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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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

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

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House of Lords

Monday 30 April 2018

2.30 pm

Prayers—read by the Lord Bishop of Portsmouth.

Death of a Member: Lord Martin of Springburn

Announcement

2.36 pm

The Lord Speaker (Lord Fowler): My Lords, I regret to inform the House of the death of the noble Lord, Lord Martin of Springburn, on 29 April. On behalf of the House, I would like to extend our condolences to the noble Lord's family and friends.

Retirement of a Member: Lord Kirkhill

Announcement

2.37 pm

The Lord Speaker (Lord Fowler): My Lords, I should also like to notify the House of the retirement, with effect from today, of the noble Lord, Lord Kirkhill, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House I thank the noble Lord for his much-valued service to the House.

Benefit Cap: Child and Family Well-being

Question

2.37 pm

Asked by ***Baroness Lister of Burtersett***

To ask Her Majesty's Government what assessment they have made of the impact of the benefit cap on child and family wellbeing since that cap was lowered in 2016-17.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, since 2013, the benefit cap has provided a strong financial incentive for those who can work to come off welfare and so improve their child and family well-being. While 134,000 households had their benefits capped, figures for February 2018 show that around half are no longer capped because they are working at least part time, and so qualify for their full benefit entitlement and therefore a considerable boost in income and well-being.

Baroness Lister of Burtersett (Lab): My Lords, a new study by Policy and Practice, which was founded by one of universal credit's architects, highlighted the human costs of the cap, arguing that it should be applied only to those who are actively required to seek work. Can the Minister explain what purpose is achieved by imposing this measure, which is designed to get people into paid work, on lone parents of infants, who are not required to seek paid work because of their caring responsibilities, thereby causing, in the words of a High Court judge,

"real misery … to no good purpose"?

Baroness Buscombe: My Lords, I beg to differ from the noble Baroness. I would call it not "imposing" but "empowering". Our research shows that the best way to lift children out of poverty is by supporting parents into work. Record numbers of lone parents are now working: 1.2 million, with 1 million fewer people living in absolute poverty compared to 2010, including 300,000 children. We know that 75% of children in poverty leave poverty altogether when their parents move into full employment. We have doubled free childcare to 30 hours a week for nearly 400,000 working parents of three and four year-olds, and a parent need work only one hour a month to be eligible for childcare costs.

The Countess of Mar (CB): My Lords, the noble Baroness has not responded to the question from the noble Baroness, Lady Lister, who was referring particularly to mothers of infants. There is no special nursery care for those, and mothers should be with their infants in the early stages.

Baroness Buscombe: I respond to the noble Countess by saying that many women, however young their children are, want to work. We are encouraging jobcentre staff to help people to find work that fits around their caring responsibilities. We are also giving those people extra discretionary housing payments. I add that those who are not working at all are still in receipt of what amounts to a gross salary outside London of £23,000 a year and in London £29,000 a year.

Baroness Thomas of Winchester (LD): My Lords, does the Minister accept that many local authorities are now having to pick up the pieces of this policy, particularly in high rent areas, where two and three-child families are now being hit? Discretionary housing payments are supposed to be only a temporary sticking plaster, not the complete answer.

Baroness Buscombe: My Lords, we welcomed recent external research on the benefit cap, working with local authorities. We are finding that there is a positive employment impact from the lower benefit cap, even at such an early stage in a child's life. This supports our evidence that the cap is increasing work incentives for previously workless households.

The Lord Bishop of Portsmouth: My Lords, welfare reform was predicated on the principal that work should pay, but that principal is being undermined, not least by the two-child limit. In future, a family with three or more children seeking to avoid the cap by moving into work will find themselves subject to the two-child limit instead. They could end up losing out by going to work. What assessment have the Government made of the impact of this perverse incentive?

Baroness Buscombe: My Lords, I would not call it a perverse incentive. Our reforms of support for children make sure that people on benefits and those supporting themselves solely through work have the same choices, including whether or not they can afford to have another child. Our policy is about fairness and incentivising work. Of course, child tax credits were not available before 2003, and, no matter how many children someone might have, they continue to be paid child benefit for each and every child.

We welcome last week's decision by the High Court in relation to kinship carers. We have considered that part of the judgment, which I referred to during a Question last week, pertaining to non-parental carers, alongside internal reviews that the Department for Work and Pensions carried out in parallel to the legal case. We are pleased to announce that it is right that this change should be extended, not just to those in non-parental caring arrangements but also to include children who are adopted who would otherwise be in local authority care. We can respond positively to all noble Lords who have been pressing us on this point.

Baroness Sherlock (Lab): My Lords, I am grateful to the Minister for that and I commend the Government for having made the right decision, but will she think about what the next stage is? My honourable friend Anna Turley has raised the case of a constituent who had two dependent children in her care and was then asked by social services to take in two of her grandchildren. As a result, the household was hit by the benefit cap. Will the Minister think about that for a moment? There is not much point in exempting kinship carers from the two-child policy if, in practice, they cannot claim those benefits because the benefit cap then kicks in. Might the Government either review who is affected by the benefit cap or, at the very least, consider exempting the benefits given on behalf of the children that a kinship carer has taken in when the benefit cap is considered?

Baroness Buscombe: My Lords, I cannot assure the noble Baroness that we will consider this any further. It is right that I articulate the fact that we are already spending £95 billion a year on benefits for people of working age. We have a budget in our department of £200 billion, which is 25% of the whole of the budget for government. We have to think about affordability before we can continue to extend our policies, notwithstanding that each and every individual case is of great importance to us. Our concern is to ensure that we help those who are genuinely in need.

Lord Watts (Lab): My Lords, is it not the case that children come out of poverty only if the two parents get excellent, well-paid jobs, and the vast majority in this category do not do that?

Baroness Buscombe: My Lords, perhaps I can also explain that, not only is universal credit giving so much further support and really making work transform lives that, in a family with three children, for example, the couple need only work up to 24 hours in total a week to be exempt from the cap. So the cap comes off and they receive benefits to the equivalent of a salary of £35,000 gross a year, and that does not include housing benefit. Noble Lords should accept that such a salary compares extremely favourably with the income of the many thousands of families who do not call upon the welfare system.

St Petersburg International Economic Forum

Question

2.46 pm

Asked by ***Lord Balfe***

To ask Her Majesty's Government what is their assessment of the attendance of United Kingdom executives at the St Petersburg International Economic Forum from 24 to 26 May.

The Minister of State, Department for International Trade (Baroness Fairhead) (Con): My Lords, the attendance and participation of UK companies at the St Petersburg International Economic Forum, or SPIEF, is entirely a matter for them. We have not sought to influence them one way or another. Her Majesty's Government continue to offer advice to UK businesses operating in Russia and support legitimate sanctions-compliant trade and investment.

Lord Balfe (Con): I thank the Minister for that reply, but the Japanese Prime Minister, the French President and senior members of the European Commission will be there pushing their Governments' cases. Who will be representing the British Government? Does she accept that some British businesses feel rather bereft of support in view of the way the sanctions debate with Russia has escalated rather out of control?

Baroness Fairhead: I thank my noble friend. It appears that Prime Minister Abe and President Macron will be attending and there is a whole series of bilateral ministerial levels in Russia. In line with government guidance, there will be no ministerial representation. However, I can confirm that Her Majesty's ambassador to Russia will be there. He will be present to meet, greet and support our UK businesses. That is part of a calibrated response to signal that we are unhappy about what has happened, while at the same time making sure that we support our businesses. That sort of engagement is critical to making sure that there is engagement between businesses and people.

Viscount Waverley (CB): My Lords, while recognising the sensitivity of the timing, I declare that last week, St Petersburg International Economic Forum organiser, Roscongress, requested that I assess and advise, at no cost, on trade-only related matters to encourage interaction sector to sector in addition to SME co-operation with the UK. Does the Minister agree that restricting all engagement with Russia is probably self-defeating? As the Government push towards a truly global Britain, in which UK private sector corporates must compete

in the international marketplace, fully cognisant of bilateral and multilateral sanctions, would it not be circumspect for the Government's approach to trade policy to be distinct from other tiers of government policy?

Baroness Fairhead: I agree that engagement matters and that we need to continue engagement to make sure that ultimately we get a good outcome. It is true that we have suspended all planned high-level bilateral contact with Russia, but we are not restricting all engagement. Indeed, we encourage engagement in areas of common interest such as culture, education, sanctions-compliant business, environmental protection and climate change. The important message is: engage, but beware. It is a calibrated response, but I agree with the noble Lord that engagement matters in these situations because that is how we will get a positive outcome.

Lord Wallace of Saltaire (LD): My Lords, what advice is the Department for International Trade giving to British business about the peculiar political and legal complications of operating in Russia for either trade or investment? The Bribery Act and various other things clearly come into play. Are special forms of advice being offered to British business in these circumstances?

Baroness Fairhead: I thank the noble Lord for his question. I can confirm that specialist advice is available. We have special advice from the DIT in London and the British embassy in Moscow. Indeed, a number of other expert organisations, such as the Russo-British Chamber of Commerce, can also offer advice, as can a number of individuals in this Room. Advice is available: the DIT offers it and it can be accessed on location in Moscow, too.

Lord Cormack (Con): My Lords, if Ministers from other Governments will be present—as they clearly will be—what is deterring British Ministers from standing up for our country, negotiating and taking part in meetings and gatherings of this sort? Absence achieves nothing.

Baroness Fairhead: In terms of our stance on Russia, and in response to actions in Syria and Ukraine and the Salisbury attack, we are trying to show that this matter is a real threat to a rules-based international order. We are trying to send a clear message that those actions are unacceptable and illegal and to give a calibrated response that shows how unhappy we are with them, while continuing to engage in other areas and support businesses that take part in sanctions-compliant activity. We think that is the right way to do it.

Lord Stevenson of Balmacara (Lab): My Lords, I want to offer the Minister some help. Perhaps she should just argue that the cost of going will be too high. After all, a place at the St Petersburg International Economic Forum will cost $8,600. I have looked through the 36 pages of the business programme, seven pages of the sporting programme and 78 pages of the cultural programme; it is quite a feast of pleasure, I must say. If she is interested in culture and so on, I would have thought there was a case for doing that.

More seriously, reading deep into the programme, why are we not sending people to the following sessions, which seem very important: "A Recent History of Blockchain", which has apparently caused a sensation in Russia and for which expert advice is available, and "Exporting Trust: Building Safe Global Digital Infrastructure", which is about what Russia can offer? Do these really not attract Dr Fox?

Baroness Fairhead: I thank the noble Lord for his advice and help. SPIEF is a major event—143 companies attended last year—so he is right: the programme is very full. I am happy to say that almost all major UK companies will be present, as will our DIT staff and ambassador, as I said. It is one of a number of our interactions because engagement has to continue. We have put this guidance in place at a bilateral ministerial level. Our policy is very clear: engage, but beware. That is the right calibrated, nuanced approach. We are supporting companies in their engagement and we absolutely believe in supporting the digital economy, because that is where the heart of our new technology will reach global markets.

Secretary of State for International Trade: Visits

Question

2.54 pm

Asked by ***Lord Foulkes of Cumnock***

To ask Her Majesty's Government how many countries the Secretary of State for International Trade has visited since the referendum on the United Kingdom's membership of the European Union.

The Minister of State, Department for International Trade (Baroness Fairhead) (Con): My Lords, my right honourable friend the Secretary of State for International Trade has undertaken 56 visits to 35 different countries since the EU referendum in June 2016.

Lord Foulkes of Cumnock (Lab): Is the Minister aware that I have also visited one of those countries—New Zealand? While, of course, it would be willing to agree a trade deal with the United Kingdom if we leave the European Union, its priority is a trade deal with the European Union and the Trans-Pacific Partnership. In fact, most of the people we met in New Zealand said, "Why on earth are you leaving the European Union?" Why do we not take their advice and let Liam Fox off his wild goose chase?

Baroness Fairhead: New Zealand is indeed one of the countries that we hope to have an early free trade agreement with. It is one of the nations with which we have trade and investment working groups. We have 14 of those and 21 countries are participating. It is clear that they are engaging with us. We are working with them very actively and they are looking to work

[Baroness Fairhead]
with us on areas and sectors. The noble Lord shakes his head but I know that these trade and investment working groups are having an effect and people are starting to focus on specific areas where we will be able to start negotiating. As the noble Lord knows, we are unable to negotiate any future free trade agreements while we remain a member of the EU.

Lord Purvis of Tweed (LD): My Lords, last month's official data from the EU showed that UK exports to non-EU countries fell by 8% over the last year; to the EU they grew by 6%. The Government's position to turn this around is that there will be trade deals with non-EU countries that we are not currently part of in the EU in operation immediately after the Brexit period. However, her predecessor said in an interview with the *Guardian* on Friday that,

"it will take three to five years. It won't happen overnight and in the interim companies might think twice about investing and consumers might decide they want to be more cautious".

Is the noble Lord, Lord Price, right?

Baroness Fairhead: Exports grew overall by more than 10% last year so there has been growth. Regarding how long it will take a free trade agreement to come into effect, we will be able to negotiate future free trade agreements from March next year as part of the implementation period. We will be able to negotiate, sign and ratify without implementing. There are a whole range of free trade agreements that can take anything from a year to multiple years. There are also many other types of cooperation that we are looking at, as noble Lords will be aware, such as joint trade reviews, economic partnerships and mutual recognition agreements. There are a whole series of trade arrangements we can have with other countries and we are looking at those. Our drive will be what is in the best interest overall of the UK and UK business.

Viscount Waverley (CB): My Lords, I understand the Minister's department is rolling out a programme of trade commissioners. What is their role? Are they going to be masters of their strategy? When will this possibly take effect from, and will they be properly financed?

Baroness Fairhead: I thank the noble Viscount for his question. We have announced the creation of nine Her Majesty's trade commissioners. It is a pretty important role. We are trying to coordinate all the opportunities we have from UK companies exporting to overseas markets. They are very high level trade commissioners. Five of them have already been appointed and generally, they have been recognised as people of extreme competence who will have a real impact. Their role is to make sure that other nations are very aware of the capabilities we have in our country. We are very clear that our export strategy needs to be linked to our industrial strategy, so that the world can benefit from what we can provide in the UK and is made aware of the skills and expertise in this nation.

Lord Rooker (Lab): Will the Minister remind the Secretary of State before he next visits the United States—which he been to more than once—that food poisoning cases per head of population in the United States are 10 times the figure in the UK? In 2016, 450 people in the United States died from salmonella and in the last five-year period for which figures are available in the UK, no one died of salmonella. We will not want to be importing American eggs.

Baroness Fairhead: My Lords, I hope I have been clear at the Dispatch Box before that food standards will remain paramount. We are very clear that the safety and health of people in this country is paramount, so we have been clear that food safety standards, as well as environmental standards, will be maintained at the highest level.

Lord Wallace of Tankerness (LD): My Lords, when the International Trade Secretary visited the Philippines he talked about shared values with President Duterte. Given the President's record in office, which values were he referring to?

