in Committee, during which many noble Lords raised concerns about the creation of criminal offences through secondary legislation. I am grateful to the noble and learned Lord, Lord Judge, for Amendments 34, 44, 54 and 97, which seek to prevent the key powers in the Bill from creating criminal offences. I think we are all in agreement that the power to create criminal offences, above all things, is not to be taken lightly. These decisions can have huge impacts on people's lives. Therefore they are decisions that the Government take very seriously. Parliament is absolutely right to give full scrutiny to proposals of this kind.

The Government listened very carefully to the debate we had in Committee and respect and understand the concerns raised. I pay tribute to the noble and learned Lord, Lord Judge, for his constructive approach to this matter. The Government believe that serious omissions or weaknesses to law enforcement could arise if the Bill did not include a capacity to create criminal offences in certain circumstances. It is therefore the Government's view that the ability of the key powers to create criminal offences must remain in the Bill, for reasons I shall endeavour to explain. I realise that the noble and learned Lord and the noble Baroness, Lady Hayter, are very conversant with these issues, but perhaps other noble Lords would welcome a slight expansion of the Government's approach to this.

Before I endeavour to expand on these reasons, I take this opportunity to highlight the amendment tabled by the Government—to which the noble and learned Lord referred and of which I am sure noble Lords are all aware—requiring a statement to be made alongside all instruments made under the main powers that seek to create a criminal offence. The statement will be made in writing by a Minister before the instrument is laid and then usually published in the Explanatory Memorandum to inform the deliberations of committees and the House. I am happy to talk with the noble Baroness further about the form in which the statement will be made to the House. One option might be to deposit the statement in the House.

The statement will explain why, in the relevant Minister's opinion, there are good reasons for creating the offence and for the penalty provided in respect of it. This is in line with the approach taken in the Sanctions and Anti-Money Laundering Bill, and it will increase the level of transparency, ensuring that where the Government seek to create a criminal offence the Minister's reasoning is clear and justified to Parliament. Of course, if either this House or the other place feels that these reasons are not good enough, I expect MPs and certainly noble Lords to vote against the instrument—I remind noble Lords that all statutory instruments made under the main powers in the Bill creating criminal offences must be affirmative. If noble Lords did not wish to take that dramatic option but wanted to express their dissatisfaction with the proposal, I hope they would avail themselves of other options to express this such as regret Motions, inviting the Minister to give evidence before the sifting sub-committee of the Secondary Legislation Scrutiny Committee, or asking for the Minister to justify himself or herself before a committee of this House or of the other place, such as the Exiting the European Union Committee or other relevant departmental Select Committee.

[Baroness Goldie]

I understand the amendment will be discussed in detail once we reach the debate on Schedule 7. I shall be happy to go into further detail then. However, I will say that the Government have tabled the amendment to increase the scrutiny of the main powers, rather than to reduce their scope or remove the power completely because of its important function. The Bill does, of course, limit the ability to create criminal offences with the sunsets on both the correcting power, which is sunset at two years after exit day by Clause 7(8), and on Clause 9, which is sunset at exit day as set out in Clause 9(4). I stress to noble Lords that these are the only powers—other than Clause 8; I hope the House accepts the Government's amendment to remove that clause—that could create a criminal offence.

Upon exiting the EU, existing criminal offences that relate to the EU may require amending to ensure that previous criminal conduct remains criminal—for example to correct deficient references to the EU, EU bodies or EU legislation. If these are left unaddressed, the protections provided by having an offence in place will fall away. The reality of this would be a green light for criminal behaviour to go unpunished, leaving businesses and individuals unprotected from what was previously deemed so unacceptable that it was made criminal.

The noble Baroness, Lady Hayter, asked about examples. Some examples were given in Committee but there may be further examples that she is not aware of—if she is, I ask her to indulge me—where it might be appropriate, depending on negotiation outcomes with the EU, to amend existing offences or to create new ones. Certain financial services firms that are regulated at an EU level may need to be brought into the UK regulatory regime. HM Treasury is therefore considering amending the offence of misleading a regulator to include trade repositories misleading the FCA and third-country central counterparties misleading the Bank of England, if their regulation is transferred from the European Securities and Markets Authority. Without this, these important City operators, unlike other firms already supervised in the UK and within our regulatory perimeter, would not be subject to a criminal penalty when misleading the regulators which ensure their good conduct and the stability of our financial system. I cannot believe that any noble Lords would want this.

5.15 pm

Another example is, as the noble Baroness indicated, that the Department of Health and Social Care is considering amending offences in the Human Medicines Regulations. For example, for various existing offences regarding a failure to provide information, the department might need to substitute the recipient of the information if it is an EU authority, such as the EMA, for the UK competent authority—the Medicines and Healthcare products Regulatory Agency—if the information is to go to that body instead. If the department cannot do that, the failure by some operators to provide the information that is crucial to the protection of consumers will not be subject to a criminal penalty.

The department is also considering creating a new offence of supplying false or misleading information in connection with the process of converting EU market authorisations into UK ones. I remind your Lordships that under Regulation 95 of the Human Medicines Regulations 2012, it is currently an offence to provide false or misleading information in connection with applications for market authorisations, as this information is key to assessing the safety, quality and efficacy of medicines. The offence is punishable with a fine or imprisonment for a term not exceeding two years. It is vital that, if we need to, we are able to amend the existing offence or at least create a comparable one. I think we can all agree—indeed, I would be very surprised if we did not—that it remains important that false or misleading information is not supplied in connection with the process of converting EU market authorisations into new ones and that the public's health is protected.

Due to the uncertainty regarding the point at which amending an existing offence amounts to creating a new offence, the removal of the ability to create a criminal offence would mean that these departments and others in a similar situation would lack the means to ensure that regimes function effectively on exit day and, very importantly, that individuals and the environment are protected. In Committee the noble Lord, Lord Marks of Henley-on-Thames, quoted the Delegated Powers and Regulatory Reform Committee as saying that it,

"would expect, save in exceptional circumstances, a maximum penalty on conviction to be included on the face of the bill".

I reiterate: "save in exceptional circumstances". I imagine we can all agree that leaving the EU, an institution we have been part of for more than 40 years, is indeed an exceptional circumstance. The noble Lord went on to say that where criminal offences are to be set by delegated legislation,

"the Committee would expect the instrument to be subject to affirmative procedure",—[*Official Report*, 12/3/18; col. 1364.]

and would expect "a compelling justification".

The Bill already fulfils the first of the noble Lord's expectations. All statutory instruments made under the main powers that seek to create a criminal offence, or widen the scope of an existing offence, are automatically subject to the affirmative procedure. Although the amendment tabled by the Government last week, requiring a statement to be produced of the good reasons for the offence and the penalty in respect of it, addresses the noble Lord's second expectation of a clear and compelling justification for the provisions being sought, I understand that some noble Lords think it is more appropriate that criminal offences be made through primary legislation. We are now at the point where the UK's exit from the EU is rapidly approaching, yet a vast swathe of legislation must be passed within a specific period. It is no longer realistic to believe that amending or creating all the criminal offences required to create consistency in our law will be delivered in time for our exit using primary legislation. There are currently no suitable legislative vehicles planned which the offences can be made under, and a new Bill or Bills would be disproportionate to the provisions we seek.

The removal of this power would therefore leave the Government with limited options: either to continue as planned by amending only existing criminal offences or to opt to create civil penalties instead. But both options present an increased risk of judicial review

and vital amendments being quashed because, as we previously explained during Committee, the line between amending and creating a criminal offence is not clear cut. If we proceeded down the road of creating only civil penalties that would have implications for consistency because, for example, businesses in the UK may be subject to a criminal penalty while other businesses could be subject only to a civil penalty for a parallel offence.

I have taken some time to explain the background to all this. I think it is a very important issue and that the noble and learned Lord, Lord Judge, has done the Chamber a favour with his persistence in requiring that this be teased out. However, I hope he will consider these concerns which the Government have about the removal of this power from the Bill, as the Government have endeavoured to consider his concerns about the provisions as they were drafted. I equally hope that the amendment tabled by the Government ensuring greater transparency to Parliament goes far enough that he feels able to withdraw and not press his amendments. I wish to make it clear that I cannot give any reassurance that the Government will return to this issue at Third Reading, so if the noble and learned Lord wishes to test the will of the House, I suggest that he should do that now.

Lord Judge: It is very tempting but I will not. The reason that I have been prepared to compromise with an interference with what I regard as a fundamental constitutional principle is that I recognise that there is a continuity required. We cannot suddenly not have criminal offences which exist on 31 March but which we no longer have on 1 April. I recognise that. I am also persuaded to act against my instinct by the fact that this is a sunset provision.

I shall in a moment seek leave to withdraw the amendment but may I urge the Government and, in due time—time will undoubtedly produce it—a Government who are from the current Opposition, as they now are: can we please stop this sticking into primary legislation of provisions which casually create criminal offences punishable with imprisonment? As I said earlier, it is a constitutional aberration. Notwithstanding my doubts about my own position, I am prepared to take the course that I am now but I assure the Minister that I would not necessarily take it if, in the course of the next few Bills we have to deal with, we have clauses such as this just put in. But for the time being, with gratitude to the Minister for her explanation to the whole House, I seek leave to withdraw this amendment.

Amendment 34 withdrawn.

Amendment 34A

Moved by ***Lord Callanan***

34A: Clause 7, page 6, line 17, at end insert—

"( ) establish a public authority,"

Amendment 34A agreed.

Amendment 34B

Moved by ***Lord Callanan***

34B: Clause 7, page 6, line 21, after "repeal" insert "the Scotland Act 1998, the Government of Wales Act 2006 or"

Lord Callanan: My Lords, the Government recognise the vital importance of our devolution settlements and the Acts that give effect to them: the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 2006. We have considered the concerns raised during Committee about the potential for the Government to use the Clause 7(1) power to amend those Acts. The Government have consequently brought forward amendments that mean this power cannot be used to substantively alter those Acts.

As noble Lords will agree, we must ensure that any deficiencies that would arise within those Acts by virtue of our leaving the EU can be addressed, so that these crucial pieces of legislation continue to work appropriately on and after exit day. We have sought to make the majority of corrections to deficiencies that arise from EU exit to those Acts in the Bill, so that we can be transparent about what corrections need to be made and the extent of those changes. Noble Lords will see from those corrections already included in Part 2 of Schedule 3 to the Bill that they are essentially technical corrections to ensure the proper functioning of these Acts.

At the time of the Bill's introduction, outstanding corrections to the Scotland Act and the Government of Wales Act were still being discussed with the Scottish and Welsh Governments, and in the case of the technical standards reservation with the Northern Ireland Civil Service as well. As a result of our discussion with the devolved Administrations, we have now agreed the means through which the remaining deficiencies in these Acts will be dealt with and can confirm that the correcting power will not be needed to make any of those changes.

In the light of our commitment to Parliament that we will not take powers in the Bill that are broader than they need to be and to provide reassurance to the devolved institutions, we can therefore remove the ability of the correcting power in Clause 7(1) and in Schedule 2 Part 1 to amend the Scotland Act and the Government of Wales Act. We can also remove the exemption from the protection for the Northern Ireland Act that would allow the power to amend paragraph 38 of Schedule 3 to that Act, the so-called technical standards reservation. These protections are applied by our Amendments 34B, 34C, and 34D.

Given the further protection for the Northern Ireland Act, the correction of the deficiency in the reservation of technical standards can now be achieved only through primary legislation. Amendment 92F therefore adds that correcting provision to the Bill. Since the reservation is consistent across the three devolution settlements, Amendments 92B and 92E make the corresponding corrections to the Scotland Act and to the Government of Wales Act.

Although this is a technical correction, I wish to take a moment to talk through this in detail, as I hope noble Lords will appreciate, given the complexities of this matter and the fact that it relates to a reservation. I can also confirm to noble Lords that the drafting of the amendments has been shared with, and agreed by, the devolved Administrations, and I would like to

[Lord Callanan]
express my gratitude to officials in the devolved Administrations for their input and constructive approach in helping us to develop these amendments.

The current reservation applies to:

"Technical standards and requirements in relation to products in pursuance of an obligation under EU law",

except in areas that are specified as exempt. The provision can be found in paragraph 38 of Schedule 3 to the Northern Ireland Act, Section C8 of Schedule 5 to the Scotland Act, and Section C7 of Schedule 7A to the Government of Wales Act as amended by the Wales Act 2017. It is our express intention that, in ensuring the reservation continues to operate as intended once we leave the EU, we should preserve the current boundary between devolved and reserved competence.

The effect of the amendments before noble Lords today is, therefore, that those standards subject to the current reservation will continue to be a reserved matter, including as they may be modified from time to time. It is the Government's view—shared by the devolved Administrations—that a standard should not cease to be reserved simply because it has been updated. I would also like to assure noble Lords that the revised reservation will not apply in those areas where the devolved institutions currently have competence.

Let us take, for example, the case as it currently stands in relation to cigarette packaging. The obligations under EU law apply certain standards—for instance, in relation to the inclusion of health warnings on the packaging. The current reservation requires that the devolved institutions cannot legislate in relation to those standards, but it does not preclude them legislating to provide additional standards to cigarette packaging where they would be compatible and within an area of devolved competence. That will continue to be the case under the amended reservation. Indeed, when the UK Government brought legislation before Parliament to introduce plain packaging for tobacco products across the whole of the UK, we sought and received LCMs from the devolved legislatures because it would have been within their competence to make those provisions themselves.

Similarly, the devolved institutions could choose to extend those standards to products within their competence that are not specified by the relevant EU law. The reservation will also not apply to brand new standards that arise post-exit—for instance, to a new product that has been brought to market but is not currently subject to EU standards. Those would not have arisen in the UK in pursuance of EU law, even if the EU chooses to legislate on those matters after we have left, so would not be covered by the current reservation or the revised reservation. The exemptions that apply to the current reservation—for instance, in relation to food, agricultural and horticultural produce—will also continue to apply so standards in those areas, as now, will not be reserved.

5.30 pm

Amendments 92C and 92D make two further minor corrections to the Government of Wales Act that would otherwise have been made using the Clause 7(1) or Part 1 of Schedule 2 powers. The drafting of these changes has been shared with and agreed by the Welsh Government. The first of these removes redundant references to the European Parliamentary Elections Act 2002, which is repealed by Schedule 9 to the Bill, and "European Parliamentary elections" in Section 13 of that Act, on the power of the Welsh Ministers to make provisions about elections, et cetera. The second removes redundant language referring to the UK as a member state of the EU in Section 16 of the Act—"Disqualification from being Assembly member". This change is within devolved legislative competence to make, and has been tabled with the agreement of the Welsh Government. The amendment does not alter the ability of EU citizens to stand for election for the National Assembly for Wales; that is a matter for the Welsh Government and the Welsh Assembly to consider, subject to the outcome of the EU negotiations.

These amendments may be technical but they are none the less important. They guarantee the integrity of our devolution statutes and provide the assurance that noble Lords have sought that those Acts will be subject to appropriate scrutiny. I beg to move.

Lord Beith (LD): My Lords, these are very helpful amendments, in that they reassert respect for the constitutional importance of the devolution legislation. They are part of the context that we will return to next week when we try to sort out other devolution aspects of the Bill—perhaps with greater ease in relation to Wales than Scotland, but that is for another day. Some of them are technical and tidying-up, and have been achieved with agreement. All that is welcome.

Lord Griffiths of Burry Port (Lab): My Lords, it falls to me to echo what the noble Lord, Lord Beith, has said, and to thank the Minister for moving the amendments and for the explanations that he has given. I hope he will agree to convey to his departmental colleagues our congratulations on their very hard work, the results of which are now before us. Of course, we should recognise that this is the calm before the storm, in the sense that Clause 11 is coming along. If there are some very simple technical amendments here, there are 16 pages of amendments to Clause 11, so there will be fun and games when we get to it. Still, as the noble Lord, Lord Beith, has said, this respects the devolution arrangements between us.

I wonder if noble Lords will be patient with me if I use this occasion to express my gratitude for the work of Carwyn Jones, the First Minister of the Welsh Assembly, who has announced that he intends to stand down. The steadiness of his hand on the tiller, and indeed his involvement in the discussions that have yielded these amendments, has been considerable. Wales, its parliament and the people of the UK owe him a great deal, and I would like to place this short tribute on the record.

So I think we are sitting pretty with this one. I know King Henry VIII was a Welshman, and he might even have voted with the Government on this one too. Without further ado, we have no problem with this at all.

Lord Callanan: I thank the noble Lords, Lord Beith and Lord Griffiths, for their contributions to this short debate. These are important amendments and they reflect important progress. It has never been the Government's intention to use the correcting power to change our devolution settlements, and I hope noble Lords will agree that the amendments put the matter beyond doubt. I hope they welcome the reassurance that the amendments provide and recognise that this reflects the sincerity of the Government's commitment to the devolution statutes.