Baroness Fairhead: That rather flummoxed me because I do not know the specific ones he was referring to. We share with a number of countries a real desire to help our businesses make people's lives better. I hope that was part of it.

Muslims: Population Growth and Sharia Law

Question

3 pm

Asked by ***Lord Pearson of Rannoch***

To ask Her Majesty's Government what assessment they have made of figures from the Office for National Statistics showing that the Muslim population of England grew 10 times faster than the general population between 2001 and 2016; what is their estimate of future growth; and what is their assessment of the impact of that trend on the relationship between Sharia and domestic law.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the ONS is charged with the collection and publication of statistics related to the economy, population and society of the UK. It is independent from government. The Government have made no assessment of the current or future growth of the Muslim population, or that of any other faith, in England and its impact. The Government recently confirmed in their response to the independent review of sharia law that sharia law has no jurisdiction in England and Wales.

Lord Pearson of Rannoch (UKIP): My Lords, I thank the noble Baroness for that reply, but I am afraid it is not really adequate. Good Muslims must follow Muhammad's example and impose sharia law on their hosts when they are strong enough to do so.

Noble Lords: Rubbish!

Lord Pearson of Rannoch: Well, let's talk about it. Several of our local authorities will soon be Muslim-majority and anger is already rising among our kufr working class at the Islamification of their communities.

First, I again ask the Government whether they will require all teaching in our mosques and madrassas to be in English.

Secondly, I yet again ask them to foster an open national debate about Islam to include our Muslim friends so that we can all understand with what we may be dealing in a few years' time.

Baroness Williams of Trafford: My Lords, I think your Lordships' House would agree that points about good Muslims and bad Muslims are not for this House. I was just wondering whether I, in that context, was a good Catholic or a bad Catholic, but I do not think that sort of thing has any place in your Lordships' House or in society. We do not prescribe English being taught in madrassas, but we absolutely acknowledge that English language skills are fundamental to taking advantage of all the opportunities of living in modern Britain—getting a job, mixing with people and playing a full part in community life. The Government have no plans to hold a national debate on Islam.

Lord Kennedy of Southwark (Lab Co-op): My Lords, does the noble Baroness agree that this great country of ours has always accepted immigrants of different faiths, traditions and cultures, and that tolerance, respecting of difference and accepting the rule of law as determined by Parliament must always be the way we go forward, along with standing up to Islamophobia, anti-Semitism and any other form of hate that seeks to divide us?

Baroness Williams of Trafford: I could not agree more wholeheartedly with the noble Lord. He and I are of Irish descent and first-generation Irish respectively. In fact, when we look around your Lordships' House and this country, there would not be many of us if we did not have immigration.

Lord Paddick (LD): My Lords, is the Minister aware that domestic law in most Muslim-majority countries is based on modern western legal systems and that sharia is actually a moral code that requires Muslims, among other things, to be just and fair in their dealings with everyone and always to promote what is good and to prevent what is wrong? Will she join me and the overwhelming majority of this House in celebrating the appointment today of the first British-Pakistani, born of Muslim parents, to hold one of the great offices of state?

Baroness Williams of Trafford: I certainly agree with the first part of the noble Lord's question and am very pleased to be able to join him in welcoming Sajid Javid as our new Home Secretary. While I have an opportunity, I also pay tribute to my right honourable friend Amber Rudd.

The Lord Bishop of Leeds: My Lords, does the Minister agree that a prerequisite to any intelligent discussion of Islam or any other religion should pay attention to the ninth commandment, which is that you will not bear false witness against your neighbour?

Baroness Williams of Trafford: The right reverend Prelate is right. I was just trying to think of my 10 commandments and might have forgotten some of them.

Lord West of Spithead (Lab): My Lords, talking of national statistics, the Minister may not be aware that, 100 years ago last week on St George's Day, the Navy carried out a huge raid on Zeebrugge and more Victoria Crosses were won on that day than on any other in the First World War, on which I am sure she will congratulate the Royal Navy. In that raid, more ships were used than we currently have in the entire Royal Navy. Does she believe that the Home Office supports the government view that there should be more ships in the Royal Navy?

Baroness Williams of Trafford: The noble Lord never loses an opportunity to weave something about the Royal Navy into a question. I did not think that he would manage it today, but he has. I am very happy to join him in paying tribute to the Royal Navy.

Baroness Tonge (Non-Afl): My Lords, will the Minister launch an investigation into the growth in the number of people named Pearson in this country and assess what effect it is having on racial harmony?

Baroness Williams of Trafford: I get the noble Baroness's point.

Lord Elton (Con): My Lords, the trouble with your Lordships' treatment of the noble Lord, Lord Pearson, is that you will not listen when he actually talks sense. There are a number of points which he raises which your Lordships should have the courage to examine, rather than simply denigrate his approach to them. One such point is the implication for democratic trends in this society, which is equally a subject of interest, but in a totally different context, in Northern Ireland. It is not a subject that should be entirely brushed under the carpet until things change.

Baroness Williams of Trafford: My Lords, I certainly was not denigrating the noble Lord's points, save to say that they were not helpful in the context of anything other than singling out one particular faith in society. I think that my noble friend meant demographic rather than democratic. There is certainly demographic change in this country, but it is all to the good because, if we had purely the indigenous population, we would be looking at population decline and therefore some major problems in meeting employment need.

Assaults on Emergency Workers (Offences) Bill

First Reading

3.08 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

European Union (Withdrawal) Bill

Report (4th Day)

3.10 pm

Relevant documents: 12th, 20th, 23rd and 24th Reports from the Delegated Powers Committee

Amendment 49

Moved by ***Viscount Hailsham***

49: Before Clause 9, insert the following new Clause—

[VISCOUNT HAILSHAM]

"Parliamentary approval of the outcome of negotiations with the European Union

(1) Without prejudice to any other statutory provision relating to the withdrawal agreement, Her Majesty's Government may conclude such an agreement only if a draft has been—

(a) approved by a resolution of the House of Commons, and

(b) subject to the consideration of a motion in the House of Lords.

(2) So far as practicable, a Minister of the Crown must make arrangements for the resolution provided for in subsection (1)(a) to be debated and voted on before the European Parliament has debated and voted on the draft withdrawal agreement.

(3) Her Majesty's Government may implement a withdrawal agreement only if Parliament has approved the withdrawal agreement and any transitional measures agreed within or alongside it by an Act of Parliament.

(4) Subsection (5) applies in each case that any of the conditions in subsections (6) to (8) is met.

(5) Her Majesty's Government must follow any direction in relation to the negotiations under Article 50(2) of the Treaty on European Union which has been—

(a) approved by a resolution of the House of Commons, and

(b) subject to the consideration of a motion in the House of Lords.

(6) The condition in this subsection is that the House of Commons has not approved the resolution required under subsection (1)(a) by 30 November 2018.

(7) The condition in this subsection is that the Act of Parliament required under subsection (3) has not received Royal Assent by 31 January 2019.

(8) The condition in this subsection is that no withdrawal agreement has been reached between the United Kingdom and the European Union by 28 February 2019.

(9) In this section, "withdrawal agreement" means an agreement (whether or not ratified) between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for the United Kingdom's withdrawal from the EU and the framework for the United Kingdom's future relationship with the European Union."

Viscount Hailsham (Con): My Lords, I am afraid that I am in danger of repeating myself, in the sense that I now rise to move this new clause—which I am glad to say has attracted support from many parts of this House. This amendment is designed to ensure that the future of our country is determined by Parliament and not by Ministers. The Prime Minister and other senior Ministers have promised Parliament a meaningful vote; and in a parliamentary system of government, parliamentarians, and in particular Members of the House of Commons, have a right and a duty to determine what is meant by "a meaningful vote". When the negotiations are concluded, both country and Parliament will be asked to consider the outcome, terms or no terms. The question that will then arise is what should be the role of Parliament, and in particular that of the House of Commons. My view is as follows.

If terms have been agreed, the choices available to Parliament, and in particular to the House of Commons, should obviously be to accept or to reject those terms. If the decision is to reject the terms, Parliament should have the right to suggest further negotiations—I should be rather chary about that, but it should have that right; or to determine that we leave the European Union without terms—that is, to crash out; or to determine that we stay in the European Union on the existing terms. In the event that no terms have been agreed, the same choices should be available to Parliament: that is, to accept that the country should leave the European Union on no terms; or to determine that the country should stay in the European Union on the existing terms; or to request further negotiations, although I am chary about that. In other words, whatever the outcome, terms or no terms, this country's future should be determined by Parliament, ultimately by the House of Commons, and not by Ministers. In a parliamentary democracy, that is what ought to be meant by "a meaningful vote".

So, we need to ask ourselves: what is on offer from the Government? Those who were present in Committee will have heard my noble friend Lord Callanan set out the Government's position. He did so frequently and with clarity and we are indebted to him. On 14 March, my noble friend Lord Patten of Barnes—I am glad to see him in his place—asked this direct question:

"Perhaps we are not being as intelligent as we should be. In the phrase 'a meaningful vote', what does the word 'meaningful' mean?"

Noble Lords may think that that was a very sensible question. He got rather a curious and surprising answer. The Minister said:

"We have never used the term 'a meaningful vote'".—[*Official Report*, 14/3/2018; col. 1650.]

He was, of course, mistaken. The phrase "a meaningful vote" has been used by the Prime Minister, Mr Davis and other senior Ministers on many occasions. I am indebted to the House of Lords Library for examples, which I would happily share with my noble friend should he require them. However, given that my noble friend has, throughout these debates, always adhered very strictly to the script in his ministerial folder—he is not a Minister who goes off-piste—his response troubles me. The Government must not be allowed to dilute or in any way move away from previously given commitments, however meagre they may be.

3.15 pm

Moreover, when one considers what my noble friend Lord Callanan said when pressed on the nature of the vote that Parliament will be offered, it becomes apparent—and here I adopt the words of the noble Lord, Lord Butler of Brockwell, who is in his place—that,

"the choice the Government intend to give Parliament at the conclusion of the negotiations is, 'this agreement or no agreement'".—[*Official Report*, 19/3/18; col. 47.]

The Minister was pressed by me and many others and it became plain that the views of Parliament would have remarkably little significance. My noble friend Lord Callanan made it plain that in the absence of agreed terms, the Government would press ahead with withdrawal without a deal—that is, crash out of the Union. He made it plain that a decision to remain within the European Union was not an option available to Parliament: there would and could be no withdrawal of the Article 50 notification and the only vote would be a take it or leave it vote.

It is clear from everything that my noble friend has said to this House that unless Parliament insists, Parliament will not have a genuine, meaningful vote. In a parliamentary democracy, this is not regaining

control. To act in such a manner would be to impose ministerial decisions on Parliament by coercion. It would be an example, if I may say so, of an elective dictatorship of a particularly flagrant kind. My response to my noble friend's position is to adopt language used in a different context by that very distinguished signatory to the Single European Act, under whom many of us were privileged to serve: "No, no, no".

However, I will briefly address the one argument advanced by the Brexiteers to justify denying Parliament the decisive say on this country's future. Their argument is that the referendum of June 2016 was decisive on this matter and requires the United Kingdom to leave the European Union, whatever the terms or in the absence of terms. I simply do not accept that argument. The electorate did not—indeed, could not—know the outcome of the negotiations. At the very best it was an interim decision. Viewed properly, it was an instruction to the Government to negotiate withdrawal on the best terms that could be achieved, leaving to one side the decision as to the acceptability of the outcome of those negotiations. The final and conclusive decision can be made only when the negotiations have crystallised into agreed terms or no agreed terms. At that point it is for Parliament, at least in the first instance, to determine what is in the national interest.

I say "at least in the first instance" because it may be that when the outcome of the negotiations is known, Parliament, in particular the House of Commons, will decide that public opinion should be tested in a further referendum, either before or after a parliamentary decision, either to guide Parliament in its deliberations or to confirm or reject the decision that Parliament has made. There would be nothing undemocratic about such a process. In democracies, both Parliament and the electorate have a right to change their mind. Unchangeable decisions have no place in a democracy, hence the universally accepted principle that a Parliament cannot bind its successors.

I conclude—I will press on, if noble Lords will forgive me—with a few words about the proposed new clause. It enables Parliament, primarily the House of Commons, to make all the decisions that I have identified. Crucially, it preserves the primacy of the House of Commons. Whatever our views, we in this House must accept that the decisive decisions have to be made by the elected Chamber. What this House can properly do is to suggest, argue, explain and enable. The decision on this matter, which is of huge importance—it is perhaps the most important peacetime decision since the failure of the home rule legislation more than 100 years ago—must be made by Parliament, and by that I mean the House of Commons.

Whatever our party affiliation, our duty as parliamentarians is to our country and our conscience. Those who are privileged to serve in Parliament, whether in this House or the House of Commons, are the heirs of a very long and noble tradition that is fundamental to our liberties and must not be betrayed. It is our duty to assert the primacy of Parliament over Ministers. It is in that spirit and with that purpose that I beg to move this new clause.

Lord Hannay of Chiswick (CB): My Lords, this amendment also bears my name and the names of other noble Lords. I will focus my brief remarks on the eventuality of the United Kingdom facing the prospect of leaving the EU in March 2019 without any deal having been reached between the EU and the UK on the terms of a withdrawal treaty, or on the framework for a new relationship between them. I will, too, set out a pretty compelling case for this eventuality to be covered if a parliamentary approval process is to be genuinely meaningful.

This House is no stranger to debate on the no-deal situation. When we considered the Bill authorising the Government to trigger Article 50 before the end of March 2017, we voted by a substantial majority for a meaningful process that covered the no-deal eventuality. The other House, where at that time the Government had a single-party majority, rejected that amendment, and we did not insist. We must, however, face the fact that this Government have never made any commitment to give Parliament any say on a no-deal outcome, although they have committed themselves—rather inadequately—to giving Parliament a say if a deal is struck. The rest of this amendment deals with those circumstances. In the no-deal scenario, there is a void—a vacuum. That is not really tolerable for such an eventuality.

I do not intend to speculate about what circumstances might give rise to this eventuality—that would be a bit of a mug's game six months before the end of a negotiation. The Government seem to have put away their rather foolish mantra that no deal is better than a bad deal, which I welcome. Suffice it to say that until the final moment of the Brexit negotiations, no deal remains a possibility and needs to be provided for in any meaningful process of parliamentary approval.

On the substance of no deal, I say only that there is now a much wider understanding of the fact that it would be seriously damaging to our economy, as we fell back on WTO terms. The Business Committee of another place brought that out very cogently as recently as last week. There are plenty of other disadvantages outside the trade field if we were to find ourselves going over a cliff edge in March 2019, but this is not the occasion nor the time to have that debate about what the consequences of no deal would be. What needs to be debated today, and I hope decided, is to set out the fact, as subsection (8) of the proposed new clause provides, that Parliament and not the Executive needs to be the ultimate arbiter in such circumstances. I hope that we will establish that in this House at the end of this debate.

Lord Wallace of Saltaire (LD): My Lords, my name is also on this amendment, and I wish to speak briefly on the role that this Chamber needs to play. We are a revising Chamber and we have spent some time looking at the detail of this extremely complex and important proposal to leave the European Union. We also have to be concerned with constitutional propriety, and we are rightly concerned that a referendum which was partly won on an argument to restore parliamentary sovereignty should not be allowed to lead to greater executive power.

As the noble Viscount, Lord Hailsham, said, the Prime Minister has promised that Parliament would be allowed a meaningful vote on negotiations once they are completed. The Secretary of State for DExEU

[LORD WALLACE OF SALTAIRE]

has promised that the resolution presented to Parliament will cover both the withdrawal agreement and the terms for our future relationship with the EU. That should provide some reassurance against fears that most difficult issues are likely to be left for further discussion after the UK has formally the EU.

This amendment puts those promises into legislative form. It spells out the deadlines required to ensure that Parliament is permitted to scrutinise whatever is agreed in good time before the end of March next year. The amendment requires Commons approval by November 30 and Royal Assent by 31 January, and provides a backstop for ensuring parliamentary sovereignty if no agreement is reached by the Government by the end of February. The noble Lord, Lord Callanan, is quoted in today's *Daily Mail* as saying that these are "false deadlines". I hope that in replying as the Minister he will tell us, if these deadlines are to be disregarded, how the UK will get through the constitutional requirements for leaving the EU by the end of March 2019 and what deadlines he might propose instead.

We are acutely aware of divisions within the Cabinet and the Conservative Party about what form of customs arrangements ought to be acceptable. That is a fundamental issue which is not yet decided but which the Government ought to have resolved, at the latest, by the time that they triggered Article 50 some 18 months ago. In her Mansion House speech two months ago, our Prime Minister admitted that it is in Britain's national interests to remain associated with many of the EU agencies that hard-line Brexiteers wanted to break away from. She promised in that speech a new security treaty with the EU, to ensure continuing co-operation in combating organised crime and counterterrorism, and a close partnership in foreign policy and defence. But we have been told almost nothing more since then about such important issues or about the compromises of sovereignty in the national interest which they would require. We risk a backlash from all sides when the terms for leaving are sprung at the last minute on an uninformed country.

Ministers have repeatedly assured us that negotiations are well on track, even though they will not tell us what they are doing, and that an agreement can be reached by October—in less than five months' time. If that is true, this amendment offers no difficulties for the Government; if it is not true and the likelihood is that all that will be agreed by October is a loose statement of principles, with the hard details of our future relationship kicked down the track to be sorted out in the implementation period—as the Government like to call it—after we have left the EU, then Parliament needs to intervene. Leaving the European Union without a clear and detailed agreement on the future relationship would be a disaster for our economy, our foreign policy, our relationship with Ireland and our internal and external security. This amendment guards against that unfortunate outcome.

3.30 pm

Viscount Waverley (CB): Will the Minister address one point when summarising? Has consideration has been given to the wording of the meaningful vote? If so, what will it be?

Lord Howard of Lympne (Con): My Lords, I have great respect for all the proposers of this amendment. It makes me all the more astonished that they should put forward a clause which could, and very probably would, lead to not one but several constitutional crises. I am reluctant to draw the conclusion that that is the purpose of the new clause, that that is the intention behind the new clause, that so determined are its movers to thwart the will of the British people to leave the European Union that they wish to provoke a constitutional crisis, but that is the perilous outcome to which this new clause opens the door.

My noble friend made a very fine speech, but the new clause which stands in his name goes far beyond the fine sentiments which he addressed. I shall concentrate on just two of its consequences. First, the new clause gives your Lordships' House a veto on any agreement which the Government have reached and which the other place has endorsed. It is instructive to compare the wording of subsection (1)(b) of the new clause with subsection (3). We have not heard very much so far from the movers of the new clause about its precise terms, so it falls to me to draw your Lordships' attention to those terms.

Lord Hannay of Chiswick: The noble Lord is giving us the speech he gave us in the Article 50 Bill, when it was indeed the case that the amendment then moved did not differentiate between the Lords and the Commons. If he looks at this amendment with care, he will see that there is a very clear differentiation and that it is only the Commons that has the right of decision; we have the right of consideration.

Lord Howard of Lympne: If the noble Lord waits until I have concluded my remarks, I think he will be better able to form a judgment about how careless I have been.

Subsection (1) of the new clause provides that the Government may conclude an agreement only if the draft has been approved by the House of the Commons and has been subject to the consideration of a Motion in your Lordships' House. The Minister may have something to say about the circumstances in which such a Motion might be considered. It is not a point I intend to dwell on, although there is clearly a possibility that your Lordships may vote not to consider such a Motion.

Subsection (3) of the new clause provides that a withdrawal agreement may be implemented only if it has been approved by an Act of Parliament, and subsection (7) provides that that Act must have received Royal Assent by the end of next January, so the new clause expressly contemplates a situation in which the Government have reached an agreement with the European Union, the House of Commons has approved that agreement, but your Lordships' House, simply by delaying the passage of the Bill beyond next January, could defy not only the will of the people but the will of the elected Chamber of Parliament. If that would not provide a constitutional crisis, I do not know what would.

The new clause goes on to provide a prescription about what would happen if such a situation were to arise. It proposes that the negotiations should be taken

out of the hands of the elected Government of our country and be decided on a resolution of the other place and the consideration of a Motion in your Lordships' House. I had the great privilege of serving in the other place for 27 years—not quite as long as my noble friend, but almost—and I have the greatest respect for it, but it is not a negotiating body. I do not believe it has ever taken that role upon itself, I do not believe it wants it and nor should it have it. I need hardly add that if this new clause were to become law, the situation would arise that it would immeasurably weaken the Government's negotiating position with the EU and would make our Government and our country a laughing stock.

The truth of the matter is that, while a great deal has been spoken about the House of Commons—my noble friend talked about the House of Commons—at the end of the day the House of Commons will have its say and the House of Commons will have its way. The House of Commons does not need to be given any guidance by your Lordships' House as to how it should go about its business. There are many ways in which the House of Commons can achieve that objective, and the House of Commons will do so.

This new clause is thoroughly and fundamentally misconceived. I am afraid that it illustrates the appalling lengths to which die-hard remainers are prepared to go to achieve their aim, and I urge your Lordships to reject it.

Lord Bilimoria (CB): My Lords, as an answer to what the noble Lord, Lord Howard, has just said, the noble Viscount, Lord Hailsham, said in moving the amendment that this was all about "Take it or leave it". Is "Take it or leave it" a meaningful vote? Throughout Committee, the main answer given by the Government was, "We are implementing and executing the will of the people", while every single day the press says, "Implement the will of those 17.4 million people". But, as the noble Viscount said, "Leave, whatever the terms"—is that what the people actually said? Is that what is in the national interest?

At the heart of this issue is the fact that in the other place at the time of the referendum two-thirds of MPs, on all estimates, thought that the best thing for this country would be to remain, and right here in this House about 75% thought the same. Yet when the referendum took place, hundreds of those MPs' constituencies voted to leave, so the MPs are caught in a trap. The confusion is whether they see themselves as delegates or representatives of their constituencies. Are they making these decisions in the best interests of their constituents and country or of their party? Are they managers or leaders? The difference between a manager and a leader is that a manager does things right but a leader does the right thing. Do they have the guts—the guts of the so-called mutineers such as Nicky Morgan, Ken Clarke, Dominic Grieve, Jonathan Djanogly and Tom Tugendhat, and I could go on—to stand up when the time comes to do the right thing?

We discovered in Committee that whether we were discussing borders, education or movement of people, no argument was made. The Government were like a stuck record, simply saying: "The will of the people". The amendment would give MPs in the other place and this House the power to stand up to do the right thing for the country. The noble Lord, Lord Howard, talked about a constitutional crisis. What constitution do we have where a Government bully Parliament and say, "Take it or leave it"? It is Parliament that should be supreme, in the best interests of the people and the country. Thanks to this amendment, Parliament would have the ability to stop the train crash that is Brexit.

Lord Howarth of Newport (Lab): My Lords, the noble Lord, Lord Howard of Lympne, is absolutely right to draw our attention to the constitutional dangers that lurk within the amendment. It goes too far to bind the Government.

I think it is time that we drew breath. We have had a very exciting couple of weeks but it is time to think about the respective roles of the Executive and Parliament and of the House of Commons and the House of Lords, as other noble Lords who have spoken have done. Parliament is not the Government and it should not try to usurp their role. Of course the Government emanate from Parliament and are accountable to it, the Government should be advised by Parliament and are invigilated and sustained by it, and if they lose the confidence of Parliament then they fall, but the Government are not the same as Parliament and Parliament is not the same as the Government. We have a separation of powers. The Government are the Executive, and Parliament neither can nor should act as the Executive.

It was improper and inept for the Government ever to suppose that they could bypass Parliament in dealing with Brexit. Of course there must be a meaningful vote, but it is for the Government to negotiate, listening all the time to Parliament—Parliament constantly proffers its advice—and then eventually to submit the deal that they have negotiated to Parliament for its approval or otherwise. You can call it a take-it-or-leave-it vote, but nobody could say that that is not a meaningful vote.

Dominic Grieve, someone for whom I have the greatest respect and the warmest regard, justified his amendment to Clause 9, requiring that the final terms of the deal should be approved by a statute, on the basis that it was essential to prevent the Government exercising the biggest Henry VIII power ever. That was an understandable and legitimate motive, but to require that the deal should be approved by the laborious process of statute seems to me to go too far in an inappropriate direction. Parliament cannot negotiate. Parliament certainly cannot negotiate by legislation or amendment. It cannot change the deal, it cannot bind the European Union. It can bind the Government in an excessively narrow straitjacket, and that would be an extraordinarily unhelpful thing to do in the national interest. The process of legislating such a statute would serve only to prolong the uncertainty about which everyone complains.

Amendment 49 would develop the Grieve amendment and take it further. It repeats the requirement for a statute already in Clause 9, but doubles up with the requirement for a resolution. It then goes further. Proposed new subsection (5) states that if the House of Commons does not approve the draft terms, the Government "must follow any direction" given by the House of Commons. That seems to me the most

[LORD HOWARTH OF NEWPORT]
extraordinary provision. Of course, legislation routinely binds Governments for the future, but it does not tie their negotiating hand. It should not, specifically, tie this Government's hands as they seek to perform this particular complex, sensitive, immensely difficult, crucial set of negotiations.

The resolution could say anything. It could say, "Go back to the negotiating table". It could stipulate that the Government deliver what is undeliverable. It could rescind Article 50. It could call for a general election or another referendum. These are exceedingly important matters where the Government should listen to Parliament, but the Government should lead and Parliament should respond.

If we reflect on the relationship between your Lordships' House and the House of Commons and our respective responsibilities, surely it is our responsibility to advise the House of Commons, to advise the Government. In the words of the noble Viscount, Lord Hailsham, it is to suggest, to argue, to explain. It is no part of this House's responsibility to seek to manipulate the House of Commons or the Government, to seek to choreograph future proceedings of the House of Commons, and certainly no part of our responsibility effectively to pull the rug from under the Government.

If we pass this amendment and some of the others on the Marshalled List today, I fear that we shall be getting too big for our constitutional boots, and many of our fellow countrymen feel the same.

Lord Lamont of Lerwick (Con): My Lords, my noble friend Lord Hailsham made an eloquent and powerful speech. If I had closed my eyes, I might have thought I was listening to his father. However, despite his eloquence, he did not go very deeply into the detail of his amendment. I wish to support what the noble Lord, Lord Howarth, and my noble friend Lord Howard said.

The first part of the amendment, proposed new subsections (1) to (3), it might be argued, roughly and broadly mirror what the Government themselves have outlined: a resolution in the House of Commons, the withdrawal Bill, primary legislation and trying to get a vote before the European Parliament has voted. But my noble friend Lord Hailsham then inserts a series of triggers with rigid dates. If the vote of approval has not taken place by 30 November, if the Act of Parliament has not received Royal Assent by 31 January, and if the withdrawal agreement has not been agreed by 28 February, a whole lot of things happen. As the noble Lord, Lord Howarth, highlighted, what happens is that the House of Commons or Parliament effectively takes over negotiations and can impose conditions. This is a most extraordinary thing. It has never been the case before that Parliament has dictated how a Government should negotiate a treaty, but this is what would happen under the provisions of the amendment. As the noble Lord, Lord Howarth, said, Parliament could dictate all sorts of things: it might dictate that the Article 50 notice be withdrawn or it might dictate, although it would perhaps be subject to dispute, that Article 50 was extendable. This would be for Parliament to assume extraordinary powers in a way that has never happened before. It would be a major constitutional innovation.

3.45 pm

Secondly, the timetable with these rigid dates is extremely tight. Between the resolution being passed in the House of Commons and the Act requiring to get Royal Assent is a period of only seven weeks. It might easily be the case that Royal Assent could not be obtained in seven weeks; the amendment shortens the timetable by a month, and it would be very questionable whether Royal Assent could be obtained during that period. And, of course, it would be open to the Lords to filibuster to frustrate the time limit. So that, again, would be another considerable problem. The amendment would make it very much more difficult for the Government to negotiate when the EU could see that we were up against all these rigid dates. It would make negotiation very difficult indeed.

In the amendment, there is a difference in the wording between the provision for the House of Commons and that for the House of Lords, already referred to in the exchange between the noble Lord, Lord Hannay, and my noble friend Lord Howard. It says that the House of Lords must have "consideration of a motion", which, too, effectively gives the House of Lords a veto. Page 496 of the 24th edition of *Erskine May* makes it perfectly clear that it is open to the House of Lords not to consider a Motion. It says:

> "It is open to any Lord to call attention to a question or motion which has appeared on the Order Paper or in the House of Lords Business and to move that leave to ask the question (or move the motion) be not given or that it be removed from the House of Lords Business".

So, again, it would be possible for the House of Lords not to do what is required in the amendment and to actually actively sabotage the whole process.

It seems to me that the amendment must be rejected. It gives extraordinary powers to Parliament, and it would make the negotiation much more difficult. Most ironically of all, given that the other side is terrified that there will be no deal, this would make no deal highly likely.

Lord Howard of Lympne: I am grateful to my noble friend for giving way—

The Countess of Mar (CB): It is Report.

Lord Howard of Lympne: It is a question, and my noble friend has not finished.

Lord Roberts of Llandudno (LD): Are we learning the lessons of history? Sometimes it is very valuable to see what has happened in other countries when similar steps have been taken. We remember the reluctance of Mrs May to allow Parliament to be involved. She wanted the Government to be in charge. My mind went back to Berlin in March 1933 when the enabling Bill was passed in the Reichstag, which transferred the democratic right from the Parliament into the hands of one man—that was the Chancellor, and his name was Adolf Hitler. Perhaps I am seeing threats that do not exist, but they are possible. Who would have thought before the 1930s that Germany, such a cultured country, would involve itself in such a terrible war?

Let us take the warning. What we are doing here must involve Parliament. I would like to see it involving the people as well, but it must certainly be in other hands. We cannot let an enabling Act of the United Kingdom possibly lead to the catastrophe that took place in Berlin in 1933.