Amendment 34B agreed.

Amendments 34C and 34D

Moved by ***Lord Callanan***

34C: Clause 7, page 6, line 23, leave out from "repealing" to "any" in line 24

34D: Clause 7, page 6, line 24, leave out "that Act" and insert "those Acts"

Amendments 34C and 34D agreed.

Amendments 35 and 36 not moved.

Amendment 37

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

37: Clause 7, page 6, line 25, at end insert—

"( ) diminish the protections in relation to "protected persons" set out in Part 3 of the Criminal Justice (European Protection Order) (England and Wales) Regulations 2014 (SI 2014/3300)."

Baroness Kennedy of The Shaws (Lab): My Lords, this amendment relates to the incredible collaboration that takes place across Europe relating to violence towards women and girls—and, indeed, boys as well as girls. Here we are talking about the ways in which this kind of violence, which we know exists in our society, can now travel across borders. There has been real co-operation between the nations of the EU in creating orders that protect people who are vulnerable to abuse and violence, and that work has been essential progress towards the creation of better societies. It has certainly provided a great deal of protection for very vulnerable people.

Noble Lords will see that in the amendment, in which I am supported by others, I have called for this House to ensure that the Government in no way introduce law that would diminish the protections in relation to protected persons that are set out in our own legislation where we adopt European protection orders. I am going to speak about this amendment in relation to two other amendments that also bear my name, Amendments 67 and 69, which also deal with the issue of tackling violence against women and girls.

The special protection orders that have been created across Europe have been very important in the area of domestic violence, particularly where there are marriages, partnerships or relationships across borders where, after the breakdown of relationships, there can often be pursuit of victims who have returned to their families living elsewhere. That could be British women returning to Britain or in the opposite direction, where they are fleeing the kind of trolling and pursuit that is put in place by partners who will not accept the end of relationships and who inflict violence upon women and their families. Protected persons orders have been hugely important in dealing with this across borders, and because of mutual recognition they can be enforced in other places apart from the place in which the order has come into being. We are anxious that the regulations that have created that should not be vulnerable to change without the scrutiny of Parliament because they are so important to protection.

I turn to the other matters that link to this. In Amendment 67, I have sought to do something that I have done in other cases too. Many of us who are lawyers and who see how the working of law across borders has been so effective are anxious that arrangements may be made where it is possible that we will see that they are not working only in the aftermath, in the period immediately afterwards. We need to have some kind of safety nets, particularly where we are talking about vulnerability to violence. We need those safety nets to ensure that matters can be brought back into review and monitored carefully after we leave Europe.

Therefore, in Amendment 67 I call for a reporting back to monitor the effectiveness of whatever is put in place of what we have now—which I hope will follow closely what we already have. The concern is that we cannot legislate for reciprocity; we need something else to ensure that reciprocity is working. There may be a commitment to it, but we must ensure that it is working. That is why we are calling for, within a month of the passing of the Act and then every calendar year thereafter, the laying before Parliament of a report on the continued co-operation with the European Union on tackling violence against women and girls.

I remind the House that what we are talking about here is maintaining common rights of victims of domestic violence and sexual abuse who move across borders—and that includes trafficking. We are also talking about reducing female genital mutilation, which is one of the areas on which we have had very close co-operation because of the movement of girls to other parts of Europe and sometimes then outside Europe. Even within Europe people have been taken across borders to places where female genital mutilation frequently happens. The orders are also used to reduce child sexual exploitation and to enable data sharing between agencies about this kind of abuse. We should monitor to ensure that we do not let this work fall between the slats once we have left and simply rely on good will and co-operation, which may not actually work in the aftermath.

Amendment 69 deals with the funding for ending violence against women and girls. Again, colleagues and I are calling for a report to be made to both Houses of Parliament by the Secretary of State, within a month of the passing of the Act and thereafter once a year, to let us know about the position with regard to the loss of EU funding. The loss of that funding will have serious consequences for the work done in this area. European money goes into very real research, service provision and other activities relating to the ending of violence against women and girls. I have

[Baroness Kennedy of The Shaws]
seen this up close, in the academic world but also in organisations that do that important work. If the money is not going to come from Europe, I want to know whether there will be comparable resources for all those elements that we have been working on. Will there be funding from the Government for that? There will be an awful lot of calls on government funding, and it is important that money is not taken away from this area.

Half the population care about this sort of stuff. They care about preventing violence towards women and girls, and they want to see that work continue. It is best done in collaboration with other countries, so I would like to hear from the Minister what is planned for the future, and whether there could be a commitment to reporting back on a regular basis so that we can keep these matters within our sights. I beg to move.

Baroness Lister of Burtersett (Lab): My Lords, I support my noble friend, and will speak in particular to Amendment 69. In Committee, I asked a number of questions about the future of domestic abuse funding, and when the Minister did not answer them in her wind-up speech I asked if she could write to all who had spoken in the debate—but letter came there none. So forgive me if I repeat those questions now.

First, what criteria will be used to decide whether future structural fund commitments will be met up to 2020, so long as they, as the Government put it, represent value for money and align with "domestic priorities"? Surely domestic abuse projects must align with domestic priorities, given the proposed domestic abuse strategy—even though the consultation document on that strategy says nothing about the future of EU funding. Can the Minister confirm that they will be considered to be in alignment with those priorities, so they will be protected until 2020?

Secondly, will the Minister give an assurance about the future of the Rights, Equality and Citizenship Programme, which supports progress on equality and human rights, including through front-line services for people experiencing domestic abuse? At the end of her speech, she gave some crumbs of hope when she said that she would look at *Hansard* and see whether the Government could provide any further comfort on the back of the debate we had then. I hope, too, that she might have been able to read the debate on the recent Question for Short Debate on domestic abuse, in which most speakers from all parts of the House emphasised the importance of adequate funding for domestic abuse, and expressed fears about current proposals for reforming the basis of that funding.

That is the context for this amendment. If the Government are not willing to accept, in particular, Amendment 69, which is incredibly modest in what it asks for, that will send out a negative message to survivors of domestic abuse, and to the organisations such as Women's Aid that work with them.

5.45 pm

Baroness Burt of Solihull (LD): My Lords, I have no wish to detain the House unnecessarily, as we have already discussed this, but it is worth emphasising the importance of the European protection order that grants victims of violence protection against the perpetrator across the EU. Because we are leaving, this will no longer be available to UK citizens. The ability to share data on perpetrators, as well as a whole host of other measures aimed at tackling human trafficking and FGM, enforcing child maintenance orders and preventing the sexual exploitation of children is also at risk. It is disappointing, therefore, that violence against women and girls has not appeared in any of the Government's Brexit-related policy papers.

It is in all our interests to ensure that the tremendous work and collaboration that we have enjoyed until now with our EU partners should not be lost. Vulnerable women and children must never be used as a bargaining chip in anyone's negotiation— and of course, funding this work is hugely important. We stand to lose really important funding streams such as the Daphne fund, the rights, equality and citizenship fund and the European Social Fund, which supports a wide range of research and other services dedicated to tackling violence against women and girls in the UK.

We are not asking the Government to commit to anything specifically, just to report on how they intend to replace the lost EU funding that supports tackling the fight against violence against women and girls. Nobody wants to see the most vulnerable, most persecuted members of our society lose out as a result of our leaving the European Union. I look forward to hearing what words of comfort the Minister can supply to assure the House that under no circumstances will the Government allow that to happen.

Baroness Ludford (LD): My Lords, I have just a few brief words to back up those who tabled the amendments. I was in the European Parliament when the European protection order directive was passed, a mere seven years ago, under co-decision with the European Parliament, when MEPs considered it a very important measure. I believe that the first European protection order in the UK was passed just over two years ago, so it has not had the chance fully to show its value, but it is about ensuring that a restraining order, for example, follows the victim wherever they move in the European Union—rather like a European arrest warrant follows the criminal, although I would not otherwise draw an analogy between the EPO and the EAW. These measures are hugely important.

Of course, the development of mutual recognition in both civil and criminal law in the EU has been a counterpart to the free movement of people, but we will not see an end to considerable free movement of people after Brexit. We have learned enough about the Government's post-Brexit EU movement plans to know that a large volume of people will still be moving between the UK and member states of the European Union and the EEA, for all kinds of economic and social reasons—although the Government keep kicking the can down the road in terms of telling us exactly what their plans are. To say that we will be ending automatic free movement rights to live, work and study in another EU state is not a good argument that we do not need to continue with these cross-border mechanisms.

A good answer from the Government on how funding from EU programmes that support vulnerable women and girls and victims of domestic abuse will be replaced is extremely important, but so is how they intend to continue co-operation to replace those mechanisms, such as the European protection order and, I add, the victims' directive, which has supported people and enabled them to enjoy a similar level of protection wherever they move around Europe. The need for those mechanisms, as well as the funding, will not go away. I hope that the Government will offer a substantive and substantial response on these matters.

Baroness Smith of Basildon (Lab): My Lords, I thank my noble friend Lady Kennedy for tabling the amendments. Yesterday, not only were female Members of this House having our photograph taken to commemorate 100 years of women being Peers—being able to be Members of your Lordships' House—many of us also went to see the unveiling of the statue of Millicent Garrett Fawcett, at which the Prime Minister spoke eloquently about the rights of women and how important they are, and we commemorated and celebrated the work of Millicent Garrett Fawcett. Would it not be a tragedy, therefore, if an unintended consequence—I think it would be an unintended consequence—of Brexit were that somehow we reduced the protection available to women and girls from violence in any way? The points made by my noble friends and noble Baronesses on the Liberal Democrat Benches in support of the amendments are valid.

The Minister may recall that on Second Reading, my noble friend Lady Sherlock illustrated the complexities that could come for child protection and family law when we leave the EU. Her experience and understanding of that is reflected in the comments of my noble friend Lady Kennedy of The Shaws today. From experience, she can say how the European protection order, which guarantees mutual recognition of legislation across the whole of the EU, adds to the protection that we all wish to see for women and young girls. As the noble Baroness, Lady Ludford, said, we hope for a substantive response from the Minister on this issue today.

The ability to share data on perpetrators, as well as a host of other measures that tackle human trafficking, FGM, the enforcement of child maintenance orders—an issue raised by my noble friend Lady Sherlock previously—and the sexual exploitation of children could all be put at risk. I was reminded by my noble friend Lady Gale, who has a huge reputation on these issues, that the Minister referred in Committee to the Istanbul convention, which should offer much-needed protection. Can she tell us when it will be ratified?

Will there be a gap between exit day, when we lose the EPO, and when the new Act will be on the statute book? What cover will allow us to ensure that all aspects of what we have now under the EPO will be enshrined in our legal system?

Another issue raised by my noble friends is funding. Although the Government's previous commitment of £100 million is needed to keep the sector going, it will not plug the gap left by the loss of EU funds. The loss of those funding streams threatens to push small, specialist providers, which receive a significant amount of their funding from the EU, into a position where they can no longer operate to ensure the protection that women and girls need.

All that is being asked for is a report and information so that we can identify where the problems are and understand the Government's response. I was disappointed to hear from my noble friend Lady Lister that she still has not had a response from the Minister to the issues that she raised. The whole point of the gap between Committee and Report is to ensure that the Minister has time to respond to questions from noble Lords. I hope that the Minister will say today why she did not respond at the time and what can be done to rectify that, because it is not satisfactory to raise issues in Committee and have to raise them again on Report because answers have not been received.

I am sure that the Government's intentions in this are honourable, but we need to know in practice how these commitments will be met to ensure that we do not put women and young girls at risk of violence in a more difficult and precarious position than they are at present. I hope that the Minister will give a substantive response today on how the Government will address this.

Baroness Goldie: My Lords, in responding to this debate, I begin by reiterating how important the issues we have discussed in the debate are. We have had today a clear, and, I suggest, impressive reflection of that importance, and I thank the noble Baroness, Lady Kennedy, and other noble Lords for their contributions.

I start by addressing Amendment 37, about continued recognition of European protection orders made after we leave the EU. The European protection order regime, established by the EU directive of the same name, is essentially a reciprocal regime. It requires the relevant designated authorities in the different member states involved to act and communicate with each other in the making of an order and in its recognition and enforcement. It is not possible for us to regulate from here to require the relevant authorities of remaining member states to act in any particular way. As such, if we are not in a reciprocal regime, we will no longer issue European protection orders to remaining member states, as it would be pointless to do so; and nor will the authorities in those member states issue them to the UK for the same reason.

In short, absent our continued participation in the European protection order regime or some proximate reciprocal agreement in its place, the regulations will be redundant—they do not work unilaterally. The amendment therefore pre-empts the outcome of the negotiations. I am happy to be clear, however, that if the ongoing negotiations produce an agreement to continue the UK's access to the regime established under the directive, or something like it, appropriate steps in legislation will be brought forward to implement it at the time.

Baroness Ludford: I apologise for interrupting the Minister, but I think she said something like, "absent a proximate system". She is being asked to say whether the Government will seek to find a solution to the present reciprocal mechanism. After all, we know that

[Baroness Ludford]
the Government will be seeking a UK-EU security treaty. When I moved an amendment on Monday about internal security, justice and home affairs, I was not very happy that there was no substantive response from the Government. Surely the Minister can tell us what the Government plan to try to secure.

6 pm

Baroness Goldie: I hear the noble Baroness, and I was just about to expand on what the problem is. I know that it is frustrating for noble Lords, but at the heart of what she and others want to achieve are the negotiations. In response to the noble Baroness, Lady Smith, I was going to say that a number of the important issues she raises are directly related to our ability, having left the EU, to continue with reciprocal regimes if that is what we can negotiate. That is what we would obviously very much like to do. I have to disappoint noble Lords who are looking for more specific comment at this time because I simply cannot provide that.

The protections to which I was referring and the access to the regime established under the directive, or something like it, and my reference to appropriate steps and legislation being brought forward to implement these at that time, is what we can—and I very much hope we can—negotiate. That will comprise the protections for protected persons. We will, of course, consider all that at that point. But this Bill cannot pre-empt our negotiations on these matters. I hope the noble Baroness, Lady Kennedy, will empathise with that position, and understand the difficulty confronting the Government in relation to the Bill and will feel able to withdraw her amendment.

Regarding Amendments 67 and 69, also in the name of the noble Baroness, Lady Kennedy, the Government are taking forward a range of work to tackle violence against women and girls. If noble Lords will permit me, I will set out the Government's position on current and future international co-operation on these issues. In response to the noble Baroness, Lady Lister, I feel that I have been chastised. I apologise because I can say that I read *Hansard* and endeavour to ensure that outstanding points are addressed. Why that did not happen in consequence of our Committee stage in relation to these matters, I do not know, but I certainly undertake to investigate and can only apologise for the noble Baroness's request being met with silence.

I reassure noble Lords that ending violence against women and girls, and protecting and supporting victims, remains a key priority for the Government, and our cross-government Ending Violence Against Women and Girls strategy, as many noble Lords will know, is underpinned by increased funding of £100 million through to 2020. We have put in place a range of measures to tackle the issue, including: the criminalisation of forced marriage; two new stalking laws; and a new offence of domestic abuse covering controlling and coercive behaviour. We are very pleased with that progress; it is good progress to have made, but we know there is more to do. We do not dispute that. That is why we continue to build on this work, driving forward our Ending Violence Against Women and Girls agenda to further address these injustices. We have launched a public consultation to support our commitment to publish a landmark draft domestic abuse Bill, and we are supporting the introduction of a new civil stalking protection Bill to protect victims at the earliest possible stage.

This House will also be aware that we already have clear mechanisms for reporting on our progress, and we are already required to lay annual reports in Parliament on this issue in the context of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence—the Istanbul convention. The coalition Government signed that convention in 2012 and this Government have made absolutely clear our commitment to ratifying it. Many will be aware that the convention sets forth obligations on parties to take a co-ordinated, coherent and cross-border approach, and highlights the need for more effective international and regional co-operation.

This Government supported the Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017 which again places a duty on the Government to provide annual reports to Parliament on progress towards ratification. The first of such reports was published on 1 November 2017, and sets out the steps which the Government and the UK's devolved Administrations—they have an important role to play in all this—have taken to tackle violence against women and girls since signing the convention, and the remaining steps required as we progress toward ratification.

In addition, once the UK has ratified the convention, we will be required to provide updates to the Council of Europe on compliance. This will not only further stimulate international co-operation but enable international benchmarking in tackling all forms of violence against women and girls. That is very important. It may sound just like dull text, but the ability to measure ourselves against what others are doing is very valuable and can undoubtedly be a catalyst to make improvements or do better if we identify areas where we are not doing as well.