Lord Blackwell (Con): My Lords, I have listened very carefully to those noble Lords who have proposed this amendment but I have concluded, on the basis of the other arguments which have been set out, that it is fundamentally flawed, for both constitutional and practical reasons. As the noble Lord, Lord Howard, said, the constitutional argument is that it risks completely confusing the roles of the Executive and the legislature. We have a system in this country where the separation of those is very clear. The Executive can command authority so long as they have a majority in the House of Commons. Their role is to bring proposals to Parliament; Parliament's role is to be the legislature. You cannot have a negotiation where a Parliament seeks to be the negotiating partner: that is an impossible situation. Subsection (5) in the new clause proposed by the amendment allows Parliament to try and direct the details of the negotiation. That is constitutionally inappropriate—that is the role of the Executive. The Executive are accountable to Parliament but it is their role to negotiate and bring their proposals to Parliament.

On a practical level, even more importantly, and as other noble Lords have said, it would completely undermine the Government's negotiating position if they did not have the opportunity to walk away. A negotiation has to involve compromises by both sides. If the European side of this argument knew that, however onerous they made the conditions, the Government would come back to Parliament, which could tell them to go back and concede some more, we would simply be offering the opportunity for one side of the negotiations to keep pursuing its case rather than compromise. That would completely undermine the practical basis on which negotiations have to be held between two sides which have the authority to negotiate, with proposals brought back for approval by the House.

Lord Grocott (Lab): My Lords, I have a couple of observations, one specific and the other more general. The specific observation relates to subsection (1) in the proposed new clause, which talks about the way in which a withdrawal agreement would be approved or otherwise by Parliament. This issue has been raised several times in the past by me and other noble Lords. If you require parliamentary approval, what happens if one House says yes and the other says no? This is particularly serious in relation to anything connected with the ratification or otherwise of agreements between the Government and the EU 27. Either House saying no—in this case it would probably be the House of Lords—would, in effect, be a veto on the whole process. To be fair, there is an attempt to deal with this problem, because proposed new subsection (1) requires approval,

"by a resolution in the House of Commons",

but the simple,

"consideration of a motion in the House of Lords".

My simple, factual and specific point is just this: we do not need an Act of Parliament in order for us to consider a Motion. We can do that any time we want to, pretty well, on any subject we choose. That is not any kind of control or limitation whatsoever. I would say, "Good, but what on earth is subsection (1)(b) doing in an Act of Parliament?" It is absolutely unnecessary—otiose may be the word, I am not sure, but it is irrelevant and we should not clutter the statute book with points such as this which are of no value whatsoever. My more general observation is that we are putting ourselves in a bizarre circumstance. We are saying that we, the unelected House of Lords, should pass an amendment which effectively tells the House of Commons how to hold the Government to account. Essentially, it is instructing the House of Commons. A lot of noble Lords have been in the House of Commons. That House holds Governments to account day in, day out. It does that by a multitude of different mechanisms: by debate, adjournment debates, emergency resolutions, questions to Ministers, and Bills.

The function of Parliament in general and the House of Commons in particular is to hold Governments to account. We are simply saying to it by this amendment, "We think you should have additional powers to hold the Government to account". If the House of Commons wants to exercise control over the way in which the negotiations proceed, it does not need any advice, still less any extra powers given to it by us—it has them already. Government is subject to the House of Commons. The House of Commons is not the servant of government in a parliamentary democracy, to quote the noble Viscount, Lord Hailsham, but ultimately it is the other way round: the Government is the servant of the House of Commons.

Lord Foulkes of Cumnock (Lab): If my noble friend is right in every case, why did Gina Miller have to take action in the High Court?

Lord Grocott: My noble friend was not present at the time, as a number of us were, but if he is in any doubt whatever about the ultimate authority of the House of Commons, he should have been in the House of Commons in 1979—

Lord Foulkes of Cumnock: I was.

Lord Grocott: I am sorry; it was later. My noble friend missed the boat by a few months. That was when the House of Commons—just before my noble friend enriched it with his presence—threw the Government out. I can think of no more substantial control than throwing the Government out of office and calling—

Lord Foulkes of Cumnock: They were a Labour Government.

Lord Grocott: Yes, sadly, they were a Labour Government, and my vote was not enough to enable them to survive. If anyone is in any doubt whatever about the capacity of the House of Commons to do what it needs or wants to do in respect of this or any other piece of legislation, those powers exist already. It does not need any advice from us.

Lord Rooker (Lab): The House of Commons is not in control of the legislative canvas—the Government are. This amendment, sent to the Commons, would provide it with a canvas on which it can operate. It can change it or modify it if it does not like bits of it and send it back, but without this canvas it cannot operate in the way my noble friend is describing.

Lord Grocott: I have never seen the word "canvas" in *Erskine May*—I do not know quite what my noble friend refers to. However, we know that the House of Commons can pass legislation if it wants to; it can be introduced by a Private Member's Bill if required, although obviously not on a matter like this. Legislation can be introduced—

Lord Cormack (Con): Surely if we in this House pass this amendment, the House of Commons can send it back, and no serious-minded Peers in your Lordships' House would seek to resist the power of the House of Commons. It is being given a chance, and if it does not like it, it can tell us where to get off.

Lord Grocott: I hope all noble Lords were listening carefully to that. A lot of noble Lords were saying, "Hear, hear", so should the House of Commons send this back to us, I very much hope that what the noble Lord, Lord Cormack, said is correct, and we would press the matter no further. Undoubtedly, the House of Commons can send amendments back or not as it chooses.

The related point I want to make—apart from stating what I think is the obvious in a parliamentary democracy, that Parliament, or the House of Commons, is supreme—is the reference that the noble Viscount, Lord Hailsham, made to his concern: if the Government's conclusion of its negotiation with the EU 27 were rejected, what would happen next? If the Government were to lose any vote on the cardinal element of their raison d'être since the general election—namely, implementing the decision of the people that was made in the referendum—that would be the end of the Government, unless the whole constitution is rewritten and turned on its head. The Government would have to resign if that were to happen. How could they possibly continue? We keep hearing about the number of Bills that are related to our departure from the European Union. If that were to happen, how on earth could the Government remain in office? Of course, that may be a good or a bad thing.

4 pm

Lord Reid of Cardowan (Lab): The constitutional position has changed radically with the Fixed-Term Parliaments Act. My noble friend is implying that no Government would be prepared to suffer the embarrassment of staying in power. But on the record of this Government, they might be quite prepared to stay in power.

Lord Grocott: My noble friend knows perfectly well that the Fixed-Term Parliaments Act provides for a vote of no confidence in the Government. It would be the equivalent of a Motion of no confidence in the Government if they lost the support of the House of Commons for their central legislative plank.

Lord Reid of Cardowan: I must insist—

The Countess of Mar: Noble Lords may get up only once, and the noble Lord has already done so.

Lord Tomlinson (Lab): The noble Countess has got up twice.

Noble Lords: Oh!

Lord Grocott: My Lords, the interventions reflect what we have known throughout the passage of this Bill—and, indeed, politics since the general election. The overwhelming majority of Members in both Houses voted for remain in the referendum and, through all sorts of different mechanisms, they want to either delay or stop the whole Brexit process. It is Parliament's right to do that, and if the House of Commons decides to do so, that is what will happen. I personally strongly recommend against it in the light of the referendum, but that is what parliamentary democracy means and that is how it operates.

My final point is in response to the noble Lord, Lord Wallace. I have heard on a number of occasions that, somehow or other, if we query in any way the relationship between the Government and Parliament, we are denying the central argument of the people who want to leave the European Union: to enable Parliament to restore its authority, which it lost in substantial measure with the passing of the European Communities Act 1972. My answer to that is this. Quite simply, if anyone in this House, or the other one come to that, is deeply concerned about parliamentary sovereignty—and indeed if they love parliamentary sovereignty, as I do—the best thing they can do is to make sure that the European Communities Act 1972 is repealed as rapidly as possible. That is far greater a restriction on the authority of Parliament, and on the House of Commons in particular, than anything the amendment to hand attempts to remedy.

I am not going to be accused of in any way challenging parliamentary democracy because I do not think that this is a terrific amendment, but I will not lose any sleep if it passed, for the reasons that I have said: Parliament can do what it likes and the House of Commons can do this in any case. However, we must not miss the wood for the trees. As far as the sovereignty of Parliament is concerned, the problem comes from the European Communities Act 1972 and not from any amendment that this or any other House can pass.

Lord Mackay of Clashfern (Con): My Lords, it had not been my intention to take part in this debate because I read in the newspapers a forecast of what the result would be. That suggests that, for most of your Lordships, the decision has already been taken. However, having listened to the debate so far, I thought it was right for me to say a word or two.

I have never been a Member of the House of Commons, but by the constitutional arrangements that then existed I was given a very senior position in Her Majesty's Government, which lasted for almost 10 years. One of my fundamental approaches to the matter of discharging that office was to respect the views of Members of the House of Commons who were members of the Government. There are colleagues of mine here who know in practical terms that that

was so. On the other hand, it was always possible to suggest ways in which their policy could be implemented with less danger to the community than otherwise might have happened.

I had the privilege of nominating my noble friend Lord Hailsham to be a silk. Her Majesty the Queen graciously accepted that nomination. But I did not have the opportunity to exercise power that would have enabled him to have the title "learned" in this House. That does not in any way derogate from the force of what he had to say except that, from my point of view, it is arrogant in the extreme for Members of the House of Lords, together or otherwise, to tell the House of Commons what to do.

I learned in the course of my experience as Lord Chancellor that it was very wise for Members of the House of Commons to be given what they wanted so far as possible. I am sorry to say that my colleague, the lady Speaker at that time in the House of Commons, is not in her place, but I remember that in relation to arrangements for things in which we were both involved it was universal that her wishes were implemented. There is an arrogance in our House telling the House of Commons how to go about its business. I agree entirely with what the noble Lords, Lord Grocott and Lord Howarth, said about that. As I said, I had not intended to speak, but I feel that this House needs to think about its attitude to the powers and discretion of the House of Commons.

The Lord Bishop of Leeds: My Lords, I find myself torn between pragmatism and principle—the principle of parliamentary democracy and upholding and preserving the constitution; and on pragmatic terms, the ability the Government need to manage the process we are in. But I keep hearing in this debate the language of "telling the House of Commons what to do". Call me ignorant, but I did not think that that was what we were doing. I thought the role of the House of Lords was to scrutinise, improve and ask the Government to think again. That is what we are called to do and that is where the principle applies. Then it is up to the House of Commons and the Government to decide what they do with the arguments put forward from this place. Not to do that is to deny the appropriate role of this House in doing its job.

Lord Spicer (Con): My Lords, if this amendment is passed, this day, 30 April, should be called hypocrisy day because the overt objective is the opposite of the covert objective. The overt objective is apparently to give greater powers and a greater say to Parliament. The covert objective, as the noble Lord, Lord Grocott, said, will be to do the opposite. If one wanted examples or specific reasons why one says that, we need only look at the Factortame case a few years ago, when Parliament was clear that it wanted its way on a European shipping matter, and our courts eventually came down in favour of the European Court having the final say. There is no question but that if we stay in the European Union, Parliament will be one of the worst sufferers.

The acquis communautaire is another example. It is the basis of what the European Court does and is entirely to do with the centralisation of power away from national institutions and organisations such as Parliament. The proposers of this amendment may argue that they are in some way strengthening Parliament, but exactly the opposite would happen in the end.

Lord Dobbs (Con): We all know what the intention of the amendment is: not to improve Brexit but to impale it. What does "meaningful" mean? A meaningful vote seems to be one that somebody has won; then, it is meaningful to them. Otherwise, it appears in certain quarters that "meaningful" is meaningless unless you have won. Was the referendum meaningful? Was the last election meaningful? Apparently not. Was the election to this House of the noble Viscount meaningful? I am sure that it was—although perhaps in hindsight we on these Benches might have done well to have inquired a little more deeply into his passions. It would have made for some fascinating hustings.

The Government have repeatedly promised a meaningful vote. Clearly, if words mean anything, that commitment is inescapable. Let us imagine for one moment that the Government broke that promise and tried to offer an unacceptable vote—or no vote at all. What would happen? There would be fury. There would be uproar in the Commons and all sorts of turmoil in the tea rooms. Your Lordships would beat their noble breasts. Speaker Bercow would be brought to bear. I have no idea whether the rather rude sticker about Brexit that was on the back of his car is still there—I cannot possibly repeat it—but I think we can guess that he would leave no parliamentary stone unturned.

The noble Lord, Lord Grocott, was right. The House of Commons has any number of different means to raise this subject. If all else failed, we could surely rely on Mr Corbyn. I know that the prospect terrifies some Members on the Benches opposite; I can see their tight lips and I felt a frisson of anxiety as I mentioned his name. But surely they could rely on their leader to slap down a Motion of no confidence, as happened time and again in 1978 and 1979, as the noble Lord, Lord Grocott, said. In other words, the Government cannot under any conceivable circumstances avoid a meaningful vote.

So the amendment is utterly irrelevant. It is also deeply—and, I believe, deliberately—damaging. It is designed to undermine our negotiating position—to confuse, to cause chaos and to give encouragement to EU negotiators to contrive the worst possible outcome, in the hope that some new vote, parliamentary decision or referendum will force Britain into retreat or even to hold up its hands in surrender.

Lord Foulkes of Cumnock: Where is Francis Urquhart?

Lord Dobbs: I am glad that the noble Lord is still awake. I take it as a compliment. In 2016, Mr Clegg said clearly that we,

"have to abide by the instruction to quit the EU".

Note the wording: not "advice", not "recommendation" but "instruction" of the people to exit the EU. There are those in this House—decent, principled people—who hate the idea of leaving the EU. I understand those feelings. But there are also those in this House who

[Lord Dobbs]
have vowed to do everything they possibly can to destroy Brexit. That is a matter not of principle but of abuse of privilege—a direct attempt not to secure the best for Britain but to drive Brexit on to the rocks. This a wrecker's amendment and I wish it ill.

Baroness Jones of Moulsecoomb (GP): My Lords, I am not a natural ditherer. I am very—perhaps overly—decisive. However, I did hesitate on some of the amendments that are coming up today. But I decided that, in the interests of democracy—which did not stop on 23 June 2016—that I would vote for them. However, the speeches in favour have turned me against this amendment. Clearly, there is more of an agenda than just allowing more of the people's will, more of their say and more parliamentary control in the process. So I will not vote for the amendment now.

4.15 pm

Lord King of Bridgwater (Con): My Lords, as somebody who has not so far spoken in one of these debates, I want to make a brief contribution. One sees how this debate has gone, with the Brexiteers on one side and the remainers on the other. I speak as somebody who has already spoken in this House as a remainer. I campaigned to remain. I now find myself in, as I would put it, the weakest of positions: a reforming remainer. We have had the referendum, the decision was taken and we are now embarked on the negotiations. My view on the amendment before the House is that one of the beneficiaries could be Monsieur Barnier.

My worry is that, as the noble Lord, Lord Grocott, said, we are cutting the feet from under the Government. In the present situation—which I did not choose and where I see many problems for the Government—we have to see how we can at least stand together to try to get the best possible deal for our country in this difficult situation.

Having said that, we will then get towards the end of the negotiations without being tied down by some of the very difficult dates included in this amendment. I agree with my noble friend Lord Howard in his reference to the unnecessary inclusions and the difficult constitutional crises that might be involved in it. We should come to the end of that process. I have never been in any doubt—having been in this building, I am appalled to say, for 48 years at one end or the other, with terrible consequence—that in the end Parliament is going to decide. Any suggestion that we must have this amendment with all its flaws to make sure that it happens, I regard as quite unnecessary, unwelcome and unhelpful. Everybody here, I hope, on whichever side—as I say, I am a remainer, but Brexiteers as well—wants to get the best possible deal and then Parliament will decide whether it is sensible to go forward. I stand for the sovereignty of Parliament. That is why I believe that this amendment should not be approved.

Lord Fairfax of Cameron (Con): My Lords—

Baroness Hayter of Kentish Town (Lab): My Lords, I think we have now heard, especially if what has been said is true, that the House will be more in favour of the amendment than against. The balance of speakers now is possibly to allow one speech in favour of the amendment.

It is a bit of a shame as I wanted to follow the noble Lord, Lord Dobbs, because it is always such fun. The only disadvantage of him being in the House is that he is not writing another television play. Please go back to doing that. The uproar in the Commons which the noble Lord mentioned—I am afraid he cannot stand up again—can be in another play.

These are serious issues and I cannot agree more with what the previous speaker has just said. It is about allowing for the deal to be negotiated—the best deal for this country, we hope—and then for it to come to Parliament. This is not, as the noble Lord, Lord Howard, said, about creating a constitutional crisis; nor is it about asking the Commons to become a negotiator, as someone said. It is to ask the Commons and Parliament to decide whether the outcome of the negotiations is good enough for the country. That does not seem too much to ask.

As for the noble Lord, Lord Lamont, worrying that it will somehow affect the negotiating timetable if our negotiators have to come back to Parliament, that, of course, is exactly what is happening on the other side because the negotiator Monsieur Barnier has to go to his Parliament—the European Parliament—to get it through there. We could see that one side has to go to a Parliament to get the deal approved but not ours. I really do not see that the timetable is quite a problem.

We always feel very sorry for the Minister—and me—on these long days because we do not get any lunch. Today I gather he got absolutely none because he was on the radio at lunchtime. What did he say? He said that the amendment was about overturning what the people decided in June 2016. That is not what it is about. It is about asking the Government to put the results of their negotiations to Parliament. It is quite hard to see why the Government, or the noble Lord, Lord Howard, and the others, are so worried about it. What do they have to fear—that the deal will not be good enough?

We support the amendment, which is quite simple but has to be written quite complicatedly because we are trying to get it right. It is to put into law the undertaking that the Prime Minister gave that both Houses of Parliament would have a vote on the outcome of the withdrawal negotiations. There are five reasons for supporting it. First, as with Article 50—but this time without having to go to court—it is to ensure that the withdrawal agreement is put into statute by Parliament because a mere Motion, which is what we have been offered, has no force of law. In fact, I doubt that it is even, in the words of Article 50(1) of the treaty, in accordance with our "own constitutional arrangements", which is what is required.

Secondly, the votes in Parliament must be meaningful. That means that they need to be effective, but also that there must be a real choice and that the outcome must be binding on the Government. Particularly for the House of Lords, it would be meaningless, if the Commons voted yes to the deal, if we were then asked to vote. If we wanted to vote no, we would know that it would not be binding and that the Government were going to

ignore it—it would not matter what we did, so we might as well follow the Commons. Or, if it was binding on the Government, we would be in the difficult position outlined by my noble friend Lord Grocott. If, as an unelected House, we wanted to vote no, we would risk overturning the elected House. My judgment is that in those circumstances we would have to vote yes regardless of what we thought of the deal. That would be a meaningless vote.

Thirdly, the votes in both Houses must offer a reasonable choice. It would, I suggest, not be meaningful to vote either to exit on a deal if we think it is poor, or else to crash out on no deal—that is, on even worse terms: WTO terms, no safeguards for UK citizens abroad or, indeed, EU citizens here, a hard border in Ireland and no transition period. That is Hobson's choice. It is true that last week David Davis suggested that there might be a third option—perhaps extending Article 50—but without it, if we simply have the deal on the table or a cliff edge and off, that is not a meaningful vote.

Fourthly, as has been said, the promised vote is currently only on a negotiated withdrawal deal. It gives no role to Parliament over a decision by the Government to walk away without a deal—again, with WTO terms, no safeguards for our UK citizens living in EU countries nor EU citizens here, a hard border in Ireland and no transition period. That cannot be something that the Government decide without Parliament.

Lastly, the promised vote says nothing about the consequences of a rejection of the withdrawal deal, or of the no deal that we heard about earlier. As we have heard, the amendment, in its different ways, answers all those shortcomings. It puts the vote into law. It removes a Lords' veto that would otherwise make our vote meaningless. It extends the vote to a no-deal situation, and it signals what must happen should the deal be rejected or there is no deal; that is, the House of Commons must then decide the next step. I commend the amendment to the House.

Lord Fairfax of Cameron: My Lords—

Noble Lords: Minister!

The Countess of Mar: My Lords, with all courtesy to the noble Lord, perhaps he would get the feeling of the House, which is to have the Minister stand on his feet.

Lord Taylor of Holbeach (Con): My Lords, I thought this amendment was about Parliament having a say. It is unreasonable not to allow a noble Lord who gave way to the noble Baroness opposite to have a say, so we should hear him.

Lord Fairfax of Cameron: I am grateful, but I am not surprised by the reception because this House is of course a cosy cabal of remain.

As your Lordships have heard from my noble friends Lord Lamont and Lord Howard, this is a wrecking amendment, designed to delay, frustrate and ultimately block Brexit. For all the protestations of my noble friend Lord Hailsham and others, it is a wrecking amendment in substance. Those proposing and supporting it are playing the role of a fifth column for Monsieur Barnier and the EU negotiators. I am sure he is very grateful; they are doing his job for him, as my noble friend Lord King pointed out.

The amendment would tie the Government's hands in the negotiations, in both time and content. It seeks by disguised means to overturn the referendum result and would make our negotiators' already difficult job even more difficult. It is therefore against our national interest. There are many in Germany and elsewhere in the EU who would like us, as they see it, to come to our senses and reverse Brexit, not least because they see us as one of the few sensible people in the room with them. The proposed new clause would work towards that goal.

Of course, its proposers will deny any such intention. It would be more admirable if they were transparent about their intentions, even if they cannot accept the referendum result. At least, the Liberal Democrats are open about their intentions; not so the Labour Party. But the 17.5 million people who voted to leave, including many Labour voters, are watching and noting the manoeuvres in this House.

The proposers and supporters of this new clause are perfectly entitled to do as they are doing, but we are perfectly entitled to call them out for what they are doing: acting as a fifth column for Brussels by undermining the Government from inside.

Baroness Altmann (Con): My Lords, I support this amendment. I feel that several of my noble friends have exaggerated its aims and intent. This is not about frustrating Brexit, nor is it about overturning the referendum; it is merely about fulfilling our role, which is to ask the other place to reconsider. It is about asking the other place to ensure that there is a meaningful vote on whatever the Government manage to negotiate. It is not intended to undermine the negotiations. We are asking the other place to consider whether the vote being offered is meaningful. If the other place is satisfied and it comes back to us, that is another matter, which we will not overturn.

4.30 pm

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, first, I thank all the contributors to this debate. It is right that we have taken the time to discuss it at length, because this amendment has potentially serious implications for delivering a successful Brexit. Of course, I understand why this amendment might look notionally appealing, at least—it triggers a greater role for Parliament should any of the deadlines set by the amendment pass without their terms being met—but let me be very clear; this is not an innocuous, measured amendment. It contains a number of constitutional, practical, legal and political difficulties, all of which we should seek to avoid if we are to leave the EU with the best deal possible, which is what the Government want to achieve. Indeed, this amendment would create a profound constitutional shift in terms of which branch of the state holds the prerogative to act in the international sphere, a point so well made by my noble friends Lord Lamont and Lord Howard and by the noble Lord, Lord Howarth, from the Labour Benches.

[LORD CALLANAN]

I do not suppose that those who are proposing this amendment are making this suggestion lightly, but I cannot support such a move, as I do not believe that it is in the best interests of the country to redefine the nature of our democracy in this way. It is a well-established feature of our constitution that the Executive represent the country in international diplomacy, and this constitutional arrangement exists for very good practical reasons. In any negotiation, there are judgments to be made as to what can reasonably be achieved. Those judgments can be made only by those engaged on the detail. It would be impossible for negotiators to demonstrate the flexibility necessary for an effective negotiation if they are stripped of their authority to make decisions. That will do nothing but guarantee a bad deal for the UK, which is something I hope we all wish to avoid. If the UK is to be a trusted and effective negotiator, with the EU or anybody else, the Executive branch must be competent to negotiate, just as they are competent to act on their own judgment in other areas of international relations. I speak in strong terms, because I want to demonstrate the seriousness with which the Government take this amendment, its implications and the precedent it will set.

The drafting of the amendment itself is of further concern. It states that a draft of the withdrawal agreement must be approved by the Commons before it can be concluded, but it is not clear what "conclude" means in this context. This may seem a lesser point but noble Lords will understand that we need legal certainty to ensure that the vote occurs at the right time in relation to the process of withdrawing from the EU. We would not want to end up in a perverse situation in which a vote must be offered while negotiations are ongoing, for instance. The vote must happen once the final text has been agreed. Until that point, there would be nothing for Parliament to vote upon, given that ultimately, of course, nothing is agreed until everything is agreed.

Lord Hannay of Chiswick: My Lords, I ask the noble Lord to be careful. He is a Member of the European Parliament and knows perfectly well what "conclude" means: it is the moment at which the two parties to an international agreement, having fulfilled all their constitutional requirements, notify one another that the thing can be brought into effect. There is no doubt about that.

Lord Callanan: I was a Member of the European Parliament, but I also know that the vote of the European Parliament is in effect a take-it-or-leave-it vote. They do not seek to bind the hands of the Commission negotiators either.

I also question the implications of this amendment on the public's confidence in our democratic institutions. The scope of proposed new subsection (5) is extremely broad, giving Parliament the power to direct the Government on anything in relation to negotiations: casting back to last week's debate, it does not even add an "appropriate" or "necessary" restriction. That means directions do not have to be just about negotiating tactics or objectives but could feasibly encompass delaying or thwarting our exit completely, which I believe is the motivation of many of the supporters of this amendment. We should think very carefully about how that could be perceived by the electorate. Such a situation would not be compatible with either the result of the referendum nor the commitments given by many parliamentarians to respect the result. I agree with my noble friend Lord Lamont that this amendment would set a range of arbitrary deadlines and milestones after which Parliament may give binding directions to the Government, up to and including an attempt to overturn the referendum result itself.

Does this give the Government the strongest possible hand in negotiating a good deal? I am afraid that it does not—in fact, the opposite: it would create a perverse negotiating incentive for the EU to string out the negotiations for as long as possible. It is not in the UK's interest to hand the EU negotiators a ticking clock and the hope that the more they delay, the more they can undermine the position of the UK Government and create damaging uncertainty and confusion. I agree with my noble friends Lord Blackwell and Lord King, who made precisely this point. The amendment would bolster those who wish not to secure the best deal with the EU but rather to frustrate Brexit altogether—a point that was well made by my noble friend Lord Howard.

However, I do not wish my response to be misinterpreted. I do not make these arguments because I think that the Government are somehow not accountable to Parliament. Of course we are. We have made a number of assurances on this matter. For example, there are some who have argued that this amendment is necessary to ensure that there is a vote on the final deal after the negotiations have concluded. I disagree. As my noble friend Lord Dobbs observed, our commitment to that is very clear and is in the best traditions of Parliament. It was made at the Dispatch Box and confirmed in a Written Ministerial Statement and has been repeated many times since.

I will make that commitment once again: the Government will bring forward a Motion in both Houses of Parliament on the withdrawal agreement and the terms of our future relationship as soon as possible after the negotiations have concluded. In reply to the noble Viscount, Lord Waverley, this vote will cover both the withdrawal agreement and the terms of our future relationship, but we have not settled on the precise wording.

Lord Wallace of Saltaire: Will the Government confirm also that that Motion will be amendable in both Houses?

Lord Callanan: I am not going to dictate what Parliament might want to do with that Motion or any other. Members will be free to table amendments to the withdrawal agreement and implementation Bill.

Baroness Hayter of Kentish Town: Will the Minister answer the other question: will it be binding on the Government?

Lord Callanan: Of course it will be binding on the Government. If Parliament rejects the deal we have negotiated, of course it cannot be implemented.

Lord Butler of Brockwell (CB): I ask the Minister to clarify one other point, which we did clarify in Committee: if Parliament rejects this agreement, is the only alternative that the Government are offering leaving with no agreement at all?

Lord Callanan: If Parliament rejects the agreement, there is nothing for us to legislate further on. It has been rejected. The Article 50 process that Parliament voted for will then kick in: we will leave on 29 March 2019. I repeat that we expect and intend this vote to occur before the European Parliament votes on the deal. If Parliament supports that Motion, we will bring forward the withdrawal agreement and implementation Bill—a piece of primary legislation to give the withdrawal agreement domestic legal effect. Of course, that will be amendable. This is in addition to the ratification process that is a requirement under the Constitutional Reform and Governance Act 2010.

Additionally, the Government will introduce further legislation where it is needed to implement the terms of the future relationship into UK law, providing yet more opportunities for further and proper parliamentary scrutiny.

Baroness Royall of Blaisdon (Lab): Returning to the point made by the noble Lord, Lord Wallace, I thought I heard David Davis suggest in a Select Committee the other day with regard to the meaningful vote in the House of Commons that the resolution might be amendable. I would be grateful for the Minister's comments.

Lord Callanan: I have not seen David Davis's comments but I am sure what he said was true and appropriate.

This is in line with our belief that primary legislation is the appropriate vehicle for major policy changes, as is evidenced by the fact that we have already introduced Bills on sanctions, customs, trade, nuclear safeguards and road haulage.

These are serious commitments. As recently as last week, the Secretary of State for Exiting the European Union took detailed questions on the vote on the final deal at the Exiting the European Union Select Committee. He said:

> "The Government is unlikely to put a vote to the House that it does not intend to take properly seriously".

Perhaps that answers the noble Baroness's question. To discount these assurances is to go against the convention that assurances to Parliament can be relied upon.

Finally, in addition to the problems and complexities I have outlined, the amendment is unnecessary because it is a simple legal fact that, following the amendment made to Clause 9 in the other place, there is no mechanism by which the Government can give the full final withdrawal agreement domestic legal effect without introducing primary legislation.

To summarise, whether intended or not, the drafting of this amendment is problematic. Some of the policy choices in it need to be rethought. Ultimately, large parts of it are simply not fit for purpose. While I suspect that I may not be successful, I strongly urge noble Lords to think again about this amendment.