I hope that I have reassured the noble Baroness, Lady Kennedy, on this Government's commitment to tackling violence against women and girls in all its forms, and that we are already bound by clear existing legislative requirements to update the House on our work in this area. In these circumstances, I hope that she will feel able to withdraw her amendment.

Baroness Kennedy of The Shaws: As always, the noble Baroness speaks very warm words, and I am sure the intentions are honourable. But I am concerned, as are others in this House, that this is one of those issues that will be of second order. This is always what happens to women's issues, such as violence against women and the experience of women. It goes far down the agenda when it comes to the reality of something like trade and other serious matters. This is serious too, so it is regrettable that we are getting only warm words.

I know that the Prime Minister and the Home Secretary have been great speakers on the subject of dealing with violence against women, so it is particularly disappointing that amendments being addressed to

matters which they have made their own special concerns are being dealt with so dismissively. It is not taking the issue seriously enough, and it is serious. I had hoped that there would at least have been a promise to come back and put before the House something soon after leaving Europe to say how it was going, and what was happening on this front. That is a disappointment, I must say. I would have thought that it would have been possible before the end of this year, and before we get to the actual crunch time, that the Minister would call a meeting of interested parties to consider where we are now, and what the way forward is looking like, so that we could have a clearer sense of that. The women in this country might feel very disappointed if this is not dealt with in a negotiated outcome.

I will not press the amendments just now, and I do not intend tabling them again before the House, but I want to say forcefully that I hope and expect to hear word from the Minister before the end of the year indicating that there will be a meeting for us to gather together those who are concerned about these issues, to consider what is being presented as the way forward and to see whether that is adequate.

Amendment 37 withdrawn.

Amendment 38

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

38: Clause 7, page 6, line 25, at end insert—

"( ) amend or vary the provisions of the Immigration Act 1971 relating to passport control procedures on journeys within the Common Travel Area."

Baroness Kennedy of The Shaws: My Lords, Amendment 38 has been grouped with Amendments 45 and 55, all of which are seeking to do much the same thing. The amendment is to prevent regulations under these provisions being used to undermine the common travel area, and to introduce what concerns many of us who are involved with human rights and civil liberties about the ways in which there could be abuse of processes that might be introduced.

To explain, much of the focus of the debate on the Irish land border and the movement between Northern Ireland and the rest of the UK has focused on the freedom of movement of goods rather than people. In relation to people, the United Kingdom's *Northern Ireland and Ireland: Position Paper* is limited to ruling out routine passport controls within the common travel area. I want to remind this House that the common travel area came into being a long time ago, immediately after the civil war in Ireland, and was an attempt basically to secure the confidence of people who had family on both sides within Ireland, in the north and south—but also in England and Scotland, like myself. My four grandparents came from Ireland, three from the north and one from the south. The common travel area is used by people who are proudly living here in the UK but who maintain relationships in Ireland.

The common travel area has made it very clear that arrival in and departure from the United Kingdom on a local journey from or to any of the islands, including the Channel Islands or the Isle of Man, or the Republic of Ireland, shall not be subject to control. That was put into statutory form in the Immigration Act 1971. Attempts have been made since to erode that—indeed, an attempt was made in 2008, and it was this House that prevented any erosion. Even if it was an unintended consequence, there was a possibility that a change in the immigration legislation in 2008 might have led to sterner controls.

I remind this House that, in Committee, Ministers committed the Government to the whole business of continuing the common travel area, saying that it was the ambition and policy of the Government that there should be no land border checks and no racial profiling. Racial profiling is one of the matters that concerns many of us. How do you distinguish between people living in the United Kingdom and travelling into Ireland and Irish people coming here and those persons who may come from the wider European Union? How do you distinguish them from people coming from elsewhere, and how do we manage those distinctions without risking the introduction of racial profiling? Concerns about racial profiling have been highlighted recently by a number of high-profile cases; they are an existing problem that may be exacerbated by increased controls in the Brexit context, even if there is not going to be routine checking—even if it is non-routine checking, which means that you would have mobile units or pick people out from queues of travellers.

The increased role of the United Kingdom Border Force also means regression in the arrangements for law enforcement in Northern Ireland set out in the Patten commission report. The United Kingdom Border Force is not accountable to the Northern Ireland Policing Board, and the Home Office has twice launched and had to withdraw recruitment exercises recently, trying to draw more people in to enhance the border control and border forces. The ways in which recruitment was attempted very clearly meant that it would be open to only one section of the Northern Ireland community. The noble Lord, Lord Patten, is not here, but I am afraid that the Patten commission report really dealt with policing and did not extend to border controls, when we would argue that it should.

As I have mentioned, the stated strategy of the Home Office is to use in this country "hostile environment" powers—and we have debated the whole business recently. It has been introduced into the way in which the Home Office runs its affairs with regard to immigration, which has caused very real anxiety over how the issue of controlling the common travel area will operate into the future. Among law enforcement bodies there has already been a vowing of intensification of campaigns in relation to immigration in Northern Ireland. The Northern Ireland Affairs Committee has warned that Northern Ireland is a country in which document checks have more sensitivity perhaps than elsewhere, and they should not be more onerous than they are in the rest of the United Kingdom.

6.15 pm

We have already heard concerns about some really unpalatable experiences from European Union persons living and working in Northern Ireland, in the National Health Service, experiencing post-referendum questioning on arriving into Northern Ireland airports from outside the common travel area and having problems in accessing

[Baroness Kennedy of The Shaws]
services and housing. A querying of entitlements and stigmatisation of migrants has taken place in a context where there are already significant concerns about paramilitary involvement in racist attacks. There have been a number of attacks on Romanians and Poles living in Northern Ireland. There is also a currently unexplained high use of the Terrorism Act's Schedule 7 powers at ports and at borders, and we have seen those powers being used—not leading to terrorism detention, so the suspicion is left that they were actually being used for immigration purposes and not for terrorist purposes at all.

The purpose of these amendments is to get some confidence from government that, in introducing changes where there will not be routine checks, we do not find ourselves having ad hoc checks that end up involving racial profiling. I know that on the last occasion a commitment was given about this but, unfortunately, events since in Northern Ireland have not inspired confidence in many of those who are working on the issues of civil liberties and human rights. On that basis, I beg to move the amendment.

Lord Cormack: My Lords, speaking as a former chairman of the Northern Ireland Affairs Committee in another place, I think that we should all thank the noble Baroness, Lady Kennedy of The Shaws, for raising this issue. I hope that we will have a sensitive response from my noble friend the Minister. Knowing his track record, I am fairly confident that we will. But if ever we needed reminding how important it is that we handle these matters with sensitivity, we only have to say the words "Windrush generation" and remember the deeply shaming facts of the last few weeks. In an empty Chamber last night, we had a Statement on that, but although the Chamber was virtually empty, every single Member of your Lordships' House who spoke said, effectively, the same thing.

We are dealing with the movement of people and, particularly, we are dealing with people who have for many years—in some cases, 30 or 40 years or more—had all the rights and privileges of the British citizen. As we know, there is real concern in the rest of the European Union among those who are sad about what happened with your Lordships' verdict last year that we should give an unconditional guarantee from the word go. They are now apprehensive and, although I believe that it is entirely unnecessary for them to worry about the Windrush effect, nevertheless they are worried. So I hope that, when responding to this debate, which I trust will be brief, my noble friend will be able to give comfort not only to the noble Baroness, Lady Kennedy of The Shaws, but to Members in all parts of your Lordships' House, in all parties and on the Cross Benches, who share her concern at these important matters.

Baroness Ludford: My Lords, from these Benches, very briefly, I just say that we share the concerns expressed in the amendments of the noble Baroness, Lady Kennedy. There are just two points that I would ask the Minister to respond on. First, what is the meaning of "routine" in the Northern Ireland position paper of last August? There was a pledge that:

"The development of our future immigration system will not impact on the ability to enter the UK from within the CTA free from routine border controls".

A lot hangs on that adjective; can the Minister please elaborate on what that means and on what border controls will be allowable?

Secondly, the draft withdrawal agreement requires the UK to ensure that the CTA,

"can continue to operate without affecting the obligations of Ireland under Union law, in particular with respect to free movement for Union citizens and their family members".

How will it be ensured that the free movement rights of EU citizens that Ireland is obliged to secure will be respected post Brexit?

Lord Rooker (Lab): My Lords, I do not think it should go unremarked in this short debate, where there is a Northern Ireland connection, that in neither House of this Parliament are there any representatives of the nationalist community and yet, in this House, we have members of the DUP who never, ever give a view. They claim to represent the majority in Northern Ireland—the leader today has threatened the Prime Minister, if she deviates, with deselection—but, at the same time, there is something wrong with the debate, because we are not fully representative. Why do we have these people in this House who never give a view, and yet their views are important? I just think it is worth putting this on the record.

Lord Dykes (CB): I am very glad that the noble Lord, Lord Rooker, has made that point, because it is noticed and it is not said enough that there is a gap there which really makes the Chamber awkward from the point of view of these issues. I also support what my noble friend Lord Cormack said and thank the noble Baroness, Lady Kennedy of The Shaws, for raising these matters. It will be quite alarming if there is an erosion of the common travel area arrangements, which are historic since 1923, just because other things are happening in a geopolitical sense regarding new legislation for leaving the European Union. The psychological aspect is important too, because creating that common travel area so long ago, as a unique and special example of co-operation between countries, was a way for the British to make up to the Irish for what had happened in the past and, as the noble Baroness, Lady Kennedy, said, a way of promoting economic co-operation and activity. People came towards Britain, mostly, rather than the other way round, but increasingly, as the Irish economy developed in the post-war period, people also went to Ireland for work and travel.

The present situation is that there should literally be no erosion or changes; it should be exactly as it was. Yet, one hears these stories of what is happening—the wrong kind of attitude on the part of certain officials, and so on; I will not go into more detail than that. This arrangement is very important, because it is a miniature Schengen between just two countries and, partly for that reason of course, both countries decided not to join in the full Schengen arrangements, although there were also other reasons connected at the margin. It is a very precious aspect of the wider picture of there being no change at all to the Irish border

arrangements, which is so important for both this legislation and the future of our relationship with the European Union. This of course means, effectively—yes, we have to say it—staying in the single market and customs union, and why not? In the meantime, this arrangement is crucial and I hope that the Government will reassure us tonight that there is a commitment to keeping the purity of the CTA and that there will be no erosion.

Baroness Smith of Basildon: My Lords, there is little I can add that is new to this debate. I am grateful to my noble friend Lady Kennedy of The Shaws for raising these issues and I hope the Minister will make use of his customary courtesy to the House. When he responded at Second Reading and in Committee on these issues, there was a sense that he understands the concerns that were raised then, and indeed the issues raised today. When he spoke on 14 March, he was clear that there will be no impediment at the land border to the movement of people—no checks and no profiling, full stop. That was the first time that the Government had given that degree of clarity—I think my noble friend Lady Kennedy would recognise that—or sought to emphasise that. This is important, and the Minister will understand the great concerns being raised. We still have no clarity on the border issue. This House has already expressed a view on the customs union and I am sure that, as we debate Northern Ireland issues later on Report, we will deal with those further.

I hope that the Minister is able to address the concerns that have been raised about the common travel area and movement of people. He has a sense of deftness and understands these issues, so if he can address them today we would be grateful.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Duncan of Springbank) (Con): My Lords, I thank the noble Baroness, Lady Kennedy of The Shaws, for introducing this topic and other noble Lords for their contributions. I had a very pleasant cup of tea with the noble Baroness yesterday and I was pleased to learn that she hails from the Kennedys of Fermanagh, which was an interesting discovery. But it was not just a pleasant cup of tea; it was more important than that. We touched on what I believe are some of the key elements that have motivated these amendments, and they are, at heart, necessary to confront. The noble Baroness, Lady Smith, somewhat surprisingly, reminded me that I was indeed apparently the first person to give clarity on this issue, but I am very happy to reinforce the clear statement that there can be no racial profiling at a border, whether it be routine, quixotic or even accidental. That cannot be the policy or the direction; there cannot be even a hint of that going on at the border. I am hopeful that those further words might again give some contentment in that regard.

If I may turn to the amendment itself, the December joint report, at paragraph 54, confirms that the UK and Ireland can continue, as now, to work together on the movement of people. Building on this, the relevant chapter of the Commission's draft withdrawal treaty text is green, confirming the policy is agreed. The key thing here is that the common travel area with Ireland is protected after the UK has left the EU. It is important to emphasise that this agreement is not just what we would like to see happen but actually what we have agreed so far. As a number of noble Lords will have noticed thus far, getting agreement is not always as straightforward as we would like. The Government are committed to turning the relevant chapter of the withdrawal treaty into legally binding text, so we will be doing that. This means that in the future, as now, the UK will not operate routine immigration controls on journeys within the common travel area. There will be no checks whatever for journeys across the land border between Ireland and Northern Ireland, nor between Northern Ireland and Great Britain. As I said earlier, this includes any aspect of what those checks might look like or be interpreted to look like. That is not what will be happening.

To touch on some of the elements raised, I think it is important again—and I will commit to writing to the noble Baroness—to set out the elements of the withdrawal agreement treaty and how they protect the common travel area. I will place a copy of that letter in the Library of the House so that all can read it and see exactly what we are stating.

Lord Blunkett (Lab): Forgive me, this is not facetious, but the words that the Minister is using are so much clearer than those that have been used by his colleagues in government that I just wonder if there might be an internal seminar, so that we can get some of this clarity on the record more often.

6.30 pm

Lord Duncan of Springbank: I will await that promotion when it comes. I hope that I am being as clear as I possibly can be. To be equally clear, these words do indeed represent the view of the Government. I am not an outlier in this regard; I am indeed speaking on behalf of the Government.

If I may, I will draw on some of the remarks of the noble Lord, Lord Dykes, about the historic element of the common travel area. It is an extraordinary outcome when you think about what had just taken place on the island of Ireland. To then create a common travel area, with all that that represents—a common travel area that survives to this day, albeit within the wider freedom of movement of the EU—is an extraordinary achievement, both for its time and for its longevity. It is a long-standing agreement; it protects unhindered the movement across the land border. I am also aware that it is also an integral element—not a symbolic but an integral element—of the Belfast/Good Friday agreement. That should not be underestimated.

My right honourable friend the Prime Minister has made it very clear, from the original Article 50 letter right through our position paper in August on Northern Ireland to her speech in Florence, that preserving these arrangements and a unique relationship between the UK and Ireland is a priority for future negotiations as well. The common travel area has proven to be resilient over the years, withstanding legal challenges, to which the noble Baroness referred, and new policy and political developments. It is a well-crafted arrangement—and in some respects, if only all legislation

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that we created could be as well crafted, we would be doing some service to the nation. It has been staunchly protected by all its members, not just the United Kingdom but Ireland—and it has been welcomed by the Crown dependencies as well. I have no doubt that it will continue to be so.

The high level of collaboration with Ireland and the Crown dependencies on border security, on strengthening the external border of the common travel area and on promoting legitimate travel within this special travel area will continue. The UK's future approach to immigration controls for EEA nationals will be compatible with the common travel area, just as our approach to non-EEA nationals is now. Our approach to the common travel area is, of course, not reliant on our membership of the EU itself. These arrangements can be maintained after the UK has left the EU without express provision in the Bill. The common travel area was formed long before our membership of the EU and, I suspect, will exist long after.

The Government made clear during the Bill's passage in the other place that the withdrawal agreement and implementation Bill will uphold the agreement we reach, including the protection of all the Northern Ireland and Ireland commitments in the joint report. That is, of course, a matter for the future Bill rather than the one we have before us today. However, I nonetheless hope that some of the elements that I have stated today will be clearly reflected in that future Bill.

Individuals travelling to the UK through Ireland will always be required to meet the UK's immigration requirements. However, our excellent co-operation with Ireland helps to ensure that those who seek to abuse arrangements are not able to gain entry at any point in the common travel area, no matter which element we might be discussing.

I have just been handed a very helpful note, and I turn to the point raised by the noble Baroness. The word "routine" does not have a special meaning in the paper that was cited. It was not seeking to add any additional burden. It is simply saying that these are the methods that we have been using thus far and will continue to use. It is not seeking to add or put in place any additional elements. To the second question raised by the noble Baroness—the question of the obligations that fall upon Ireland itself—arrangements that we have within the common travel area will not interfere with those obligations which the Republic of Ireland has to its own citizens or to the citizens of the EU, but the nature of our future immigration status will depend on that second Bill, to which I referred a short while ago.

I appreciate that this has been a short debate, but it was an important one nonetheless. We recognise that the common travel area is not just a useful asset; it is a vital one. As the noble Baroness, Lady Kennedy, reminded us, the family commitments that stretch across those borders of long standing are very important. There is nothing that we will do that will interfere with that: that would be wrong and we will not be doing that. On that basis, and with the promise that we will send a letter and lodge a copy in the Library, I hope that the noble Baroness will be able to withdraw her amendment.