Viscount Hailsham: My Lords, I have a very strong sense that this House wants to move to an early decision. I confine myself, therefore, to making one substantive point. It is to my noble friend Lord Howard, because what he said underpinned many of the arguments articulated by other noble Lords. He said, "The House of Commons will have its say, the House of Commons will have its way". It underpins his argument, but it is not government policy—that is the point. The Government's policy, as was brought out by the noble Lord, Lord Butler, is "this agreement or no agreement". That it is not letting Parliament have its say. The truth is, if we want Parliament to have a truly meaningful vote, we have to insist on it. That is what this new clause is about, and I wish to test the opinion of this House.

4.41 pm

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4.58 pm

Amendment 50

Moved by ***Lord Newby***

50: Before Clause 9, insert the following new Clause—

"Parliamentary motions on a referendum

(1) A Minister of the Crown must move a motion in each House of Parliament to provide for the option to hold a referendum on whether the United Kingdom should accept the outcome of the negotiations between the Government and the EU under Article 50(2) of the Treaty on European Union, or seek to remain in the EU by revoking the notification of withdrawal from the EU under Article 50.

(2) Such a motion must be moved prior to the enactment of any statute to implement a withdrawal agreement and as a precondition to making regulations under section 9, irrespective of whether either House of Parliament has previously considered or approved a motion relating to the outcome of the negotiations under Article 50(2) of the Treaty on European Union.

(3) If both Houses of Parliament approve the option of a referendum, the Secretary of State must not commence any statute nor make regulations under section 9 to implement a withdrawal agreement, but must bring forward proposals to hold such a referendum, and the Government must seek such an extension of the Article 50 period as may be necessary for this purpose."

Lord Newby (LD): My Lords, your Lordships' House has just passed an amendment to the Bill that gives Parliament a meaningful vote on any Brexit deal. This amendment, standing in my name and those of the noble Lords, Lord Butler and Lord Wigley, and the noble Viscount, Lord Hailsham, is about what happens next. It says the Government must put forward the option of a referendum on the deal, a people's vote to determine whether the people as a whole approve the outcome of the negotiations or seek to remain within the EU. It would not require a referendum to be held in all circumstances but only if Parliament—the Commons in particular—voted for one. In what circumstances might the Commons choose to do this? I think it might well choose to do so if it had rejected the deal that the Government had negotiated, and that is a perfectly plausible outcome.

[Lord Newby]

I have had the privilege of listening to almost all the 16 days on the Bill—some 120 hours of debate—and the dubious pleasure of hearing virtually every word uttered by Ministers during the process. Whether we have discussed clinical trials, family law, environmental protection, police co-ordination or international security, the position of the Government has been virtually identical: they wish us to have arrangements as close as possible to those that currently obtain, to the extent of being prepared to submit to the rulings of the hated European Court of Justice in respect of key regulatory bodies, while accepting that we will not have the benefits nor the influence that we enjoy today. In area after area, they accept that we will be powerless rule-takers. The alleged sunny uplands of being in a more favourable position in any of these areas have, to put it mildly, been shrouded in fog. On the key issue of the customs union, vital to the future of Northern Ireland and our trade more generally, and faced with the brick wall of hard reality, the Government's response is simply that of petulant defiance.

If the Government reach an agreement based on their current negotiating stance, I believe that it will be obvious that it leaves the country poorer, less influential and less secure—as the Prime Minister predicted it would before the referendum. A large majority of MPs and members of your Lordships' House know this, but may yet vote for it. Why? Because the 2016 referendum vote has become sacrosanct, and the expressed will of the people two years ago holds people under its spell. It is as if it has frozen attitudes in a way alien to the democratic principle, which allows people to change their minds.

There is only one way in which this spell can be broken; there is only one way in which MPs can be liberated to vote for what they know is in the country's best interest and in line with their beliefs; and that is giving the people the final say. The spell cast by the previous referendum is so powerful because it reflects the political reality that a vote in the Commons to reject a Brexit deal could not be the end of the matter. In those circumstances, the country would demand a final say.

As the noble Lord, Lord Hamilton, put it at Second Reading, such a vote would mean that he had,

"no option but to take to the streets",—[*Official Report*, 20/2/17; col. 144.]

because he could not get representation in Parliament. I suspect that he is not alone in that view. To save him from a potential criminal record and in order to give the people, who started the Brexit process, the chance to determine how it should be concluded, a vote on the deal should then be held.

Lord Hamilton of Epsom (Con): As the noble Lord mentioned my name, the Liberals were very reluctant to accept the result of the first referendum, so why will they accept the result of the second one if it goes against what their interests are?

Lord Newby: My Lords, the first referendum was a mandate to the Government to negotiate Brexit. At the end of the process, a decision has to be taken on whether that mandate has been adequately fulfilled. The only question is whether the Commons alone or the Commons supported by the people should take that final decision.

Lord Foulkes of Cumnock: With due respect to my noble friend, the first referendum was in 1975, overwhelmingly in favour of the European Union.

Lord Dobbs: I point out to the noble Lord that in 1975 the European Union simply did not exist. He keeps coming out with all this imaginative stuff. I wish we could get back to the facts.

Lord Newby: My Lords, as I was saying, many noble Lords are opposed to referenda, and I have some sympathy with that view, but I am afraid that on this issue the pass was sold when Parliament, including your Lordships' House, approved the 2015 European Union Referendum Bill. On Brexit, Parliament gave the initial decision to the people; it is in no position now to take a stand on the concept of its own sovereignty on this issue.

Lord Grocott: The noble Lord referred to an initial decision. Could he point to any phase in the passing of the referendum Bill when it was emphasised that this would be just an initial decision by the public?

Lord Newby: Well, during the referendum Bill, all sorts of things were said, including by many people that it was an advisory referendum. That soon fell by the wayside, did it not?

Lord Grocott: My Lords—

Noble Lords: No!

Lord Grocott: This is a point of clarification. The noble Lord said that it was an advisory referendum in 2016, a point often made by my noble friend Lord Foulkes. Can he answer this simple question? Is the new referendum that he is considering an advisory one or a binding one?

Lord Newby: My Lords, I said that during the debate that was said. The truth is that, if you ask the people to have a vote, Parliament, having given them a mandate to have a vote, politically cannot come back and say, "Thanks very much, you've had your vote but, actually, we are going to ignore it". Everybody knows that that is not realistic politics.

Lord Lamont of Lerwick: Does the noble Lord remember that in 2008, when other people were not advocating a referendum and there was no renegotiation, Nick Clegg put forward the idea that there should be what he called a real referendum—an in/out referendum? If that had come to pass, what would the Liberals have done if the people had voted no and wanted to leave, and there was no renegotiation? Would that have been binding or not?

Lord Newby: My Lords, that was in the completely different context of the Lisbon treaty. In previous debates in your Lordships' House, a number of noble Lords have thrown at me what former leaders of my

party have said. I would just ask the noble Lord, as we are talking about former leaders, whether he agrees with his former leader, Sir John Major, when he made a speech earlier this year and said, of this debate:

"Peers must ignore any noises off, and be guided by their intellect and their conscience".

To revert to the point that I was attempting to make, on Brexit Parliament gave the initial decision to the people; it is in no position now to take a stand on parliamentary sovereignty on this issue. On Brexit, the horse has well and truly bolted.

It is sometimes argued that people are fed up with Brexit and want to leave it to Parliament and get on and implement it, but that is simply not the case. All recent polling shows that a majority of people now want to have a final say. A poll by YouGov earlier this month, for example, showed that by a majority of 44% to 36% there was support for such a vote. So this is not just the remoaners and, with figures like that, sadly, it is not just the Liberal Democrats. It is a view very widely shared, including by government supporters. In a recent poll of Conservative voters, by a majority of 43% to 34%, almost identical to that of the country as a whole, they said that they now wanted a vote on the issue.

So, what are the objections to the proposed amendment? First, it is argued that it is too soon to put such a provision into legislation. However, just look at the timetable. This Bill will receive Royal Assent sometime in June at the earliest. The Government believe that they will negotiate a withdrawal agreement by the end of October, a claim confirmed by the Secretary of State for Exiting the EU before a Commons Select Committee last week. If we take the Government at their word, this means that the approval resolution, provided for in the amendment which the House has just passed, could be brought before Parliament within 20 weeks of the Bill gaining Royal Assent and before any further legislative opportunity to provide for the referendum option had presented itself.

Far from being premature, this amendment is extremely urgent. It is argued by some members of your Lordships' House that, if the Commons were to reject a Brexit deal, the correct next step should be a general election, rather than a referendum. However, this is a poor alternative. As last year's general election showed, the issues which dominate a campaign at the start are sometimes very different from those which do so at the conclusion. At that election, polling showed that, in the last crucial days of the campaign, Brexit was supplanted by terrorism as the most important issue in many people's minds. In any new election, health, education, jobs, housing, the qualities of the rival leaders, and issues which unexpectedly flare up in the campaign itself—as terrorism did in last year's—would determine how many people voted. An election is, therefore, an extremely unsatisfactory mechanism for taking the people's view on any single issue.

It is argued that a referendum would be too divisive but, in the circumstances of the Commons voting against a Brexit deal, to deny the people a final say would be even more divisive.

Lord Campbell-Savours (Lab): Will the noble Lord answer the question asked by my noble friend Lord Grocott? I understand that he speaks for his own Front Bench and that what he says is, therefore, the formal position of his party. In the event that this referendum were to take place, would the Liberal Democrats accept its result as binding?

Lord Newby: Whatever the legal words, it would be politically binding, by which I mean that the Commons would not seek to overturn it. That is the precedent set by this referendum. We know that, at the time, the vast majority of Members of the House of Commons opposed the outcome of the referendum. They accepted it, though, because that was the political reality, whether it was technically a binding referendum or not. However the people vote if there is a further referendum, that will be taken by the Commons as a binding mandate from the people.

We have to accept that, whatever the outcome of the Brexit process, the country is now very deeply divided. Anybody who has been out canvassing in recent weeks will be only too well aware of that. Many Members of your Lordships' House will know how keenly their children and grandchildren feel on this issue. All of us who are engaged in public life have a duty to reduce this division in the years ahead, but that great challenge now confronts us, referendum or no referendum.

5.15 pm

Finally, it is argued that there will be no time for a referendum before we are set to leave the EU on 29 March next year. The noble Lords who are proposing the amendment accept that this is a possibility. That is why it provides for the Government to seek an extension of the Article 50 period, if necessary, to allow a referendum to be held. We believe that, in practice, such a request would be granted. There are many uncertainties—

Lord Green of Deddington (CB): The noble Lord just made an important point: there is no certainty that that would be granted. Why does the noble Lord believe that it will be? Surely that is a matter for the ECJ, or may become one. What is behind the noble Lord's remark?

Lord Newby: It would be a matter for member states acting unanimously. Not surprisingly, those of us who might wish for an extension of the Article 50 process have taken advice from Members of your Lordships' House, from representatives of institutions and from other Governments, and we have formed the view that they would in those circumstances allow a limited extension of the Article 50 process to enable a referendum to be held.

This amendment complements the one we have just passed. It provides for an option, not a requirement, for Parliament to decide to hold a referendum when we see the terms of the withdrawal agreement. It would give the people who started the Brexit process the chance to have a final say in its outcome. I commend it to the House.

Lord Cavendish of Furness (Con): Before the noble Lord sits down, could he tell us what the question would be in his referendum? Would it be in essence his speech?

Lord Newby: I suggest that the noble Lord reads the amendment.

Lord Wigley (PC): My Lords, I am glad to support Amendment 50, to which I have added my name, which was moved so effectively by the noble Lord, Lord Newby. I will add a few comments of my own to explain why it is essential that a provision along these lines is incorporated into the Bill we send back for further consideration to the elected Chamber.

I make it clear that I have a great dislike of referenda as a tool for sanctioning complex legislation. A referendum may be all right for approving a simple, transparent, binary issue which cuts across traditional party divides, such as opening the pubs on Sundays in Wales, as was mentioned in Committee. The more complex the issue, the more inappropriate a referendum is. However, the genie is already out of the bottle. There is a valid question as to whether a decision taken by referendum can—or perhaps I should say should—be overturned by a vote by Members of Parliament or by a general election, and certainly not by Members of an unelected House. None the less, those MPs who at last year's election gave their constituents a pledge that they would do everything in their power to ensure that the UK remained in the European Union are duty-bound to redeem that pledge by the way they vote, as are MPs who committed in the opposite direction.

By this amendment we would facilitate MPs having a choice at their disposal when the Bill goes back to them—and in fact, they would have two choices. The first is the fundamental one: that MPs can return to the question of whether the Bill should be amended by them to provide a referendum in circumstances where they deem that appropriate. If we reject this amendment tonight, we would in effect prevent MPs giving further thought to that issue. When circumstances change, sensible MPs may want to change their minds. However, unless we give them the hook on which to latch any initiatives relating to a referendum, we essentially lock out the question of a referendum in any circumstances whatever.

The second area of choice we would facilitate by this amendment relates to the circumstances in which a referendum may be required. I believe that if the Government were able to negotiate a deal which enabled the UK, while leaving the EU, to continue to have a customs union relationship with the EU, and which enabled our industry and agriculture to participate in the single market, as outlined in the Welsh White Paper put forward by the Welsh Government and opposition parties last year, that should be endorsed by MPs without a further referendum. Not least, such an option would resolve both the Ireland and Gibraltar issues, which would be as good a compromise as we are likely to achieve. If, however, the Government fail to reach a satisfactory agreement which protects the interests of exporters and those who depend on the availability of EU workers to meet their needs, and if they secure no agreement at all and we face the utter disaster of a cliff edge prospect, MPs must be allowed to revert the issue back to the people. If voters then endorse a no-deal exit from the EU, with all that that means, so be it.

Some noble Lords may well argue that the decision at that stage should be taken by MPs and that they, if they are so minded, should have the option of overturning the referendum outcome. There are, of course, two basic reasons why this may not be possible. The first is that the Government have repeatedly—and again today—stated that the only option other than the negotiated settlement will be to quit the EU without agreement; essentially, on world trade terms. The Government continually refuse to give MPs or this Chamber the option of being able to reject a hard Brexit. In these circumstances, I believe that MPs should be allowed the option of considering a confirmatory referendum as one outcome. This amendment gives them that option. It allows them the maximum flexibility: it does not instruct them to hold a confirmatory referendum but it allows MPs to go down that path, if circumstances so dictate.

It is for these reasons that I implore colleagues, even if they share my dislike for referenda, to pass this amendment tonight and, by so doing, to enable MPs when this Bill returns to them shortly to keep the referendum option open and, in the fullness of time, to use it if, in their judgment, that is the only way to ratify or reject a worst-case scenario of leaving the EU without agreement. I commend the amendment to the House.

Lord Butler of Brockwell: My Lords, I have put my name to this amendment. Although I have always maintained that the people ought to have the opportunity of a referendum on the terms of our leaving the European Union, as the noble Lord, Lord Wigley said, this amendment does not mandate such a referendum. It gives Parliament the option of a referendum if, and only if, Parliament believes that the terms secured by the Government would be more damaging to our country than staying in the EU.