Baroness Kennedy of The Shaws: My Lords, I was very grateful to my noble friend Lord Blunkett for drawing attention to the great skills of this particular Minister and to his clarity. It is always a pleasure to hear him at the Dispatch Box.

I just wanted to express my appreciation of his agreeing to meet and discuss this matter because—I am sure that the rest of the House does not know this—in his day he worked for the Refugee Council. The noble Minister has a noble past, and he brings that experience to bear on the role that he is now playing. I, like my noble friend Lord Blunkett, look forward to him holding high office so that we can have the benefit of all that experience. Why should references from the Labour Benches from my noble friend Lord Blunkett and myself not be of assistance? We have probably killed the poor man's career.

I am grateful for the commitment to maintain the common travel area in the way that the Minister described. I understood him to say that routine passport controls are being ruled out and that racial profiling is also being absolutely ruled out. I say to the Government that they will be held to those commitments and promises in whatever arrangements are forthcoming. On the basis of what the Minister has said, I express my gratitude and I beg leave to withdraw my amendment.

Amendment 38 withdrawn.

Amendment 39 not moved.

Motion to Adjourn

Moved by ***Baroness Vere of Norbiton***

That further consideration on Report be now adjourned.

Baroness Vere of Norbiton (Con): My Lords, in moving this Motion, may I suggest that proceedings on Report should begin again not earlier than 7.10 pm?

Baroness Smith of Basildon: I am slightly puzzled as to why the House would seek to rise at 6.36 pm for a break. The normal time for a dinner break would be around 7.30 pm. I appreciate that we have made swifter progress than anticipated, but it is inappropriate for the House to adjourn at this point. We should continue with the business before us. I am grateful to the usual channels for giving us a dinner break today; that is helpful. However, the normal time of after 7.30 pm would be more appropriate.

Lord Taylor of Holbeach (Con): There is a proposition before the House that we adjourn debate on Report. I took the trouble of having a word with the Opposition Chief Whip in order to ascertain when it would be suitable to have a dinner break, and we felt at that stage that this was the right time. I now realise that circumstances have changed. We had agreed to a sort of dinner break—a gap in proceedings—because previously we found that the evenings were too long. I was asked by both the Opposition Chief Whip and the Liberal Democrat Chief Whip to consider having a

break in the evenings, because they thought that proceedings would go better if that were the case. That is not the situation. The proposition before the House is that we should have a dinner break—that we should adjourn the House on Report at this stage—and I feel that we should at least put that to the House.

Baroness Smith of Basildon: My Lords, I am grateful to the Chief Whip. It is a very wise and sensible move to have a dinner break during long proceedings—but I am not very hungry yet, and I suspect that other noble Lords might have had a late lunch as well. I appreciate that there is a Motion on the table and I am grateful for his suggestion of a dinner break. I assume that the next group of amendments would take us to around 7.30 pm, which would be a more appropriate time for a break. If he insists on putting this proposition to the House, I would ask noble Lords not to support the Government.

Lord Newby: My Lords, I support what the noble Baroness, Lady Smith, just said. It is 6.40 pm. It would be unprecedented to break for dinner at this time. I do not suggest that there is anything other than concern for your Lordships' stomachs in the mind of the Government Chief Whip, but I ask him to reconsider whether he wishes to put this matter to a vote.

Lord Cormack: We can negate it with our voices—we do not need to go into the Lobbies.

Lord Newby: I suspect that the mood of the House is to negate it—and the quicker we do it, the better.

Lord Taylor of Holbeach: I am mindful that the noble Lord, Lord Adonis, is in his place this evening. I do remember him getting extremely hungry.

Lord Adonis (Lab): It was later in the day.

Lord Taylor of Holbeach: Perhaps it was. Part of the difficulty here is that we had agreed via the usual channels to have a break, and had agreed more or less where we would have it; it was going to be before the consideration of the amendments which we are now at. I do not want to defy the majority view of the House, and I have to accept that the numbers suggest that the will of the House is to carry on with proceedings. With that in mind, I suggest that we move on to the next group of amendments. However, I will ask the usual channels in future to be much more specific about what they intend when they ask for these facilities.

Baroness Vere of Norbiton: I beg to move that the Motion be withdrawn.

Motion withdrawn.

Amendment 40

Moved by ***Lord Trees***

40: After Clause 7, insert the following new Clause—

"EU Protocol on animal sentience (Article 13 of Title II of the Treaty on the Functioning of the EU (TFEU)

(1) Ministers of the Crown and the devolved administrations must pay due regard to the welfare requirements of animals as sentient beings in the formulation and implementation of public policy.

(2) In this section—

(a) "animals" means vertebrates, other than man, and cephalopods, whether under the control of man or living in a wild state.

(b) "Ministers of the Crown" has the same meaning as in the Ministers of the Crown Act 1975 and also includes government departments.

(3) It is for Parliament exclusively, in the exercise of absolute discretion, to hold Ministers of the Crown to account for the discharge of their duties under this section.

(4) It is for the Scottish Parliament exclusively, in the exercise of absolute discretion, to hold the Scottish Government to account for the discharge of their duties under this section.

(5) It is for the National Assembly for Wales exclusively, in the exercise of absolute discretion, to hold the Welsh Government to account for the discharge of their duties under this section.

(6) It is for the Northern Ireland Assembly exclusively, in the exercise of absolute discretion, to hold the Northern Ireland Executive to account for the discharge of their duties under this section.

(7) The Secretary of State must submit a report annually to Parliament relating to the formulation, implementation, and effectiveness of policy relating to animal welfare to reflect the duty of subsection (1).

(8) The Scottish Government must submit a report annually to the Scottish Parliament relating to the formulation, implementation, and effectiveness of policy relating to animal welfare to reflect the duty of subsection (1).

(9) The Welsh Government must submit a report annually to the National Assembly for Wales relating to the formulation, implementation, and effectiveness of policy relating to animal welfare to reflect the duty of subsection (1).

(10) The Northern Ireland Executive must submit a report annually to the Northern Ireland Assembly relating to the formulation, implementation, and effectiveness of policy relating to animal welfare to reflect the duty of subsection (1)."

Lord Trees (CB): My Lords, I begin by thanking your Lordships as I am very hungry to get on with this debate. However, if it lasts very long, I may request a private break for other purposes.

I declare my interest as a former president of the Royal College of Veterinary Surgeons and a current co-chair of the All-Party Parliamentary Group for Animal Welfare. I hope that that makes it clear that my motives for bringing this amendment are purely about animal welfare.

This amendment seeks to fix a problem and plug a gap in the legislative protection that will be afforded to animals when we leave the EU. It seeks to embed in UK law the principles in Article 13 of the Treaty on the Functioning of the EU, notably that the Government should pay due regard to the welfare of animals as sentient beings in developing and implementing policy. In that regard, putting an onus on government, it complements and augments our current Animal Welfare Act 2006.

[LORD TREES]

Your Lordships may be aware of the history of this animal sentience issue but I will briefly remind the House of it. An amendment of this type was tabled by Caroline Lucas in the other place to the European Union (Withdrawal) Bill towards the end of last year, and your Lordships may remember that it was defeated by a government majority. That resulted in a substantial public and media backlash and criticism that the Government did not care about animal welfare. Many people, including myself, felt that that criticism was unjustified, as subsequent events have indicated.

The Government's response was to bring out a draft animal welfare Bill in 2018—a very short Bill, half of which basically embodied the principles of Article 13. That was followed by an inquiry by the EFRA Committee, which reported at the end of January 2018. That applauded the spirit of the government animal welfare Bill but severely criticised its execution, and Defra is now reconsidering. We are in a bit of a pickle. There is a high level of agreement about where we want to go but no certainty about how to get there. Adoption of this amendment or a similar amendment would enable us to get to where we want to be.

6.45 pm

In drawing up the amendment we have tried to address criticisms, particularly those raised in the EFRA Committee report on the draft animal Bill: vagueness, ambiguity and openness to misinterpretation. I have sought the advice, which I acknowledge, of Dr Mike Radford of the University of Aberdeen, who is an expert in animal welfare legislation. We have sought to put greater definitions and specificity into the Bill; we have defined the animals involved; we have made it clear how the Government are to be held accountable by the Secretary of State reporting to Parliament; and we have tried to mitigate and reduce the risks of unintended consequences and misuse by making Parliament responsible for holding Ministers to account.

The clock is ticking, as Monsieur Barnier keeps reminding us. It is important to get something in UK law as soon as possible which establishes parity between our animal welfare legislation and that of the EU 27. It will be important as we begin to negotiate, which we will do shortly, trade in livestock and livestock products with our friends in the EU 27. It will be important as a tool and a backstop for our negotiators when they start to negotiate trade in livestock and livestock products with third-party countries such as the USA, for example. It will also be important to reassure the public that our animal welfare standards will not be diminished post Brexit. I beg to move.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I support Amendment 40 in the name of the noble Lord, Lord Trees, to which I have added my name. We had a very full debate on this in Committee, and the issue was also debated at length in the other place, so I will not rehearse previous arguments.

The Government have made a commitment to the intentions behind Article 13 of the Lisbon treaty and have brought forward a draft animal welfare Bill, which went out to consultation, as the noble Lord, Lord Trees, said, on 12 December last year. The consultation closed on 31 January this year. I understand there were 9,000 responses, many criticising the Bill for its lack of breadth and for being open to possible misinterpretation. I can sympathise with those who made such comments. The consultation document consisted of 20 pages, only two of which were the actual Bill. When I read it, I found it hard to believe that the Government could be using taxpayers' money on such a pathetic draft Bill.

Secondly, a huge amount of parliamentary business will need to pass through both Houses to underpin the Brexit Bill and ensure that legislation does not fall through black holes. This means that it would be wiser and safer to enshrine this amendment in the Bill at this stage of its passage.

Much discussion has taken place on what "sentience" means. The RSPCA, a widely respected and trusted organisation, defines it explicitly as,

"the capacity to have positive or negative experiences such as pain, distress or pleasure".

While the Government's animal welfare Bill 2018 was originally to be welcomed, it did not go far enough and leaves a gap in legislation. It is important that the UK is able to achieve trade agreements in livestock and livestock products with the countries of the EU and the rest of the world. In order to achieve this, the public and the farming community will seek reassurance that animal welfare has not been compromised by Brexit. They will need this reassurance now and certainly next year.

I understand that the Minister has hinted that the Government might bring forward a second draft animal welfare Bill. Is he able to give a commitment that this will be before 29 March 2019 and that the new draft Bill will have considerably more substance than the last one?

The Minister must be aware of the depth of feeling and concern around this subject among the public, interested businesses and organisations throughout the UK. Now is the time for him to concede that animal welfare is a key issue and to support this amendment. If he is unable to do so, I and my colleagues on the Liberal Democrat Benches will support the noble Lord, Lord Trees, in the Division Lobby.

Baroness Jones of Moulsecoomb (GP): My Lords, I shall speak in support of Amendment 40, to which I have attached my name, and will also be speaking to my Amendment 41A.

The two amendments are complementary. Amendment 40 addresses some of the objections raised by the Minister in Committee and helps to bridge a gap in the current law and in the law that the Government may wish to see in their future Bill—a Bill that seems to be receding further and further into the future. Amendment 40 helps us to move towards the ideal but Amendment 41A follows up as a backstop to ensure that at least we do not lose what is already there. The Government cannot say that Amendment 40 goes too far and that Amendment 41A does not go far enough. In the absence of their own Goldilocks amendment which sits happily in the middle, we believe that it is

incumbent on them to introduce an animal welfare Bill as soon as possible, and definitely before Brexit day.

In Committee, the Minister responded to my amendment by saying that,

"the purpose of this Bill is to provide continuity by addressing any deficiencies in law as we leave the EU. It is not about improving EU laws that the Government think could be better".—[*Official Report*, 5/3/18; col. 880.]

I completely agree, and that is entirely the purpose of my amendment. It is specific and limited: it does no more and no less than is required to achieve the continuity of this Bill.

I was surprised in Committee to see that the only Member of this House to speak against the amendment was the Minister. He said that the Government want to bring forward an animal sentience Bill which goes further than Article 13, which is what we are trying to retain. I am very glad that the Government want to do better. I too want them to do better—much, much better—but I am afraid that at the moment they are absolutely failing. They are failing to hear what is being said in this House and they are failing to hear what people outside this House want. People do not want a lessening of animal welfare. That would be totally against any British feeling about animals and how they are handled.

I ask the Minister whether the next steps for the animal sentience Bill have been published. I do not believe that they have. If not, what does the Minister think can be done in place of that Bill? I believe that the only thing that can be done is to agree to this amendment.

Lord Hope of Craighead (CB): My Lords, I am very much in favour of the idea that lies behind the amendment of the noble Lord, Lord Trees, and Amendment 41A, which the noble Baroness has just addressed us to. However, I have a technical problem with the amendment. In making this point, I wish to make it absolutely clear that I am not in any way criticising subsection (1) of the proposed new clause in Amendment 40 or the idea that lies behind it. My point is directed at proposed new subsections (4), (5) and (6), which, as I think the noble Lord hinted at, are designed to exclude judicial review as a means of holding Ministers to account. As the amendment is worded, it is for the Parliament,

"exclusively in the exercise of absolute discretion, to hold",

Ministers to account. I think that the word "exclusively" is there to make it clear that there is to be no other remedy except to raise the matter before Parliament.

I recall arguments about 15 or 20 years ago when there was a real risk that the Government of the day would put provisions into Bills excluding the possibility of judicial review. There were occasions when the judges made their position clear and they were very unpopular as a result. There was a real risk of the Government taking that measure, and I think that that risk was diminished through various representations made through the Lord Chancellor and others. Eventually it was established as a convention that the Government would not seek to exclude judicial review. They might limit it in some respects, as they have done, by the length of time that can elapse before a petition is brought, and there have been other ways in which the opportunity for judicial review has been narrowed, but they have never excluded judicial review, because it is one of the essential protections of individuals against the state.

We are talking here not about people but about animals, and I can quite see that there is room for some difference, but I respectfully suggest that it would set an unfortunate precedent for us to pass a measure that excluded judicial review. If that were to be picked up later by a Government in areas where individual rights were involved, I think that we would greatly regret it.

I am sorry to raise that technical objection. I wish that we were not on Report but in Committee, where this matter could be sorted out. However, I feel it necessary to make that point clear at this stage.

Lord Wigley (PC): My Lords, I intervene briefly in support of the amendment moved by the noble Lord on the question of animal sentience. I should declare an interest. I am an honorary associate of the BVA and I want to underline the representations that it has made—I think that a number of noble Lords will have received them at various times. It feels very strongly that steps need to be taken prior to Brexit to include provisions for animal sentience in UK law. When representations of this sort come from such a respected body as the BVA, I think that we are duty-bound to take good notice of it, and I hope that noble Lords on all sides of the House will act accordingly tonight.

Lord Brown of Eaton-under-Heywood: My Lords, I want to follow up on what my noble and learned friend Lord Hope said. He referred to proposed new subsections (4), (5) and (6), which deal with the devolved Administrations, but of course Clause 3 deals with our central Parliament and thus the English position, and exactly the same point arises.

My further concern is that, assuming that we did not have that apparent bar on any question of judicially reviewing Ministers of the Crown, it would be very difficult to see by what sort of touchstones any legal challenge would work. Proposed new subsection (1) says:

"Ministers of the Crown and the devolved administrations must pay due regard to the welfare requirements of animals".

Heaven knows, I hope that I am as anxious as the rest of the House about the welfare of animals—certainly, my cat would never forgive me if I were not—but, as I understand it, the only substantive provision in this proposed new clause is subsection (7), which requires an annual report, although that is obviously a separate and discrete obligation. However, I am not quite sure how judicial review in this context would work or, without it, what is envisaged in the way of Parliament exclusively holding Ministers of the Crown to account. It is all rather abstract and I am a little unsure of how it is intended to work.

Lord Hodgson of Astley Abbotts (Con): My Lords, the noble Lord, Lord Trees, has introduced the amendment in his characteristically persuasive manner. He has an exemplary record in the area of animal

[Lord Hodgson of Astley Abbotts]
welfare. As a senior veterinary surgeon, he has enormous professional knowledge and, above all, personal courage in being prepared to speak up about what are often controversial matters. I have had the privilege of working with him on a number of areas of welfare: the welfare of animals at the time of killing, or WATOK, regulations; meat labelling; the export of live animals and so forth. Therefore, I like to think that my commitment to an appropriate standard of animal welfare is not in question, and I believe that a reading of *Hansard* would show that.

However, as I have told the noble Lord, I am afraid that I cannot support him this evening. We are discussing the European Union (Withdrawal) Bill, which is focused on the process of disentangling this country from the European Union, not on the shape of policy post Brexit. Special issues such as animal sentience, important and vital though they are, are not really part of that withdrawal process. However, I can promise the noble Lord that when we come to discuss animal sentience and welfare in legislation focused on the policies of the new world, I shall be right there with him to ensure that there is no diminution, weakening of or sliding away from proper standards of animal welfare. On that, the noble Lord, Lord Trees, can count on my full support. But not, I am afraid, on this amendment this evening.

7 pm

Baroness Oppenheim-Barnes (Con): My Lords, I am very sympathetic to this amendment's aims, and have been ever since we joined the market. It relates to an issue that was one of my strongest concerns when making up my mind to vote against going in in the first place, which I did: the question of all the animal welfare measures, little and big, and the worst measure of all, which sees animals waiting overnight and longer at the docks—for perhaps two or three days—without any care. That alone would be good enough to make me Brexit for life, if I was not already. This debate allows me to bring to the cause a little good news. I understand that the animals which were being held at the ports because they had to be delivered alive in France have now been given help. The local animal welfare departments have removed them from the ports and are giving them water and food while they wait. That is only a small thing, but it is important and it is taking the lead.

I too am concerned about the judicial review. I do not want to see the whole issue bound up by complicated legal matters when the kind of thing that is necessary is available in a much less complicated way—and because it is less complicated, it is easier to police and to maintain. I hope that those moving this amendment, with whom I have great sympathy, will look again at these provisions. I want us to get this right. I do not want us to regret it. When the time comes, I want us to be able to say of this big achievement that what we have done is acceptable, enforceable and very badly needed.

Lord Judge: My Lords, I want to add my voice and underline, if I may, how serious the issue arising under subsections (3) to (7) is. There are many executives that would be desperately pleased to have provisions such as these in primary legislation. There is no reason whatever why Parliament should not be able to deal with any issue arising in the context of sentient animals—there is no exclusion about that. However, to exclude the possibility of somebody seeking a remedy before the court would be an astonishingly dangerous principle to put into any legislation. The fact that it arises in this very sensitive issue relating to animals is one thing, but a lot of citizens, and individuals who happen to live in this country, rely on the possibility of taking the Government or the local authority to court to make them account for the exercise of, or failure to exercise, their powers. This would set an alarming precedent.

Lord Mackay of Clashfern (Con): My Lords, the subject of animals is an extremely important one and I have great sympathy with the spirit behind both the amendments in this group. However, this subject needs to be properly dealt with in a statute of the United Kingdom. I know that criticism has been made of the attempts so far, but there is always room for improvement, and constructive suggestions have been liberally made in the consultations. As far as I am concerned, it would be much better to have a good United Kingdom statute for these animals than to try to do it through adapting part of an EU treaty.

The technical question of judicial review is quite difficult. I am not sure just how crucial it is to the amendment from the noble Lord, Lord Trees, but, years back, skilful Lords of Appeal—Lord Reid, a Scottish judge, and Lord Wilberforce from this jurisdiction—developed a theory that makes it next to impossible to prevent judicial review in an Act of Parliament. They did so by saying that what Parliament has protected is the judgment that is supposed to be come to, but, if the judgment that is come to has been falsified by some mistake or lack of proper process, then it is not a judgment protected by these provisions—Anisminic was the case. As was said by the noble and learned Lords, Lord Hope and Lord Judge, at the end of a long process, the attempt to restrict judicial review was eventually torpedoed by these judges, with support of course. It is for that reason that the Government decided some considerable time ago not to put such protected clauses into legislation, because it is apt to mislead the public—they think that these clauses are, at face value, worth while, but when Lord Reid and Lord Wilberforce got on to them, they were not worth the paper they were written on.

Baroness Byford (Con): My Lords, I will speak briefly to these amendments. I am one of perhaps three or four people in the Chamber today who took through the original Animal Welfare Act 2006, so I am supportive of anything we can do to make sure that animal welfare is top of the agenda. As an associate member of the BVA and the royal college, and as somebody who has had animals on the farm, this is a key interest of mine.

I have talked often with the noble Lord, Lord Trees, about the fact that although I am 100% behind what he is trying to do, I am not sure in my mind that this amendment is the right vehicle. I apologise if that is a disappointment to him. I am grateful for the observations

of the noble and learned Lords, which were above the understanding I had before the debate started. It is very clear that the Government have tried to rectify a problem that was raised in the House of Commons by bringing forward a draft Bill. I think they realise, in hindsight, that that Bill is not sufficient to do what they wish it to. As others have said, it is quite difficult to deal with this on Report because we have to wait and then we cannot come back. However, I am hopeful that the Minister will be able to give us much greater clarification than we have had up to now as to the Government's thinking about where we stand. While we are not fully behind the wording of the amendment, I hope no one thinks that we in any way do not believe in the full commitment we should have to animal welfare. Although I have no idea what the Minister is going to say, I hope he will bring us up to date on where we are and what the Government's thinking is.

I say to my good friend the noble Lord, Lord Trees, and others that I am grateful to them for bringing forward this amendment. It has given the House another chance to reflect on an issue that some people might think is not important but which, I say to my noble friend the Minister, is hugely important. I hope his words will give greater resolve to those of us who wish to see this welfare issue taken forward in a meaningful way.

Baroness Jones of Whitchurch (Lab): My Lords, I support Amendment 40 in the name of the noble Lord, Lord Trees, to which I have added my name.

The noble Lord made an authoritative contribution explaining why this issue is important, as have a number of other noble Lords. It followed the excellent debate in Committee, which had widespread support from around the House. At that time the noble Lord, Lord Callanan, confirmed that animals should be regarded as sentient beings. The question we are debating now is how best to enshrine that in UK law.

We can all agree that the rushed Animal Welfare Bill was not fit for purpose. As the Commons' Environment, Food and Rural Affairs Committee said in a scathing report on that Bill, animals,

"deserve better than to be treated in a cavalier fashion".

As we have heard, the closing date for the consultation on that flawed Bill was 31 January. We are still waiting for the Government's response. It is now April and we do not have a revised animal sentience Bill or a commitment in this Bill to recognise animals as sentient beings. This is the worst of all worlds.

During the debate the Minister tried to reassure us. He said that the Government would publish their summary of the consultation on the Bill and the next steps in due course and, hopefully, before Report. Indeed, he went further and said that if that was not the case, he would look at what could be done in its place. We still have not got the information that the Minister said—I would not say promised—he hoped to give us before Report. We are therefore left with the dilemma of how to plug that governance gap.

Time is going on. We are leaving next year and, if our amendment is rejected today, we will not have that commitment in the Bill as it stands and we will not have anything in its place. Our amendment provides that stop-gap. It provides reassurance to those in this Chamber and outside it who care about this issue that the recognition of animal sentience will transfer over and will apply from day one.

We await with interest the Government's future plans to extend the application of animal sentience—they may answer all of the issues raised today—but we do not have that before us and I venture that we will not have it on the statute book before next March. A report on the next steps of a draft Bill, which the Minister may offer today, is not the same as delivering primary legislation before Brexit day.

As time ticks by, the number of Defra Bills promised but not delivered is stacking up. While I do not think that deliberate on anyone's part, the fact is that the Defra Secretary of State is losing control of his promises and of the scheduling. Perhaps his civil servants are finding it hard to keep up with him or he might be embroiled, as we read in the papers, in the battle for his priorities with other Cabinet colleagues. I am not going to go there. However, I know that the timetables for other Bills are slipping. Any separate animal sentience legislation will need to take its place behind other Defra Bills, including Bills on agriculture and fishing. We have been promised a Bill on the environment and primary legislation is needed for a ban on ivory sales. So an animal sentience Bill will have to take its place in that queue.

A number of noble Lords have said that they want to get this right—I understand that; we all want to get it right—and when the new version of the animal sentience Bill is published and we see it, we will want to get that right too. We do not want to be rushed to agree it; we want to take time on it. The sensible thing to do today is to agree a simple amendment now which sets recognition of animal sentience as a duty in UK law. That is our holding position and our amendment will deliver it. We can then take time to craft a new animal sentience Bill which delivers Michael Gove's promise of improving animal welfare post Brexit.

The noble Lord, Lord Hodgson, asked whether this Bill was the right place for this issue. Yes, it is, because it is an important environmental principle. We have been promised that before and after exit day, rights and protections will be the same. However, if we do not put it in this Bill in this form, those rights will not be the same the day after Brexit. This is the right place to put it.

In the absence of a government amendment, which is where we find ourselves today, I hope noble Lords will agree that this is the right way forward and, given the dilemma in which we now find ourselves and lacking any other way of plugging this gap, will see fit to support our amendment.

7.15 pm

Lord Howarth of Newport: My noble friend is making a powerful speech but will she deal with the important issue of judicial review that has been raised during the debate. We have to attend to that. Will she also give her view on the merits of Amendment 41A in the name of her namesake, the noble Baroness, Lady Jones of Moulsecoomb?

Baroness Jones of Whitchurch: I am always loath to argue with noble and learned Lords on technical legal matters.

Lord Rooker: Perhaps I may suggest a reply to my noble friend. I am being practical now. We are in charge of our own procedure in this House, so what would be the problem, if the House wants to pass this amendment, in passing a technical drafting amendment to remove four words exclusively on Third Reading? That is the end of the problem.

Baroness Jones of Whitchurch: As ever, I thank my noble friend for his helpful advice. He must be right.

We of course support the amendment in the name of the noble Baroness, Lady Jones of Moulsecoomb. It is another option but, on the basis of the debate we have had so far, I hope noble Lords will support Amendment 40 as it stands.

Lord Callanan: My Lords, let me start by being crystal clear about the Government's commitment to animal welfare as we leave the EU. As the Prime Minister said in another place on 22 November,

"we already have some of the highest animal welfare standards in the world, and as we leave the EU, we should not only maintain, but enhance them. We have already set out our proposals to introduce mandatory CCTV in slaughterhouses; to increase sentences for animal cruelty to five years; to ban microbeads, which damage marine life; and to ban the ivory trade to help bring an end to elephant poaching".

The Prime Minister went on to explicitly confirm:

"We also recognise and respect the fact that animals are sentient beings and should be treated accordingly. The Animal Welfare Act 2006 provides protection for all animals capable of experiencing pain or suffering which are under the control of man".—[*Official Report*, Commons, 22/11/17; col. 1038.]

The following day my right honourable friend the Secretary of State for Environment, Food and Rural Affairs set out in a Written Ministerial Statement in the other place that:

"This Government will ensure that any necessary changes required to UK law are made in a rigorous and comprehensive way to ensure animal sentience is recognised after we leave the EU".

But, as he further noted,

"The withdrawal Bill is not the right place to address this".—[*Official Report*, Commons, 23/11/17; cols. 35WS-36WS.]

In this respect I agree with my noble friend Lord Hodgson. The Government's commitment to legislating in this area is in no doubt. I can confirm to the noble Baronesses, Lady Jones and Lady Bakewell, and to my noble friend Lady Byford, that not only have we made that commitment but we have begun work on drafting and developing that legislation.

In December, the Government published draft legislation to address the recognition of animal sentience through the *Animal Welfare (Sentencing and Recognition of Sentience) Draft Bill*. The public consultation on the draft Bill closed on 31 January. We have received over 9,000 responses, which the Government are analysing. The magnitude of the response highlights not only the importance and complexity of animal sentience in and of itself, but also the manner in which it is recognised in legislation.

On 1 February, the Environment, Food and Rural Affairs Select Committee in the other place published its pre-legislative scrutiny of the draft Bill, and the Government's response to that was published earlier this week on 23 April. I do not know whether that is the consultation which the noble Baroness, Lady Jones, said she had not seen yet, but if that is the case, I will be happy to get my officials to send her a copy. However, we have responded to that consultation. In its report, the committee highlighted a number of concerns about the draft Bill, which once again serves to underscore further the complexities of the issue and why it is so important that we get this area of the law right, a point that was well made by my noble and learned friend Lord Mackay. That is what we all want, but I am afraid that the amendments before us will not achieve that, as I will outline shortly.

As previously stated, there is no question but that the Government regard animals as sentient beings. As we said in relation to this issue during the Committee stage of this Bill, we certainly agree with the underlying sentiments of amendments such as that tabled by the noble Baroness, Lady Jones of Moulsecoomb, and of course the noble Lord, Lord Trees. However, as we also said in Committee, we cannot support them.

In order that there can be no ambiguity regarding the Government's resolve on this matter, let me be clear again that the Government intend to retain our existing standards of animal welfare once we have left the EU and, where possible and practical, to enhance them. My noble friend Lady Oppenheim-Barnes set out some important areas that we would want to consider in this respect. Perhaps I may also be clear that the Government fully recognise the level of support for our commitment to maintaining and enhancing our high standards of animal welfare as expressed not only in this Chamber and the other place but also among the general public. The groundswell of feeling on this matter is surely a testament to the UK as a nation of animal lovers who share a proud and long history of legislating to protect animals from cruelty and suffering, much of which of course predates our accession to the EU. As we move towards a new relationship with Europe and the rest of the world, we are absolutely determined to maintain our high animal welfare standards, to improve on them where appropriate, and to legislate to do so where necessary.

However, as has been said, the purpose of this Bill is to provide continuity by ensuring that we have a functioning statute book upon our exit from the EU. As I am sure noble Lords appreciate, in relation to the European Union and EU member states, Article 13 creates an obligation to have full regard to the welfare requirements of animals when formulating and implementing EU policies on the basis that animals are sentient beings. However, the underlying requirement to consider the needs of animals contained in Article 13 is limited to a small number of EU policy areas. The resulting impact of Article 13 on domestic law is therefore minimal. At its conception, Article 13 was considered by many to be a symbolic step change in our relationship with animals that would drive radical improvement in animal welfare across Europe. In reality, its impact has failed to materialise. Simply transferring Article 13 as it stands into domestic law would be a

disservice to the cause of animal welfare and is not in keeping with the Government's aim for the UK to be a world leader in this area.

The draft Bill that I mentioned earlier sets out a possible method to better enshrine the principles of animal sentience in domestic law. Notably, and unlike Article 13, the draft Bill does not seek to restrict the recognition of animals as sentient beings to specific policy areas, a change that we hope noble Lords will agree is a significant improvement. The draft Bill also imposes a clear duty on Ministers of the Crown to have regard to animal welfare.

Given the complexities that I touched on earlier, it is crucial that this issue is given the consideration and effective legislation that it deserves to avoid replicating the issues contained in Article 13. For this reason, I regret to say that we cannot support the amendment tabled by the noble Baroness, Lady Jones of Moulsecoomb. The amendment appears to seek to transfer the obligations contained in Article 13 to domestic law. However, this clause applies only to the formulation, rather than to the formulation and implementation, of law and policy. It is the Government's view that this clause would further reduce the already limited scope of Article 13.

I would like to reassure noble Lords—and I know that the noble Lord, Lord Trees, is particularly interested in this fact—that the Government and the EU have reached agreement on an implementation period following our exit from the EU until the end of December 2020, and Article 13 would continue to apply during that period.

Turning to Amendment 40, moved by the noble Lord, Lord Trees, the proposed new clause seeks to place a duty on Ministers of the Crown and the devolved Administrations to pay due regard to the welfare requirements of animals when formulating and implementing public policy. I am grateful to the noble Lord for his contribution, and as other noble Lords have indicated, he does of course have much experience in this area. I am also grateful for the constructive engagement that he has had with the Government, and I was pleased to meet with him earlier this afternoon.

The clause also seeks to prevent judicial review for failure to comply with that duty, instead requiring the Secretary of State to account to Parliament and requiring the devolved Administrations to account to their respective legislatures. This appears designed to address concerns raised by the Commons EFRA Committee about the need to avoid an unnecessary and costly burden being imposed on the courts in the pursuit of replacing Article 13. However—and this reflects on the points made by the noble and learned Lords, Lord Hope and Lord Judge—due to the constitutional significance of legislation to this effect, very clear wording is required to remove the availability of judicial review. The current drafting of the amendment is not sufficiently clear, meaning that it is likely that policy decisions could still be subject to judicial review for failure to comply with the duty to pay due regard. Here I bow to the superior wisdom of my noble and learned friend Lord Mackay on this subject.

In addition, the Secretary of State and the devolved Administrations would be accountable to their respective Parliaments for their compliance with the duty and need to report on an annual basis on the formulation, implementation and effectiveness of policy related to animal welfare. Subsection (3) states that it is for Parliament to decide how the duty has been properly discharged. However, it is likely to be argued by some that subsection (1) creates a distinct duty that can in fact be used to judicially review policy decisions.