I supported the amendment that the House has just passed. Of course Parliament should be allowed a wider choice than the choice which, as the Minister admitted, the Government intend, and of course we must hope that the Government secure a good agreement. But Parliament should not be limited to what the noble Baroness, Lady Hayter, described as a Hobson's choice between a bad agreement and no agreement at all. For that reason, I will also support Amendment 62 in the names of the noble Lords, Lord Cormack, Lord Reid, Lord Deben and Lord Balfe.

Although no one relishes the idea of a further referendum—I certainly do not—I believe that Amendment 50 is the logical consequence of the one that the House has just passed, which says that, if Parliament withholds approval of the withdrawal agreement, the Government must follow any direction approved by the House of Commons and considered by the House of Lords. I have considerable sympathy with the arguments advanced by the noble Lords, Lord Howard and Lord Lamont, against Parliament giving instructions to the Government. However, I believe that there will, in effect, be no choice for anybody about the instructions that would have to

be given. About this, we have to be realistic. Whatever agreement is reached will be the result of long and painful negotiations. We cannot realistically expect the EU to be willing to reopen the negotiations and give us better terms at the behest of the UK Parliament—that is simply not a possible prospect.

It is in this respect that Amendment 50 goes further than Amendment 49. It recognises, in keeping with my view, that the only alternative to an unacceptable agreement is no agreement at all. That is not acceptable. The only other option is to withdraw our notice under Article 50. We must be honest that that is what a rejection of the agreement would entail. At the same time—

Lord Green of Deddington: I have listened very carefully to the noble Lord, but what would be the terms? We do not know for sure that we can lift our Article 50, but nor do we know—and nor would we know if a referendum were called—what terms we could return on. Would we get the same rebate? Would we have to undertake to join Schengen or the euro and so forth? Surely, we cannot assume that 27 countries will give us a completely clean return. Therefore, it would be rather difficult to know what the two options for the referendum were.

Lord Butler of Brockwell: That is precisely the point that I am making. We certainly cannot be sure that, if the agreement were rejected, the EU would give us better terms. I do not believe for a moment that it would. In that case, the only other alternative is to think again about our notice under Article 50. That is what we need to face up to.

The amendment acknowledges that, since the decision to leave the EU was taken by the British people, a decision to withdraw our notice could also be taken only by the British people. That is where a further referendum comes in. It is not ignoring the will of the people but submitting to it. I realise that those who believe that the United Kingdom should leave the European Union oppose submitting the view of Parliament to a decision of the people. But I find it difficult to see why they regard themselves as more democratic than those who favour giving the people the final say.

Amendment 50 is also realistic about the timetable, as the noble Lord the leader of the Liberal Democrats in this House has said. An agreement even in broad terms will not be reached until this October at the earliest. If Parliament rejects the agreement, time will be needed to legislate for a referendum and hold it. That would, in all likelihood, be impracticable before March 2019. So the amendment requires the Government to seek an extension of the Article 50 period for that purpose. It would, as has been acknowledged, be up to the EU partners to decide on whether such an extension should be granted, but if there is a prospect that it could enable the UK to stay within the EU, I believe that it would be granted.

Those who have reservations about a further referendum should not feel that they would be committing themselves by supporting this amendment tonight. It would be an option if, and only if, Parliament finds the outcome of the negotiations unacceptable. At that point, it would be the only option. But the amendment ensures that Parliament would at least have that option, and I urge the House to support it.

Baroness Wheatcroft (Con): My Lords, I support the amendment. It is increasingly clear that the public want a vote on the final deal. Perhaps it is not surprising that, asked whether the public or politicians should have the final say, a majority is very clear that it should not be the politicians. They feel that they have been let down by the politicians. The Brexit that was dangled before them no longer seems to be on offer—the land of milk and honey that came with no bill attached was never going to be a reality and the people are waking up to that now.

Earlier this month, I attended the launch of the campaign for a people's vote on the deal. I confess that it was the first time that I had been inside the Electric Ballroom in Camden, but it was an upbeat and optimistic gathering. By contrast, according to the pollsters, the category of optimistic leavers is shrinking very fast. At the Electric Ballroom, there were eloquent speeches from people who are not the usual suspects. The actor Sir Patrick Stewart talked passionately about his fears for a country that was headed in the direction that this one is. A leading surgeon spoke of the damage that Brexit is already inflicting on the NHS, with doctors and nurses leaving. People working with student unions stressed how strongly young people feel about having a vote on the deal; I know at least one person in this House who was vigorously opposed to the idea of a referendum who has changed his mind because he says that his grandchildren would never forgive him if he did not support the amendment.

5.30 pm

Like other noble Lords, I do not like referenda, but when the country has got itself into a mess with a referendum, perhaps the only way out is with another one. Some people will argue that to support the amendment is to try to frustrate the will of the people, but the will of the people is now for a vote on the terms of the deal. I hope that colleagues will heed the words of Sir John Major from earlier this year:

> "Peers must ignore any noises off, and be guided by their intellect and their conscience".

The amendment gives Parliament the option—and only that—of a referendum if, once a deal or no deal is on the table, the will of the people is that they should have a vote on it. Parliament should then be able to grant it. The amendment gives Parliament that power, so I support it.

Lord Adonis (Lab): My Lords, I strongly support the amendment and, along with many of my noble friends, I will vote for it.

Few of us would have started from here. Most of us are in the position of the now-famous maiden aunts of the noble Lord, Lord Lisvane, who turned up at the Odeon next to the Electric Ballroom on 23 June 2016 to find that only two films were showing: "Reservoir Dogs" and "The Texas Chain Saw Massacre". I am now in a position to tell the House what happened after they went to the cinema. They have been in touch and told me that they decided to return home without watching either film. With the noble Lord's help, they

[LORD ADONIS]
put a DVD on. It was Alfred Hitchcock's "Psycho". They are still watching it in slow motion. To their horror, the point they have reached is that of Janet Leigh about to go into the shower—or, to be more precise, she goes into the shower on 29 March next year, in 333 days. The big question facing your Lordships and the country is this: is there a better ending to the film, knowing—as we do—that the British people will suffer serious harm if Brexit proceeds, but equally that we are a democracy and believe in the will of the people?

The only way I can see of deciding Brexit democratically, with a real option to reject it, is a referendum on Mrs May's withdrawal treaty after she presents it to Parliament this autumn. Like many noble Lords, I am not a fan of national referendums for all the reasons that Churchill and Attlee banned them in post-war Germany. The imperative for a referendum on the Brexit deal is that we currently have a Government in office who believe that they are operating under an instruction from the British people two years ago to withdraw from the European Union. If that view turns out not to be supported by a majority of the Members of the House of Commons when they consider the exit treaty in the autumn but the Government present the treaty as a matter of confidence—which they surely will, and must, given its centrality to government policy—the only constitutional course is for the people to judge whether the Brexit treaty is their considered will or their considered will is to stay in the European Union. This could take the form of a general election but we have already had two of those in the last three years so a referendum looks like a highly credible option.

I want to make three quick points. First, I say this to my noble friends: the amendment straightforwardly supports Labour Party policy. The resolution on Brexit, passed unanimously by our conference last year, stated:

> "Unless the final settlement proves to be acceptable, then the option of retaining EU membership must be retained. The final settlement should therefore be subject to approval, through Parliament and potentially through a general election or referendum".

That is party policy and what the amendment enshrines in law.

Secondly, it is important not to be distracted by subsidiary issues. Is the time ripe? In my experience, the time is never completely ripe, but this is probably the only chance we will get before the withdrawal treaty so there is not much time left and we should seize it. What about the referendum question? Parliament will decide on that; of course, as said by the noble Lord, Lord Butler, it will be a decision between the treaty and staying in the EU, because if the majority of MPs are for a referendum, that is the choice they will want to put before the country. Is a referendum too divisive? Well, it will be, but nothing like as divisive as when Brexit goes badly wrong, there is a search for scapegoats and we have to try to get back into the EU after we have left.

Finally, I want to make a point about abstention, which, to my great regret, is my party's whip. On the great issues of life and politics, it is hard to abstain with dignity and self-respect. All of us will be asked what we did. I for one do not intend to say, "I abstained". I will say, "I voted for the British people to be in control of their destiny at a moment of supreme national crisis".

Lord Brown of Eaton-under-Heywood (CB): My Lords, I abstained on the last vote because I thought that many of the arguments against that amendment were very powerful and it was, in many ways, a defective amendment. However, I strongly support this amendment. I have no such doubts. I support it even though I readily recognise that it is entirely possible—many people think, highly likely—that in a further referendum, the vote would again be in favour of leaving. This time, I suggest there is much to be said for making the next referendum, unlike the first, legally binding, with no question of "neverendums".

Of course, the public have already voted, and certainly that vote—although not legally binding—made it imperative that we give an Article 50 notification. We have done that and continue to explore what terms for leaving the EU are available to us. The public cannot yet vote on those available terms, but why should they not eventually be allowed to do so? Surely not even the most fervent Brexiteer would argue that a further referendum would not present the public with an altogether clearer, and better informed, choice than last time. Why would that not be properly regarded as giving them a further choice and further respecting, rather than betraying, the earlier expression of the popular will?

I have struck out a great deal from what I was intending to say because much of it has already been said by others. However, I should deal with one further point. An argument, which I confess initially troubled me against a further referendum, is this: because the other 27 countries would prefer us to remain, as I think most people believe, if there is a further referendum, they will make the terms of leaving as unattractive as possible to maximise the chance of the public rejecting the deal on a further vote. So, it is said, a commitment to a further referendum would compromise our negotiating position. But I have concluded that, ultimately, that is a completely unreal objection.

In the first place, given that a further vote could very well still, as I say, be to leave, and that if, finally, we were to do so, then it is patently in the interests of all the EU states that we leave on mutually beneficial terms. I do not believe that the proposal of a further referendum would, in truth, worsen those terms. But put that thought aside. The plain fact is that, in any event, there is an obvious and powerful reason why the remaining 27 will not wish to allow us too favourable a deal—namely their concern to discourage from leaving any other state which is possibly inclined to exit the Union as we now propose.

One other point I will touch on is that made by my noble friend Lord Green of Deddington. I am not sure that the noble Lord, Lord Butler, quite appreciated it. What I think my noble friend Lord Green said is: how do we know that we will not, if we vote to remain, lose the rebate and our right not to be within euroland? The noble Lord, Lord Kerr, has made it plain—there is nobody better able to do this—that, in his view, a right to withdraw our notification must inevitably leave us in the same position as we started in. I support

that view too. Again, given that the other 27 would want the vote to be to remain, I think that they would readily make that clear.

In short, the case for the public to have the final vote on this really most momentous of issues, perhaps in many of our lifetimes, now seems to be overwhelming and I urge your Lordships to support it.

Lord Howarth of Newport: My Lords, this amendment is reckless. It is peculiarly reckless proposed in an unelected House. It would be reckless if it were to be entertained by the elected House. The 2016 referendum generated bitter divisions in our country. To rub salt in those wounds and fan the flames of that anger by offering this option, raising hopes of a further referendum, seems to be most unwise. My noble friend Lord Adonis, in his Hitchcockian script, truly made my flesh creep.

The 2016 referendum exposed depths of mistrust and resentment against the political establishment and against what has broadly been the policy orthodoxy of recent decades. The appropriate response to that, surely—even if you deeply disagree with the view that was taken by the majority then, even if you consider that people were voting against their own best interests—is not to say, "You are stupid, bigoted and ignorant. You are wrong. You should think again and get it right". That is how it will be perceived.

Noble Lords: No!

Lord Howarth of Newport: Yes, it will. Rather, we should seek to understand the nature of this public discontent and the depths of this anger and offer something better. I give way to my noble friend.

Lord Winston (Lab): I am grateful to my noble friend for giving way. Would he not concede that the political resentment against political figures occurred before the referendum rather than afterwards?

Lord Howarth of Newport: Indeed it did, and what we saw in the vote at the referendum was an extremely disturbing expression of that. As I say, we should not fan those flames.

In any case, there is no sign that those who voted to leave have changed their minds. A recent ComRes poll, which took a rather larger sample than the occupants of the Electric Ballroom in Camden, found that 68% think that remainers should show respect for the majority for leave, and that we should get on with it and end the uncertainty. Instead of which, however, there is a proposal for a big campaign in support of a second referendum. That would be a bad use of time, energy and money.

I believe that the result would be the same because the European Union is unreformed. It remains in relative economic decline. It is undemocratic in its processes and it has completely failed to grip the problem of migration. There is deep popular discontent still with the EU. The only proposal for reform that is around is that of President Macron for deeper integration. In the unlikely event that that comes to pass, the UK would find itself even more marginalised.

5.45 pm

Lord Hamilton of Epsom: Does the noble Lord think that dissatisfaction with the EU has grown greater since the stance it has taken on the negotiations?

Lord Howarth of Newport: There is a great deal of national grumpiness, and when the British people get grumpy, they are a force to be reckoned with. The dispossessed rejected the status quo and were unimpressed by Project Fear, and my advice to my noble friends is to stop digging.

The false simplifications, the distortions and the mendacities on both sides in the referendum campaign were a degradation of our politics. I believe that the nation's heart would sink at the thought of another bout of all of that. The second referendum would inevitably intensify the divisions and the bitterness of the first one. There would, I fear, be ugly episodes. The losers would demand a third referendum, whatever the noble Lords, Lord Newby and Lord Wigley, say.

We are not immune in this country to the neo-fascism that has so deeply, disturbingly possessed swathes of central and eastern Europe. We are fortunate that the most sinister figure to present himself as a leader of the far right in this country was Nigel Farage. If we were to have a second referendum, I greatly fear that a far more charismatic and sinister leader might emerge on the far right.

In any case, referendums are alien to our constitution, and the issues that would fall to be decided at a referendum, if and when the people were asked to judge the terms of the deal the Government had negotiated, would be immensely complex technical issues about trade, financial services, immigration, security, environmental protection and so forth. These complex issues should be determined by indirect democracy, by the intricate processes of parliamentary government, not by the crude instrument of a plebiscite.

I am always a little unsure of myself when I find myself disagreeing with the noble and learned Lord, Lord Brown of Eaton-under-Heywood, because I have huge respect for his judgment. He calls for one last referendum. But the Constitutional Committee of your Lordships' House advised us that referendums should occur only rarely, but were appropriate when a major constitutional issue needed to be decided. That is what happened in 2016. There was a referendum on the great constitutional issue of whether we should leave the European Union and reclaim the sovereignty that we had lent to it. That great constitutional issue has been decided. Strictly, of course, as noble Lords have mentioned, in legal terms that particular referendum was advisory, but politically it was binding.

Noble Lords may recollect this document. The Government sent it to every household in the country. It was sent to 27 million households and cost £9.3 million of taxpayers' money. In it the Government said:

> "The referendum on Thursday, 23 June is your chance to decide if we should remain in or leave the European Union … This is your decision. The government will implement what you decide".