We are carefully considering how to take forward the recommendations made by the EFRA Committee and others during the consultation. We are grateful to the noble Lord, Lord Trees, for his proposed formulation and will consider it carefully as we decide how to take forward the measures that we have set out in the draft Bill.

I again reiterate that the aim of this Bill is to provide a framework which ensures that our impending exit from the EU occurs in an efficient and timely manner. It will urgently provide the reassurances needed in order to plan for day one as we leave the EU. As part of that function, this Bill will retain the existing body of EU animal welfare law in UK law, ensuring that the same protections are in place in the UK following our EU exit.

I hope that what I have had to say provides reassurance to the noble Lord and the noble Baroness on the Government's firm stance on animal sentience and that the noble Lord will feel able to withdraw his amendment. However, I cannot give any false hope that I will reflect further on this issue between now and Third Reading, so if the noble Lord wishes to test the opinion of the House, he should do so now.

Lord Trees: My Lords, I am grateful to all noble Lords who have spoken in this stimulating and interesting debate, and I hope that it has provided food for thought. Above all, I hope that it gives the Government an impetus to solve this problem. Perhaps I may address some of the points that have been raised.

The point about adding specific issues to a general Bill of this type was made by the noble Lord, Lord Hodgson, and others. I have huge respect for the noble Lord, who is a great fighter for animal welfare. I will answer in two ways. Normally I would totally agree with the point, but these are not normal times; rather, we are living through extremely extraordinary times, and I think that extraordinary times need some special and novel remedies. The second point is that we are seeking to enable a very specific and defined issue through making a modification to the EU withdrawal Bill.

With regard to the technical objections raised on proposed new subsection (3), I absolutely defer to the expertise of the noble and learned Lords, Lord Hope, Lord Judge and Lord Brown. We sought to give Parliament authority to have oversight of how proposed new subsection (1) would operate. Parliament could define the mechanisms and the definitions, getting over some of the points made by the noble and learned Lord, Lord Brown. As the noble and learned Lord, Lord Mackay, said, it does not absolutely exclude the possibility of judicial review. It certainly reduces the

[Lord Trees]
possibility, which was a recommendation of the EFRA Committee report, but it does not exclude it, as the Minister acknowledged as well. We seem to have been criticised for excluding judicial review; on the other hand, perhaps we are not, so although that is an important issue it clearly needs further clarification.

No one would be more pleased than me to see the text of the amendment improved further. It could be done by the Government and tabled as an amendment on Third Reading. I had written that down before the noble Lord, Lord Rooker, made his helpful intervention, for which I thank him. No one would rather see this improved than me. I am very happy to take criticism; I am an academic of long experience and used to lots of criticism. Let us get it better but let us get it done.

Finally, turning to the main issue, I do not doubt one bit the sincerity of the Government and the Minister in wishing to see this sorted but, as has been pointed out by several noble Lords, it has already taken a long time to get this rectified. A vast tsunami of legislation is coming along the tracks, which will demand a slice of a finite amount of parliamentary time. In particular, Defra has a huge burden of legislation and adjustment to make around Brexit. While I am in no way questioning the sincerity of the Government's desire, stuff happens. Ministers come and go. Other priorities emerge. It is particularly disappointing that the Minister has made no commitment to when we might see an improved animal welfare Bill.

Our negotiators will shortly go into battle to negotiate the trade of livestock and livestock products. They need assurance behind them so that they can argue that our welfare legislative standards are absolutely the equal of those of the rest of the EU, and so on. If we wait, I fear that we will be waiting for Godot. Noble Lords need no reminding that Godot never came, so it is with a heavy heart that I feel I must test the opinion of the House.

7.33 pm

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7.45 pm

Amendments 41 and 41A not moved.

Clause 8: Complying with international obligations

Amendment 42

Moved by ***Lord Lisvane***

42: Clause 8, page 6, line 34, leave out "the Minister considers appropriate" and insert "is necessary"

Amendment 42 agreed.

Amendment 43

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

43: Clause 8, page 6, line 40, at end insert—

"( ) impose or increase taxation,"

Lord Kerr of Kinlochard (CB): Amendment 43 is in my name and those of the noble Baronesses, Lady Hayter and Lady Kramer, and the noble Lord, Lord Cormack. It would add to the prohibitions in Clause 8(3) a prohibition on increasing or imposing taxation by regulation. There are already similar prohibitions in Clauses 7 and 9 that you cannot impose or increase taxation by regulation made under these clauses.

Noble Lords might have noticed that my fox is ever so slightly shot by the admirable Amendment 47A from the noble Lord, Lord Callanan, which proposes the dropping of Clause 8. I welcome it and many of the government amendments in the group. It is clear that the noble Lord has been listening hard and I am very grateful for the changes he proposes. However, I want to say a word about Amendment 104, which is lurking in this thicket of government amendments and is also in my name and those of the noble Baronesses, Lady Hayter and Lady Kramer, and the noble Lord, Lord Cormack. It would insert the same prohibition

[Lord Kerr of Kinlochard]
against making new taxes or increasing taxes by regulation in paragraph 1(3) of Schedule 4. Schedule 4 is about fees and charges, not taxation. The idea of the amendment is to add a prohibition on eliding from fees and charges into taxes.

When I was young, irresponsible and committing multiple misdemeanours I was sentenced to five years in Her Majesty's Treasury—a sort of borstal or juvenile detention centre. Now that I am old, irresponsible and committing multiple misdemeanours I have very few memories of the Treasury, but one that stands out clearly is of being in the Box behind the Chancellor of the Exchequer—I was a private secretary—at the time of the Budget speech. At the end of the Budget speech there is an interesting ritual that takes place in silence in the House of Commons, where the Chancellor of the Exchequer and the leader of the Opposition stand up and sit down three times. They are passing the Motions that permit the instant changes of taxes that might be pre-empted. The Chancellor can say something like, "So the price of petrol at the pumps will go up by 5p at 5 pm". When you go home and look, by God, they did go up. It is an astonishing thing. That is because since 1913, I think, it has been clear that it is not possible to increase taxes or to create a new tax other than by legislation in the House of Commons. That is what happens in that ritual immediately after the Budget: they are passing new taxes for a limited period of three to five months maximum while the Finance Bill goes through the House. The Finance Bill contains these changes and in due course becomes law.

I worry about Schedule 4, which creates the power for Ministers to create public authorities and confer on them the power to impose or create taxes. It seems a fairly fundamental breach of the principle that only Parliament may create or change tax. I am reinforced in this view by the excellent reports from our Delegated Powers Committee, which takes serious exception to the powers in Schedule 4. It points out in its 12th report of this Session, published on 31 January, that the powers are "very wide" and notes that the delegated powers memorandum submitted by the Government spells out that they would enable,

"the creation of tax-like charges, which go beyond recovering the direct cost of the provision of a service … including to allow for potential cross-subsidisation or to cover the wider functions and running costs of a public body".

The committee comments:

"A 'tax-like charge' means a tax. Although regulations under clauses 7 and 9 cannot impose or increase taxation, regulations under Schedule 4 may do so. Not only can Ministers tax, Ministers can confer powers on public authorities to tax. Indeed, they can do so in tertiary legislation that has no parliamentary scrutiny whatsoever".

The committee concludes:

"Taxation, including 'tax-like charges', should not be possible in fees and charges regulations made under Schedule 4. Fees and charges for services or functions should operate on no more than a full cost-recovery basis. Taxation should be a matter for Parliament, a principle enshrined in Article 4 of the Bill of Rights 1688"—

a powerful case, which persuades me.

The Delegated Powers Committee has reported again this week, in its 23rd report, having looked at the government amendments, which I have just welcomed. It remains of the view that,

"taxation, including 'tax-like' charges, should not be possible in regulations made under Schedule 4",

and spells out three or four reasons for that, including the fact that it would offer,

"little consolation to be told that one is being taxed under Schedule 4 rather than under clause 7 or clause 9".

The prohibitions are clear in the Bill in Clauses 7 and 9, although there was a prohibition that we would have added in Clause 8, had Clause 8 been there, by way of Amendment 43.

However, Amendment 104 seems to make a very valid point which I think the House should hear more about, so I look forward to hearing the Minister's answer on it. Why do the Government feel it is right to confer on themselves and whatever public authority they wish the power to levy taxes or increase taxes, against what is usually thought to be a fairly fundamental principle of parliamentary control? I beg to move Amendment 43.

Baroness Ludford: My Lords, we on these Benches support the points made by the noble Lord, Lord Kerr, who is arguing for consistency throughout the Bill that taxation or "tax-like charges" should be imposed only by primary legislation. That is all I need to say at this stage.

Lord Cormack: As my name is on the amendment, I merely endorse what my friend the noble Lord, Lord Kerr, and the noble Baroness have said. We want consistency. We are glad that Clause 8 is to be taken out of the Bill, but the point that he made about Schedule 4 is very important indeed. I know we cannot vote on that amendment tonight but I hope that my noble friend Lady Goldie, who I am delighted to see will reply to this debate, will be able to give us an assurance that this matter has been taken on board.

Baroness McIntosh of Pickering (Con): My Lords, it seems appropriate for me to speak to Amendment 47, in my name and that of the noble Baroness, Lady Smith of Newnham, for the simple reason that government Amendment 47A seeks to remove Clause 8 from the Bill and the purpose of Amendment 47 is to amend Clause 8 by adding the words as printed on the Marshalled List.

I tabled this amendment for Report because, in my view, my noble friend the Minister's response in Committee lacked clarity. Since then, of course, we have had a vote on an amendment requesting that the Government negotiate a customs arrangement, which was agreed in this House by a substantial majority. Of course, when that amendment goes to the other place it could be rejected, so I would just like to raise a number of issues on Report which will be helpful at Third Reading or in any future altercation between here and the other place if the amendment seeking a customs union does not find favour there.

On 21 February, my noble friend Lord Callanan explained that, in his view,

"the regulations of the EEA will continue during the implementation period. For the period after the implementation period we will seek to negotiate an ongoing relationship with the other three member states of the EEA",

and that this approach would mean that,

"we seek the continued application of the EEA agreement for the time-limited implementation period to ensure continuity in crucial elements of our trading and non-trading relationship with those three EEA states".

The lack of clarity came, I believe, when the Minister went on to say:

"Participation in the EEA agreement beyond the implementation period would not work for the UK. It would not deliver on the British people's desire to have more direct control over decisions that affect their daily lives and it would mean accepting free movement of people … We will instead seek to put in place new arrangements to maintain our relationships with those three countries: Norway, Iceland and Liechtenstein".—[*Official Report*, 21/2/18; col. 180.]

8 pm

He concluded that he hoped he had made the Government's position clear—but I regret to say that he has not. We had a debate in Committee, which I believe has not been resolved, on the legal position as to whether or not we automatically leave the EEA, or whether a separate treaty is required to give effect to the UK leaving. My preferred position is clearly that we either remain within a customs union or have a new customs arrangement going forward. But I place on record now, and I seek a view on it from the Minister, my suggestion that remaining in the EEA would resolve the Northern Irish-Irish border situation. It is a matter of fact that most food and drink products crossing the EU's external borders are subject to sanitary and veterinary certification and inspection regulations. These regulations require checks at the point of entry, which cannot be fixed by technology.

Why is this important? The reason is simply that our largest manufacturing industry is indeed the food and drink industry. More than two-thirds of UK trade in food and drink is currently with the EU 27, and it is worth £28.8 billion a year to the UK economy. It employs 400,000 people in all four corners of the UK, and it is an essential part of the farm-to-fork supply chain, which amounts to £112 billion. Why is the EEA potentially important here? It is because, while it would not allow a customs union, it would give access to a single market and fulfil a major ask of the food and drinks industry, as so eloquently expressed by the Food and Drink Federation: to have a continuing supply of workers, large numbers of whom work in the agricultural and fruit and vegetable industries at this time.

I also wish to place on record the difficulty with perishable foods, which may be stuck at borders if physical checks are in place, in the event of having no access to a customs arrangement. Delays at borders would completely thwart the principle of speedy access and just-in-time delivery to the market. So, in the event of a failure to reach customs arrangements, I request and urge my noble friend the Minister to keep our future membership of the EEA, or an application to EFTA, under review.

I also have a question, if I may. It is a source of great concern to the food and drink manufacturing sector, as so vocally expressed by the Food and Drink Federation, as to what the consequences would be of leaving a customs union and not being in an arrangement such as the EEA, EFTA or a specific free-trade area. I will place on record its concern over the sheer volume of negotiations that must be concluded to maintain the UK's existing trading arrangements. For example, EU free trade agreements with third countries account currently for more than 10% of our exports and are worth £2 billion. It is concerned about the interregnum between leaving on 29 March next year, then having the implementation period and falling off a potential cliff in December 2020. So I ask the Minister in the strongest possible terms: when will the Government be in a position to table their own proposals as regards rules of origin, so that any potential negotiations are structured more favourably around a UK proposal, rather than using the European Union's standard text?

I am told that the ideal arrangement is not that of the Canadian so-called EFTA-CETA arrangement, because that is defective for a number of reasons, which I am not prepared to rehearse here. But where Canada was successful was in coming forward with its own text, particularly as regards rules of origin, on which to negotiate.

Three items remain to be looked at in the event that we do not fall within a customs arrangement: one is rules of origin, ideally on the basis of a government text; another is the free movement of workers, particularly in the agricultural, fruit and vegetable-growing sector; a third is a realisation that if there are animal and food movements on the Irish border, for the reasons I rehearsed earlier, there will have to be physical checks. In these circumstances—

Lord Berkeley (Lab): Can the noble Baroness confirm that seed potatoes are part of the problem? If they are sown on both sides of the Irish border, they will not be able to be taken across unless they are subject to specific checks.

Baroness McIntosh of Pickering: The noble Lord has the advantage over me. I was not thinking so much of potato seeds but the fact that the Secretary of State has said that we are to have higher standards of animal hygiene, animal health and animal welfare, which I welcome. That follows on from the little debate we have just had. There will have to be physical checks. There cannot be checks managed by technology, in which case potatoes and their seeds could effectively fall within that category. So the noble Lord has actually made and developed that point very neatly for me.

In the context of Amendment 47, I urge the Minister to maintain Clause 8 in the Bill and to keep an open mind as regards potential membership of the European Economic Area or applying to join the European Free Trade Association.

Lord Beith: My Lords, notwithstanding the noble Baroness's arguments, I want to address this group from a different standpoint: that of government Amendment 47A, which is to leave out Clause 8. It may be because I have a suspicious mind, but, while the removal of Clause 8 would be quite welcome to the Constitution Committee, which had considerable concerns about its breadth, I am worried that in removing it the Government have satisfied themselves that there is nothing they could do under Clause 8 that they could not do under Clause 17 and its broad powers. What is more, there are things which the Government can do under Clause 17 which they are prohibited from doing

[Lord Beith]
under Clause 8. When we come to Clause 17, we will perhaps have to look more carefully at it than has been done so far.

It would be helpful if the Minister could set out the Government's argument for deleting Clause 8. I am quite sympathetic to that, even though I understand the standpoint from which the noble Baroness, Lady McIntosh, was arguing. But were we able to get the Government to move seriously in the direction of having a customs union-EEA, as our vote last week showed that the House wants to do, I am quite confident that ways could be found to do that with or without Clause 8. I would be only too glad to assist if that happens—but I am concerned about the reliance on Clause 17, which may lie behind the removal of Clause 8.

Baroness Smith of Newnham (LD): My Lords, I will speak briefly about Clause 8 but, like the noble Baroness, Lady McIntosh, I have signed Amendment 47. That amendment would become obsolete if Clause 8 disappears. Like my noble friend Lord Beith, I am perhaps a little suspicious to see an amendment in the names of the Minister and the noble Baroness, Lady Hayter. To see the Government and Opposition Front Benches agreeing makes one a little suspicious but anyway, as my noble friend suggests, perhaps the Government think that they do not need Clause 8.

One of the issues I want to raise briefly is a genuine question because I have read different things by academic colleagues on where we are in terms of the EEA from a legal perspective. Amendment 47 refers to remaining a member of the European Economic Area. Before the Minister shakes his head and says, "No, no, no, we're leaving the EEA", there is a question about our membership. We are a member of the EEA as a member of the European Union. All EU members are members of the European Economic Area. My understanding is that we are individually members, not just as part of the EU 28, so do we legally have to resign from the EEA? The assumption is that we are there automatically as a member of the EU. That was my genuine question. A slightly more facetious question would be: given how keen noble Lords who favour Brexit are on free trade, should we perhaps be thinking about going back to EFTA where we started off way back in the 1950s?

Baroness Hayter of Kentish Town: It is late at night and I cannot resist it. For the Liberal Democrats who were in coalition with the Conservatives for five years to be suspicious about my name on one amendment is a bit rich. On the whole I resist doing this, but I am afraid I was led into it. I thought the Minister would enjoy that.

There are two debates here. On Amendment 43, to which I also have my name, as does the noble Baroness, Lady Kramer—but I hope that does not give the noble Baroness, Lady Smith, too many worries—I associate myself with what was said by the no longer young but, I gather, still irresponsible noble Lord, Lord Kerr. I particularly look forward to the answers to the serious questions raised about Schedule 4, which is referred to in Amendment 104.

I very happily put my name to Amendment 47A. Were any of the things on the international agreement arising out of the withdrawal deal to come to pass, the clause could be in the withdrawal and implementation Bill, which is probably a much better place because it would be much more specific. I am not in favour of wide powers just in case. We have too many just-in-case powers in the Bill as it stands, so the deletion of Clause 8 is an improvement to the Bill.

Since Amendment 47 has been moved into this group, it is probably right that I should say a word about the Opposition's position on it. Since the noble Baroness, Lady Smith, is an academic and much better read than I am, I am sure she is familiar with the House of Commons briefing on this. It is clear that the vast majority of legal advice, certainly that which I had when I was in Brussels and elsewhere, is that the EEA combines EFTA and the EU—there is an even more expert head nodding. So, it was a nice try, but it is a red herring, and one of the things that we do not want to do is to give people false hope that there is a way out of the mess that this Government got us into—sorry about that.

That is why I shall a word about rejoining EFTA. I worked for an EFTA organisation many years ago. It was a very nice, friendly body at the time, but it was larger than it is now. There is an idea that we could just rejoin and that it would accept us. The Prime Minister of the largest EFTA country has already said, "Ahem. Hang on a moment. This is going to be a little more difficult and complicated than you think". There are fewer than 14 million people, I think, in the EFTA countries. That is more than in London but not bigger than London and Wales combined. There are serious questions about whether structures that suit their economies, size and way of working in marketing and in other things would suit our economy with 66 million people. I worry that people think there is a nice, easy option. On this side, we are not persuaded that it would be easy or necessarily correct for us.

8.15 pm

We as a House have just voted for the customs union. That is the most significant vote that we have taken—I hope we will have some others—but EFTA is not in the customs union. It takes us in the wrong direction, not just for Northern Ireland but for the food and drink industry, Airbus, our motor manufacturers and all of that. We need to hold on to what we have already done. I know that Amendment 47 will not be pushed to a vote today, but it is not an amendment that we would support.

On the main part of the group, the decision to put the international side into future legislation, either the No. 2 Bill or a separate Bill, if anything were to happen, is the right way of doing it. I look forward to the answers to the questions posed by the noble Lord, Lord Kerr.

Baroness Goldie: My Lords, I thank all noble Lords who have contributed to this debate as well as those who have worked very constructively with the Government behind the scenes to reach the position we are in today. This is an important group of amendments and, if noble Lords will excuse the football metaphor, I can say that this is an amendment grouping of two halves. In the first half we have Clause 8, where I believe the Government and the opposition's thinking are aligned, and in the second half we have Schedule 4, where there remains some disagreement.

I will begin with Clause 8, perhaps specifically in response to the points raised by the noble Lords, Lord Kerr and Lord Beith. The Clause 8 power was originally included in the Bill to ensure that the UK's withdrawal from the EU did not affect its reputation as a nation which honours its promises and respects its international obligations. The power also includes the ability to prevent breaches of international obligations outside retained EU law and to meet any existing obligations requiring an imposition or increase of taxation. This element of the power, in particular, has been the subject of much debate in both Houses, as Amendment 43, tabled by the noble Lord, Lord Kerr, demonstrates.

We were concerned that this power might be necessary to ensure that the UK could continue to comply with all its existing international obligations. As the Bill has progressed through Parliament, the Government have continued to plan for multiple scenarios and it has become clear that there are better and more effective ways to ensure that the Government's international obligations continue to be met than through the use of Clause 8. Therefore, in line with our policy to take delegated powers only where there is a clear and present need for them, the Government have tabled amendments to remove Clause 8 and the corresponding power for devolved authorities in Schedule 2, Part 2. I am grateful to noble Lords who have indicated that the Government's proposition has found favour.

Any measures still required to remedy or prevent breaches of our international obligations will be made in other primary legislation—perhaps that reassures the noble Lord, Lord Beith—or under other delegated powers where that is permissible. I think we have now managed to reassure noble Lords that the Government are very sensitive to the points which have been raised in debate in Committee and on Report. As a consequence, the Government do not now think that there is a need for an entirely separate clause in this Bill, hence our amendment to remove Clause 8. Given that, I hope that the noble Lord, Lord Kerr, will be happy to withdraw his amendments in light of the Government's proposed offer. I hope that this offer demonstrates that the Government are willing to act on the constructive discussions that take place in this House. We try to consider all amendments carefully as long as they do not undermine the primary purpose of the Bill and, where we can, we act upon them where appropriate.

I turn briefly to my noble friend Lady McIntosh of Pickering's Amendment 47. It has rather interposed itself into this group so I am doing a bit of shuffling of notes here. I might begin with a point raised by the noble Baroness, Lady Smith: my understanding is that once the implementation period ends, the EEA agreement will no longer apply to the UK. I also understand that in triggering Article 127 our legal position remains unchanged. Article 127 does not need to be triggered for the agreement to cease to have effect. I hope that clarifies the points that my noble friend sought clarification on.

Lord Kerr of Kinlochard: I agree with the reading by the Minister and the noble Baroness, Lady Hayter, of whether one has continuing membership of the EEA after one has left the EU: one does not. However, I am struck by what the Minister has just said about the moment when one leaves. I am not sure that it is at the end of the transition period. I think it may be at the moment when we leave the EU—in other words, in March next year, not 21 months later. I am not quite sure why the lawyers in the EEA, EFTA and the EU should accept that once we have left the EU we still remain in the EEA.

Lord Cormack: Write a letter.

Baroness Goldie: Or offer up a prayer, one or the other. My noble friend Lord Callanan says we are seeking to continue these international agreements, and I presume that is forming part of the negotiations.

I turn to Amendment 47 specifically because my noble friend Lady McIntosh deserves a response. Initially it was in a group of its own and my noble friend Lord Callanan was going to respond in detail, but I shall try to deal with the substance of the amendment. I must begin by repeating that the Government's intention is to end our membership of the single market because remaining in it would fail the first test for the future economic partnership that the Prime Minister set out at Mansion House: it would fail in delivering control of our borders, law and money and would mean the UK accepting the four freedoms, including freedom of movement. That simply would not deliver the result of the referendum. As the Prime Minister set out in her Mansion House speech, the Government are instead seeking the broadest and deepest possible partnership, covering more sectors and co-operating more fully than any free trade agreement anywhere in the world today. Given those objectives, I cannot support the amendments that seek to keep the UK in the single market.

My noble friend seeks in particular to include any obligations or legal requirements arising from continued membership of the EEA or of EFTA, should agreement be reached on remaining part of the EEA or rejoining EFTA, in a definition of "international obligations" for the purposes of Clause 8. As I have said, the Government have tabled an amendment to remove Clause 8 from the Bill and, as has been made clear, we are not seeking to remain in the single market through the EEA agreement.

For clarification, the Government have no plans to rejoin EFTA because leaving the EU offers us an opportunity to forge a new role for ourselves in the world, to negotiate our own trade agreements and to be a positive and powerful force for free trade. It is also worth mentioning that membership of EFTA would not necessarily be a quick and easy solution, as some have argued; all the EFTA states would have to agree to us rejoining and, even if they welcomed us back, we would not have immediate or automatic access to their free trade agreements. Our entry into each one would need to be negotiated individually with the third countries involved. Similarly, if we were to seek longer-term participation in the EEA agreement, we would have to first join EFTA.

It is not proper for Governments to legislate contrary to their policy intention. We cannot bind future Parliaments and therefore do not need to purport to legislate to leave the door open. Future Governments can of course bring forward whatever legislation they choose to. In any event, joining the EEA or EFTA would give rise to new obligations and the implementation of

[Baroness Goldie]
such new requirements would not be possible under the Clause 8 power, which covers only existing obligations. I hope I have satisfied my noble friend as to why the Government cannot accept her amendment, and in the circumstances I ask her to withdraw it.

Baroness Ludford: I apologise if this is not quite the right moment to ask the Minister to clarify something; I do not know if she has finished on the EEA. In case she has, will she write with the answer to the question from the noble Lord, Lord Kerr: how can it be possible that we stay in the EEA in transition if the Government's legal case is that the Article 50 notification covered both the EU and the EEA? When we leave the EU next March we must also leave the EEA, so it cannot be possible that we stay in the EEA during transition. It cannot be both; it is one or the other.

Baroness Goldie: We are seeking to remain part of the international treaties to which we are party, through negotiation. I will certainly undertake to write to the noble Lord, Lord Kerr, because I have no more information beyond what I have been given and I would be straying into very uncertain territory if I tried to be more specific.

Baroness McIntosh of Pickering: Would my noble friend comment on one more point? The clarification that I was seeking relates to the *Hansard* column where my noble friend Lord Callanan clearly said exactly what my noble friend has just said: it is the Government's intention that we remain in the EEA until the end of the transitional period, and it is then the Government's intention to negotiate new arrangements with the three member countries of the EEA. I seek clarification today on something that was not in *Hansard*: at what point will those negotiations either commence or be concluded? The whole of Clause 8 relates to maintaining our international obligations. I would like to know what our obligations to the EEA will be after December 2021.

Baroness Goldie: I am reluctant to disappoint my noble friend, but that is all germane to the negotiations and I have no more information I can add at this point. I want to make progress with the rest of the amendments in this group, which cover a range of aspects on the important issues of imposing or increasing taxation. With regard to the second half of the group, I note that the position of the Government and that of the noble Lords who proposed them are much closer to each other than they were, and I hope that we may have reached a point at which we could agree to disagree.

In responding to Amendment 73, tabled by the noble Lords, Lord Hannay and Lord Cormack, and the noble Baronesses, Lady Kramer and Lady Hayter, I wish first to point to the Government's amendments that we shall consider later on Report. I shall not pre-empt that debate, but I wish to make clear that the Government and noble Lords are not so very far apart. The Government have heard the concerns raised in Parliament and recognise the significance of the question of how Parliament approves fees and charges on the public. Indeed, this has been a question of great historic importance in the development of this institution and of the relationship between this House and the other place.

The Government agree that delegated powers, particularly in this sensitive area, should be subject to close scrutiny by Parliament. The Bill as introduced provided that any statutory instruments made under the powers in Schedule 4 which established a new fee or charge regime, or which sub-delegated this power, had to be subject to the affirmative procedure. In other cases, Ministers held discretion to choose between the affirmative and negative procedures as appropriate. I understand, however, that noble Lords considered that was not a satisfactory position, so the Government have reflected further.

The balance we have sought to ensure is that there is a level of scrutiny of the exercise of the powers in this Bill which satisfies the needs of Parliament without unduly expending limited parliamentary time on a great morass of minor instruments better suited to the negative procedure. We are therefore proposing amendments that require all SIs under Schedule 4 to be subject to the affirmative procedure unless they are adjusting fees or charges to account for inflation. This will ensure that where the Government wish to lower a charge, restructure a fee from daily to hourly, or increase a fee to reflect a change in how it is provided, that must be debated and voted upon by both Houses. Despite this, the Government believe that allowing inflation-related adjustments to be subject to the negative procedure is proportionate. Such a measure reflects no change in policy, or in how a service is provided, but simply reflects developments outside this place and changes in what we have termed "the value of money". Even this, if appropriate, could be brought before your Lordships' House for a debate and a vote. I hope noble Lords will accept this as addressing their concerns and will not press these amendments.

8.30 pm

On Amendment 104, tabled by the same noble Lords, we are, I fear, slightly further apart, but let me take this opportunity to seek to reassure noble Lords that Schedule 4 is assuredly not a power to raise general taxation. It is a power to provide for fees and charges. I am afraid I must disagree with some noble Lords—including, unusually, even the Delegated Powers and Regulatory Reform Committee—about some previous provisions on this matter, such as Section 56 of the Finance Act 1973. That provision allows for the raising of "charges" for functions relating to the EU.

The committee said in its latest report:

"there is a big difference between charging for a service and taxing people for the use of a service",

and that Section 56 of the Finance Act 1973,

"does not allow for taxation, and was never intended to do so, lest it rendered nugatory the prohibition against taxation by statutory instrument contained in the European Communities Act 1972".

But I am afraid that although Section 2 of the European Communities Act expressly forbids taxation, Section 56 of the Finance Act 1973, which permits the creation of fees "and other charges" does allow for taxation. An element of taxation is the distinguishing feature of a "charge" that differentiates it from a fee. Indeed it is precisely for that reason that the ability to make charges sits in the Finance Act 1973 and not in the European Communities Act.

As your Lordships will be aware—the noble Lord, Lord Kerr of Kinlochard, referred to this—Finance Acts are how the House of Commons regularly provides for taxation, and in the case of Section 56 of the Finance Act 1973, that included any elements of taxation contained in charging regimes made under that power. These elements are, in many cases, outside the everyday sense of "tax", and are often very minor. For example, a charge requiring people to pay for a body's enforcement costs or to pay levies for participating in a regulated market is, under the long-established definition set out in *Managing Public Money*, at least in part a tax.

Without an element of taxation in some of the charging regimes planned under this Bill the charging regime could not be established, and the costs of specialist services described previously would fall on the public purse. Nor could we continue to adjust under the Bill the charging regimes created under Section 56 of the Finance Act 1973 after exit. However, it is important to say that any new fees or charges established under the Bill cannot extend beyond charging or raising fees in relation to a function that a public authority has been granted under the Bill. They therefore cannot be general taxes on the public, or even on a subset of the public. In the light of these observations, I hope that noble Lords will feel able not to press their amendments, and that my noble friend Lady McIntosh will feel able not to press her Amendment 47.

Lord Kerr of Kinlochard: I thank the noble Baroness for her response and I look forward to a letter on the EEA/EFTA membership point.

I am left a bit concerned about Amendment 104. There is clearly major disagreement between the Minister and the Delegated Powers Committee on the issue. For me, there is a bigger issue than that here. The European Communities Act 1972 is absolutely explicit that it cannot be used as a basis for taxing. When we take back the powers conferred in the 1972 Act, if we are allowing Ministers under Schedule 4 to set up public authorities that may tax and Ministers themselves to tax, we are doing something new. It is different. I am puzzled about that. I am sad that this amendment, which seems to me to raise a rather important issue, has been placed in a wider group with many other amendments. I wonder whether the Government would like to think a bit further about this before we come to Third Reading.

If the Government are happy with the prohibition in Clauses 7 and 9, why can it not also, for consistency, be in paragraph 1(3) of Schedule 4? It is a very long time since I was in the Treasury—I served quite a short sentence and got let out for bad behaviour—but I still feel that there is an unsatisfactory feature here which we have not quite got to the bottom of. Nevertheless, I beg leave to withdraw the amendment.

Amendment 43 withdrawn.

Amendment 44 not moved.

Amendment 44A had been withdrawn from the Marshalled List.

Amendment 45 not moved.

Amendment 46 had been withdrawn from the Marshalled List.

Amendment 47 not moved.

Amendment 47A

Moved by ***Lord Callanan***

47A: Clause 8, leave out Clause 8

Amendment 47A agreed.

Amendment 48

Moved by ***Lord Whitty***

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

"Transport connectivity

(1) The Secretary of State must within two months of the passing of this Act lay before both Houses of Parliament a report indicating the manner in which continuity and safety of transport is to be maintained following the United Kingdom's withdrawal from the EU.

(2) The report referred to in subsection (1) must include proposals to maintain a relationship with the deliberations and operational activities of the EU's transport Executive Agencies, whether by continued participation in the European Agencies in some form or by establishing an effective equivalent within the United Kingdom or by other means.

(3) The Agencies referred to in subsection (2) include—

(a) in respect of civil aviation, the European Aviation Safety Agency;

(b) in respect of maritime transport, the European Maritime Safety Agency; and

(c) in respect of rail transport, the European Railway Agency.

(4) A Minister of the Crown must seek approval for the proposals in the report under subsection (2) by means of motions in both Houses of Parliament.

(5) The Secretary of State may by regulations made by statutory instrument provide for the implementation of any proposal approved by both Houses of Parliament under subsection (4).

(6) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

Lord Whitty (Lab): My Lords, Amendment 48 is in my name and in the name of my noble friend Lord Judd. I have often remarked, in my long years in this Chamber, that the attendance in the Chamber is often in inverse proportion to the range of interests in the population and economy as a whole. I am glad we have the additional attendance of the noble Baroness, Lady Sugg. This is a very important issue to a large proportion of our population and a large chunk of our industry—everybody who is ever a traveller, a tourist, an importer or an exporter, or who buys those imports or sells those exports, everybody who works in the international transport sector and the whole of the aerospace and other manufacturing industries which support all those sectors.

Ministers will recognise that I am returning to my favourite subject in the Bill: the future relationship with the EU agencies. Frankly, I have at no point

[Lord Whitty]
received clarity from the Government—nor have the industrial sectors—as to their aim in the negotiations and what they would like the future relationship to be between our industries in those sectors and the EU agencies of which we are currently full members.

I was encouraged in this view only yesterday. As noble Lords will know, I am a member of your Lordships' EU Select Committee. This was in public proceedings, so I can reveal it. We had before us yesterday among our witnesses the director-general of the CBI. We asked her what were the practical problems for her members that were being brought to her, of the uncertainty and lack of clarity over Brexit. The very first thing she mentioned was that there were so many sectors that did not know what their future relationship with those agencies and the processes under those agencies would be—in other words, the very terms of trade and the terms of the relationships under which they will operate. That underlines the Government's failure to explain what they are after.

We had some glimmer of light from no less a person than the Prime Minister herself. In her Mansion House speech, she referred to having to have continued relationships with the aviation agencies. She referred to associate membership. I have said before that associate membership does not bring the kind of rights and influence that we currently have, but nevertheless it is a step forward on anything else the Government have said. On the rest of the agencies—there are not only the three mentioned in the amendment, but roughly 40 other agencies that affect different sectors of our economic and cultural life—we have no glimmer of what the Government intend.

Transport is a vital sector. I would hope that Ministers could give at least as clear an assurance as I think the noble Lord, Lord Callanan, gave on Monday in relation to my equivalent amendment on the environment and food safety agencies. He said that, because the Government were committed to bringing forward a new statutory authority for environments, before we reach Third Reading greater clarity will be shed by the Government on the role of the environmental agencies. I would hope that we could have at least a glimmer of such hope with regard to the transport agencies.

The aviation industry is probably the most acutely affected by this, as not only British airlines and European airlines but also American and third-party airlines do not know what they will be selling in a year's time. We do not know what the landing rights will be; we do not know how British-based airlines will operate, even through the transition period. At the moment, in the transition period, if we understand the EU's position clearly, they will no longer be members of those agencies. EASA, to take the most important example in this amendment, has been greatly influenced by British presence, expertise and regulation. The British aviation industry is the biggest single such industry in Europe, and the tourist industry in Spain and several other Mediterranean countries depend on it continuing to be so. If we are no longer full members of EASA, the airlines themselves will be in difficulty in knowing quite what they will sell to their customers—passengers—in less than 12 months, and even more so beyond 2020.

I am not entirely sure whether the noble Baroness, Lady Sugg, or the noble Baroness, Lady Goldie, will reply to this debate. I do not mind who says it, and hope that they are all agreed, but I would like a bit more hope that we can get greater clarity on these vital transport agencies, which are key to connectivity across Europe. We ought to have clarity before we complete the passage of the Bill, and the Government have only a few weeks to provide that clarity. I beg to move.

Lord Judd (Lab): My Lords, it is always good to support my noble friend Lord Whitty. He invariably brings to our deliberations well-argued, well-analysed speeches that in the end boil down to common sense. His arguments are absolutely irresistible, and I cannot imagine that the Government would not want to be positive in their response, in one way or another.

One of the opportunities that you get when living in Cumbria is that when you have clear skies—and we have clear skies more often than the cynics suppose—one sees the indispensability of British airspace to European traffic, using the Arctic routes to North America and beyond. There are mutual interests at stake here, which is partly why this is so urgent. We cannot scramble something together at the last moment as a consequence of the action that we have taken constitutionally; we must plan now for how we are going to guarantee effectiveness in meeting the challenges of that mutual interdependence.

8.45 pm

The safety and well-being of passengers is, of course, something that crosses national frontiers. I can imagine situations post Brexit when it becomes a greater challenge for those operating transport than it was before, because people will want to travel and goods will want to move, whatever happens on Brexit itself, and it makes the co-operation and effectiveness of the inter relationships between the different operators all the greater.

At this hour, it is not necessary to go on at great length, but this seems to me a practical, sensible and helpful amendment, and I hope that the Minister will be able to show that the Government are taking very seriously the issues at stake.

Lord Berkeley: My Lords, I support my two noble friends who have spoken to this amendment. I declare an interest as chairman of the Rail Freight Group and a member of the board of the European Rail Freight Association. They are absolutely right in the worry that these agencies will not be able to accept us after Brexit. I know the European railway agency people very well, and they would love us to stay, obviously, and would love to work with us, but of course they are forbidden from doing so by the European Commission, because that is part of the regulations. But the consequences, as my noble friends have said, are actually very serious. The manufacturing issue is not just about how we are going to take the components back and forward—it is the standards to which they are created and built and the safety certification that has to go along with it, which cannot easily after Brexit cross between us and the rest of Europe.

The issue also occurs on the railways, partly with manufactured items and partly with the operation. We do not yet know whether the train drivers that go

across in the tunnel—Eurostar or rail freight—will have to have separate licences. The one good thing that the European railway agency started off doing was to try to get a common standard for red tail-lights across Europe, because each member state had its own standard, and when you got to a frontier somebody had to walk to the back of the train and change the lights. Mercifully, that is a thing of the past—but, unless all these issues are sorted out and the necessary drivers and other staff get the proper training, there will be no trains through the tunnel, and there may not be any flights, if my noble friend's comments on the air service are correct.

We really need to get on with this. Everybody is waiting for a decision and, if we do not, we can expect to have very little traffic on the railways when we leave the EU. I do not think that the same will apply to the ferries across the channel, but we do not know. How all that affects the transport between the north and south of Ireland and across the Irish Sea, we had better leave to another day—but I hope that the Minister will have some positive response to my noble friends' questions.

Baroness Smith of Newnham: My Lords, we have been told frequently that this Bill is about providing legal certainty on the day that we leave the European Union. We have already heard from three noble Lords a whole range of issues that will be extremely difficult in the transport sector when we leave the EU. If we cannot stay in the European agencies, are the Government doing to do at least as much as proposed new subsection (2) suggests and establish,

"an effective equivalent within the United Kingdom"?

If we are to have legal certainly, it is not enough simply to enshrine EU law into United Kingdom law. We need to know what the standards will be on the day that we leave. This is not something that is just hypothetical; this is not about widgets—it is about how our transport system functions on the day we leave. So far, we have not had sufficient answers on this, so I hope that the Minister might be able to tell us something that goes beyond the idea that this is simply going to be about the negotiations.

Lord Tunnicliffe (Lab): My Lords, I look at this amendment and note that it is about the continuity and safety of transport. I have fewer fears than my colleagues about the matter of safety, because the industries concerned were moving towards standardisation decades before the EU was formed. The area where I am very alarmed is the whole issue of traffic rights. I spent 22 years in aviation, 20 of them working for BOAC and British Airways and, towards the end, as the number 2 in British Airways' marketing department. That was the world pre-open skies and pre-EU, and it was horrific. Literally every city pair had a different agreement about it. All of them had to be agreed. Those were the days when Hong Kong was a colony, which was a golden card in negotiations. The idea of having to start from scratch and do all 134 city-pair negotiations is very difficult to understand.

Similarly, we have the same problem on the roads. The professionals who talk about the port of Dover say that the slightest delays through the port will cause chaos to the point where we have to worry about fresh food getting to our plates. The noble Baroness, Lady Sugg, laid on for interested Peers a meeting with the Secretary of State. He gave a very smooth presentation, which I would précis as, "It'll be alright on the night". He justified this by saying that it would be in both parties' economic interest to conclude sensible and rational agreements. I think he is a bit heroically naive; I have spent most of my professional career in negotiations, and I have always found rationality to come a rather poor third place after emotion and power. The reality of these negotiations is that they will be conducted by politicians and bureaucrats.

The great thing about the EU is that it is refreshingly transparent. Perhaps more people should read what it produces more frequently. From time to time, in this negotiation, it produces guidelines. The first sets of guidelines were more or less delivered as agreed by the Council, and the latest set was agreed on 23 March. A six-page document was published with those guidelines adopted by the European Council at the meeting on 23 March; one paragraph says that,

"the European Council has to take into account the repeatedly stated positions of the UK, which limit the depth of such a future partnership. Being outside the Customs Union and the Single Market will inevitably lead to frictions in trade. Divergence in external tariffs and internal rules as well as absence of common institutions and a shared legal system, necessitates checks and controls to uphold the integrity of the EU Single Market as well as of the UK market. This unfortunately will have negative economic consequences, in particular in the United Kingdom".

They are very clear about just how firm their position is. One has to recognise that they are representing the EU 27. They are there to meet their demands, and every member has a veto on this agreement. We have left the club: they are not looking after us anymore; that is not their responsibility.

So where do we stand? We have an emotional battle to fight—emotional or political, call it what you like—and we also have a power battle to fight. Do we have any cards? One card that we have with the EU is money, but we more or less agreed that anyway, so that one goes away. The other thing that we used to fight on over the decades after World War II when establishing air rights was reciprocity. That means, "You can't come to our airfield unless we can come to yours". The problem with that is that we are a bit of everybody else's aviation activity. For us, the world is where we need to be and the world, at the moment, is determined and available through the European Union. If we cannot have access to the world, then our industry will be seriously damaged.

I hope that my pessimism is not justified, but I think that getting a better deal than the status quo is, sadly, highly unlikely. I hope that the Minister will be able to assure us that the energy is there to try to achieve the status quo, because otherwise it will damage us and it will damage our EU friends, but it will damage them a great deal less than it will damage us.

Baroness Goldie: My Lords, we have bags of energy here; let me try to reassure the noble Lord, Lord Tunnicliffe, that there are bags of energy in the negotiations.

Lord Tunnicliffe: That statement implies that the negotiations have started. If so, it would be good to have some refreshingly open details of them in the transparent way that the EU works.

Baroness Goldie: That was a general observation, not a specific comment; I referred to the general process of negotiations as they have been taking place.

I am grateful to the noble Lord, Lord Whitty, for raising this important issue, because it provides me with the opportunity to reassure the House about issues of transport connectivity and safety. The noble Lord has helpfully brought this before the Chamber and I shall try to provide some reassurance.

The Government are considering carefully all the potential implications arising from our exit, and that, of course, includes implications for the UK's transport connectivity and for our future relationship with the European Union agencies. The noble Lord, Lord Whitty, rightly referred to the significant numbers of people and groups of people who rely on that connectivity. He referred to importers, exporters and tourists, and he was absolutely correct. We are committed to getting the best possible deal that we can. We are focused on securing the right arrangements for the future so that our transport industry can continue to thrive and so that passengers can have opportunities, choice and attractive prices. I say to the noble Lord, Lord Whitty, that, in particular, we want to secure continued connectivity for transport operators and users and we want to maintain the safety of international transport operations. These are obviously extremely important objectives.

We are absolutely committed to maintaining high standards of safety—another very important objective. The Bill is part of that because it allows the Government to be clear that we are committed to ensuring that exit will not jeopardise a harmonised safety system that benefits both the UK and EU networks and maintains high safety standards. We strongly believe that it is in the interests of both the UK and the EU to ensure continued productive co-operation on safety and standards in the future, regardless of the outcome of negotiations. We want to ensure a smooth and orderly transition to new arrangements, while maintaining and developing the current levels of transport connectivity between the UK and the EU.

The Government fully recognise the central role that transport will play in supporting our new trading relationships as we leave the EU—in short, transport will be essential. That is why we are committed to avoiding disrupting trade or imposing additional regulatory burdens on industry in the UK or the EU.

Specifically on the UK's continued participation in the European Aviation Safety Agency, the European Maritime Safety Agency and the European Union Agency for Railways as a third country, I know—I accept that it is frustrating—that I will disappoint some noble Lords when I reiterate our position that participation in these agencies is a matter for the negotiations. Our participation in European Union agencies is of course something that the Bill cannot legislate for.

However, I will try to provide some comfort because, as the noble Lord, Lord Whitty, acknowledged, the Prime Minister in her Mansion House speech in March clearly confirmed the Government's ambition to seek continued participation in the EASA system. There are provisions in EU legislation which allow non-EU countries to participate in the EASA system, as Switzerland, Norway and Iceland currently do. The Prime Minister acknowledged that an appropriate financial contribution will be necessary, and that there will be a role for the Court of Justice of the European Union. We also value information-sharing with other countries through the EMSA and the EUAR.

After our exit from the EU, we will ensure that UK agencies and operators have the tools they need to manage UK services as effectively in the future as they do now. For instance—this is probably of particular interest to the noble Lord, Lord Berkeley—Britain's railways are among the safest in the EU, and railway safety standards will continue to be safeguarded by an independent safety regulator, the Office of Rail and Road. In fact, it is historic UK practice that the European safety framework largely reflects. We should bear that in mind. For decades we have worked closely with our European partners to develop a regime in transport safety and standards that reflects UK practice.

I make it clear—and in doing so, I hope that I may offer some comfort to the noble Lord, Lord Tunnicliffe—that, whether or not we remain part of the EU, executive agencies and EU safety regulations will be incorporated into domestic law by the European Union (Withdrawal) Bill. Importantly, this means that on exit the same safety rules will continue to apply.

Again, I thank the noble Lord, Lord Whitty, for his informed interest in this important area. I hope that I have satisfied him that we understand the importance of maintaining the continuity and safety of our vital transport links.

Lord Berkeley: Could the Minister just explain something on the question of railway safety? The present system is that the European Union Agency for Railways can give approval for the manufacturing and bringing into operation of rolling stock in any member state, including our own. Will that continue, or will we have a separate agency and then have to get separate approval to operate in France and elsewhere? If that happens, we will go back 20 years in interoperability.

Baroness Goldie: The noble Lord raises an important point. Again, I have to say that yes, that will be part of the negotiation process. It is all to do with what the Government seek to achieve, which I have tried to outline. However, I think the noble Lord will fully understand that I am unable to say whether this or that will happen or be possible, as it is entirely subject to what we are able to negotiate.

It is important that, as negotiations proceed, your Lordships are kept as fully informed as possible. The noble Lord, Lord Tunnicliffe, was good enough to refer to the meetings which have been taking place; he was perhaps a little dismissive of their value, but it is important that Ministers engage with your Lordships, and I and my noble friend Lady Sugg will certainly continue to do that.

Lord Tunnicliffe: I was dismissive not of the value of the meetings but of the level of assurance.

Baroness Goldie: I thank the noble Lord for his clarification. This issue will continue to be an important factor as we engage in the negotiations. I have endeavoured in so far as I can to set out for your Lordships the

current situation, what the Government's objectives are and how the Prime Minister anticipates the way forward. I invite the noble Lord, Lord Whitty, to withdraw his amendment and observe that the Government do not intend to return to this matter at Third Reading.

Lord Whitty: My Lords, the noble Baroness was doing quite well until her last sentence. I take a limited amount of comfort from what she says are the Government's desired outcomes. I am sure that we all subscribe to those outcomes on safety and co-operation and so forth. However, these entities have provided the basis on which European railways, European maritime contacts and European air contacts have operated with increasing closeness over the last few decades. The situation is similar with roads. At least yesterday, with regard to haulage, the noble Baroness, Lady Sugg, provided a necessary but not complete basis for activity to replace the European Community licence system. In these areas, the industries feel uncomfortable that they do not know what is happening and do not know how to plan ahead. That has been underlined to us from time to time and Ministers must have had the same kinds of approaches. Therefore, it would have been helpful if the Minister had given us a promise—in writing, if necessary—that the objectives would be spelled out in a little more detail.

We are in an asymmetrical position. We know what the EU has said. In its guidelines for the negotiations, it has said that not from December 2020 but from March next year we will no longer be a member of those agencies and will be invited only at its request for particular reasons. That is the EU's negotiating position. We are not clear what the Government's negotiating position is in relation to these or any other agencies. The Prime Minister has, admittedly, said slightly more about aviation but, even there, she referred at one point to continued participation and at another point to associate membership, which have rather different connotations.

Therefore, despite the noble Baroness's efforts and some of the reassurances that she has given us, which I appreciate, I am no clearer about which way we are going. If I am not clear, I suspect that those who run our airlines, railways, maritime services—the ferries in particular—and roads are not clear either. On transport depends the rest of our industry and our society. If those industries are not clear, that bodes ill for how we respond economically to the shock of Brexit.

I will beg leave to withdraw the amendment with some regret—I had hoped for better from the Minister—but the issue remains, and I certainly advise Ministers to address that issue with the industries as rapidly as possible.

Amendment 48 withdrawn.

Consideration on Report adjourned.

House adjourned at 9.09 pm.