We have to live with the results of our democratic choices. If Parliament and the Government were to renege on the commitment made by the Government

[LORD HOWARTH OF NEWPORT]

in that document, I believe there would be a very serious crisis in our country.

Great political turning points in the national life are inevitably uncomfortable for the establishment. The political genius of the British establishment has hitherto been to accommodate itself, however reluctantly, to big, uncomfortable changes: Catholic emancipation, the Great Reform Act 1832, repeal of the Corn Laws, death duties, reform of the House of Lords in 1911, the welfare state and the loss of empire. The latest such challenge is leaving the European Union. Your Lordships' House and the people who take the big decisions in government and public administration on behalf of the people should now be similarly prudent, constructive and magnanimous. We should not waste our energy in seeking to overthrow the democratic decision of the British people to leave a European Union that is discredited in the eyes of the majority and perceived as failing because of mass youth unemployment, deep inequalities and its undemocratic nature.

It is for the left to rediscover the generous patriotism of JB Priestley and George Orwell. Agitating for a second referendum is displacement activity. The real challenge is to revive the centre left and to get beyond the intellectual and political bankruptcy of social democracy in the period since 2008 and the global financial crisis. But if all the centre can now offer, 10 years after that moment, is to remain in Europe, voters will say, "These politicians don't understand us, they don't respect us and they have nothing useful to offer us", and they will move to the extremes. If the respectable politicians do not engage with voters on these matters of the deepest possible concern then disreputable politicians will take our place. I heard a former Commissioner of the European Union on the "Today" programme criticise his former colleagues, saying that those in Brussels tend to live in something of a bubble. I hope that will not be said of your Lordships' House.

Lord Faulks (Con): My Lords, I will not go into the virtues of remaining in the European Union or leaving it, but simply concentrate on the amendment. I was one of the Minsters who had the privilege of taking the referendum Bill through your Lordships' House. As many noble Lords will recall, there were debates about the extent of the franchise, among other matters, but there was no suggestion by any of the major parties of a threshold, let alone a second referendum. One can only imagine the response there would have been following the results if it had been the other way around and there was an attempt then to have a further referendum—surely what is sauce for the goose.

It must be remembered that the Bill went through Parliament when a general election was looming. Any party, or combination of parties, could have formed the next Government. Surely it was incumbent on each party to make clear that it would not honour the result of the referendum without a further vote or the option of one.

There are a number of uncertainties about the amendment. Can we revoke the notification of withdrawal under Article 50? I know that the noble Lord, Lord Kerr, says that we can, but, with the greatest respect to him—I really mean that—that is ultimately a matter that could be determined only by the European Court of Justice in Luxembourg. We cannot predict with any certainty what the outcome might be. Similarly, we do not know whether we would be able to seek an extension of the Article 50 period, which is also a necessary part of the amendment as provided by proposed new subsection (3), although I know the noble Lord, Lord Newby, has had some secret soundings. But the whole premise of the amendment is legal uncertainty—precisely the opposite of what the Bill is intended to achieve.

There is yet another unsatisfactory aspect to the amendment. If a further referendum were held, it would give two options: acceptance or revocation of the notification of withdrawal, which would lead to our remaining in the EU should there be agreement by all parties or—this is uncertain—the ECJ rules that we are entitled to revoke unilaterally, notwithstanding the objection of any or all of the other 27. But what about the option in the event of a referendum that we should leave the EU without a concluded agreement? This is the no deal scenario. I—and, I suspect, most of your Lordships' House—would much prefer that we did not leave without a concluded agreement, but there must surely be an opportunity for those voting in this referendum, having been informed by the lengthy and highly publicised process of negotiations between the Government and the EU, to conclude that they do not wish to remain in the EU and nor do they want to accept the deal that has been concluded. The proposed referendum in the amendment precludes that option.

If Parliament now denies voters a chance to leave the EU, except on onerous terms imposed by a combination of parliamentary fetters and/or unreasonable conduct from the EU, surely we should not deny the people the chance to leave without a deal. That would be treating people with contempt, and would be inconsistent with the EU referendum Act passed by both Houses of Parliament and what was or was not said by all the parties when the Bill went through Parliament. I do not need to elaborate on how divisive a further referendum would be—the first one was quite divisive enough.

Finally, is it not time that the Labour Party made clear what its approach to a second referendum is? If it thinks that voters should have an opportunity to think again, should it not say so rather than hover waiting for some political advantage?

Lord Kerr of Kinlochard (CB): I shall speak briefly on two technical points. First, the noble Lord, Lord Green, asked whether we would have to pay a price if we chose to withdraw the Article 50 letter. Secondly, the noble Lord, Lord Faulks, asked whether we are confident that we could withdraw the Article 50 letter unilaterally. The answer to the noble Lord, Lord Green, is that given by the noble and learned Lord, Lord Brown of Eaton-under-Heywood. Of course we could not be charged a political price if we withdrew the Article 50 letter during the period of the two years' negotiation because we would never have left. We would have

exactly the rights of a member because we would never have given them up. There would be no question of opt-outs or rebates being taken from us. Of course, the converse would apply if, having left the European Union, we decided that we wanted to come back. There would then be no chance of securing opt-outs or rebates. But, as a member in good standing, operating under the normal voting rules—the rebate is removable only by unanimity and I rather suspect we would not vote for its removal—there is no question that we would be paying a political price.

On the question of whether we would legally be able to withdraw the letter unilaterally, the noble Lord, Lord Faulks, who is a much better lawyer than I am—I am not a lawyer at all—said that that would be a matter for the ECJ. With respect, I do not think so. If the Prime Minister of the United Kingdom appeared in the European Council and said that, as a result of an election or a referendum, there had been a change of view in the United Kingdom and that we would like to stay in the European Union, there is absolutely no doubt what the European Council's answer would be. It is on the record. The President of the Council, the President of the Commission, the President of the Parliament, the President of France and the Chancellor of Germany are all on record as saying that, although they respect our plan to leave, they would rather we changed our mind and stayed. There is absolutely no doubt that the European Council would say yes. It is conceivable that, three years later, a case might go to the European Court of Justice. Were the European Council correct and intra vires when it agreed that the British might take back their Article 50 letter, I have absolutely no doubt how the ECJ would rule in that case when it came up.

The second point I want to touch on is whether an extension of the two-year negotiating period would, if we sought it, be obtainable. This seems very relevant to the amendment we are considering. If the House of Commons were to choose to adopt the option—it is only an option in the amendment—of putting the deal to the people, it would require an extension. It would be impossible to do that before 29 March. We do not have a referendum law in our statute book; we would have to pass one. There would then have to be a campaign. Realistically, we would be looking at June or perhaps September. We would be looking for, say, a six-month extension.

Would we secure the necessary unanimity in the European Council for that extension? It is a matter of judgment. In my view, it would depend entirely on the reason we gave. If, for example, we said, "We'd like an extension to carry on negotiating. We'd like to send David Davis across for a few more months", it is conceivable that we might not get the necessary unanimity. If, on the other hand, we were to tell 27 democracies that we needed an extension because the House of Commons had voted in a way that meant there had to be a referendum, or an election, there is no question but that we would get the necessary unanimity—in my view; that is only a judgment. The option in the amendment, and it is only an option, therefore seems reasonable, foreseeable and possible, and I shall vote for it.

6 pm

Lord Green of Deddington: My Lords, would we still be members of the European Union for the period of the extension and therefore have all the rights of a member?

Lord Kerr of Kinlochard: Of course.

Lord Dobbs: My Lords, I shall be brief, but I do not expect it to make me many friends. I cannot believe how many noble Lords have said, "I hate referendums, but I want another one". It is like falling down the rabbit hole and landing on our heads. The noble and learned Lord, Lord Brown, said that a second referendum would be decisive. I suggest that it would not be. If there is a second referendum, why not a third referendum or a fourth? A second referendum would not settle the issue; it would only prolong the agony. The noble Lord, Lord Kerr, has just explained clearly how extended that uncertainty and agony might prove. Which of those referendums—the second, the third or the fourth—would be, in today's parlance, the "meaningful" vote?

I have to take the noble Lord, Lord Newby, slightly to task when he responded to the noble Lord, Lord Lamont, about the words of Mr Clegg that he waved in front of him. They had nothing do with the Lisbon treaty. I will quote Mr Clegg. He said:

> "It's time for a real referendum on Europe … Only a real referendum on Britain's membership of the EU will let the people decide".

He also asked voters to sign a petition, to give the people "a real choice". There was not a squeak, not a little chirrup, about a second referendum—no ifs, ands or buts, and no suggestion that people might change their mind.

While we are talking about Lib Dem policy, it is interesting that, in 2011, they forced through the AV referendum Bill. It was their Bill, their policy. I voted against it—I got myself into terrible trouble with my Whips, but I think the noble Lord sitting on the Front Bench has forgiven me. It was a binding vote; it was obligatory. There was no suggestion that we could change our mind. It was, I believe, the only binding referendum in our legislative history. There was no chance of Parliament, let alone the people, changing their mind. That until now has been Lib Dem policy, and I do not believe they can have it both ways.

I talked earlier about Mr Clegg's position on the instructions of the electorate, so perhaps I may briefly wrap up—

Lord Foulkes of Cumnock: Hear, hear!

Lord Dobbs: I am glad to see that the noble Lord is still awake. All I require now is his attention.

Mr Cable spoke 18 months ago, in September 2016, and used these words:

> "There are people in the party"—

the Lib Dem party—

> "who don't accept the outcome, who feel incredibly angry and feel it's reversible, that somehow we can undo it. The public have voted and I do think it's seriously disrespectful and politically utterly counterproductive to say 'sorry guys, you've got it wrong, we're going to try again', I don't think we can do that".

I agree with him.

Lord Grocott: My Lords, it may surprise people who follow anything that I say in this House—there do not need to be many—that I am not opposed in principle to a further referendum. How could I be? I was on the losing side once in a referendum vote, in 1975, and I was very keen to have a second referendum. I certainly got one, but it took 41 years. I therefore have no objection to people who say, "Things can change; circumstances can alter, and maybe we should have another referendum" But to have another referendum in two years stretches it just a little. I shall not say, "Wait till 2057", which would be a direct comparison with precedent, but it certainly needs to be much longer than two years. Anyone seriously arguing for this needs at least to be able to answer yes to one question, which is this: was that made clear when the referendum Bill was going through this House? I sat through nearly all of it—Second Reading, Committee and Report. I must have missed the speech of someone who said, "If this referendum that we all voted for"—we did; there was no opposition to the Bill at Third Reading—"results in a leave vote, we will need to have a second referendum in a couple of years' time". Anyone who said that, please ignore the rest of my remarks—I did not hear it. I shall happily give way to my noble friend, who I know is a very reluctant remainer.

Lord Reid of Cardowan: I was, until I saw the mess the Government are making of these negotiations. My noble friend makes a very good point on the referendum, but it would not be a second referendum on the same proposition. It is not just the facts that have changed; it is the proposition on which people will be asked to vote that will have changed in the light of the deal.

Lord Grocott: I am really grateful to my noble friend for pointing out that, if circumstances change, there is a case for a further referendum. During the 41-year gap between the 1975 referendum and the further referendum, the European Union became unrecognisable in comparison with the institution that was voted for in 1975. It went from nine members to 28; it introduced the single market; the powers of the Commission changed beyond all recognition, as did the circumstances in which the European Parliament met. Once again, if there was anyone in this House who during that period said, "Really, things have changed quite dramatically; it is now a different proposition"—to use my noble friend's expression—"and we ought to have a second referendum now to see whether the people still agree with what they said in 1975", I did not hear that. It is another speech that I must have missed; I keep missing speeches. There was no acknowledgement, so far as I could see, that, because circumstances changed between 1975 and 2016, there should be a referendum. On the contrary, every time a further referendum was raised, any remainer—if I can describe it in those terms—was vehemently opposed to it. Now we have the irony of people who are opposed to one referendum wanting two.

The argument frequently used—I do not know whether this was what my noble friend was getting at—is that when people voted leave, they did not really know the full details and consequences of what they were voting for. I have had the privilege of representing two parliamentary constituencies, both of them very large. I have spoken to thousands, maybe tens of thousands, of people. I never found anyone in either of those parts of the country who got confused by the meaning of the word "leave". Yet for some strange reason, in the immediate vicinity of Westminster there are large numbers of able people for whom the meaning of the word tortures them. They go into paroxysms of uncertainty about precisely what is meant by leave.

I know what leave means: at the very least it means you do not have to continue to obey the rules of the organisation you are leaving. I would also argue that if you leave an organisation you do not have to carry on paying the subscription. My noble friend Lord Adonis supports me in the words I am saying: he left the Liberal Democrats and joined the Labour Party—an excellent move; I commend him for that decision—but I very much doubt whether he continues to pay a subscription to the Liberal Democrats. When you leave an organisation, you do not pay the subs and you do not obey the rules; it is pretty simple.

Lord Adonis: It is true that I do not pay £39 billion to the Liberal Democrats; that is going to be the cost of exiting under the agreement that Her Majesty's Government have reached. Would my noble friend refund the voters that £39 billion as part of his arrangement for leaving?

Lord Grocott: That £39 billion is a lot less, of course, than the amount we would need to pay in if we remained in for a further 41 years—the figure 41, he may remember, is of particular interest to me.

The other thing I have noticed about so many of these discussions—I have to tie myself down and not jump up every time it is mentioned—is the psychic powers of the remainers, which I am really in awe of. Hardly any remainer I have come across does not know precisely why the leave voters voted the way they did. We keep being told that people definitely did not vote to leave the customs union. People definitely did not vote to leave the single market, we are told. I do not know whether that is true or not—I do not possess these psychic powers—but I can say as a matter of fact that we definitely did not vote to remain in the European Union. That is a certainty as a result of the last referendum.

People say it is not really a second referendum; they are different questions. One question remains on both the referendum we have had and the one that is being proposed. The option to remain is there, so if you did not vote first time to remain, you get a second chance to remain. You do not get a second chance to leave, in a straightforward decision. So I find it increasingly unconvincing that the motives of those seeking a second referendum are an ardent desire to recheck the views of the British public. I think that such an amendment, such an attempt to have a second referendum within two years of the first, is no less than what we all in this House know, remainers and leavers—it is an attempt to reverse the decision of the first referendum. That is unacceptable and we should vote against it.

Lord Bilimoria: My Lords, when the noble Lord, Lord Newby, spoke to Amendment 50, he spoke about a spell. I say to the noble Lord, Lord Callanan, that

there is one reason why we need this amendment: as he made very clear on the last amendment, the Government are giving us the option of deal or no deal—to crash out on WTO rules. The noble Lord, Lord Butler, said that that was not acceptable. I ask the noble Lord, Lord Grocott, how it can be fair to give people a yes/no vote. The noble Lord, Lord Dobbs, compares it with the AV referendum: that was a very simple result; this is a yes/no, leave on any basis. There is no way that the people would have agreed to that on 23 June 2016 with four months' notice. It is said that people know the reasons why they left with four months' notice. We in this House are all in the thick of it, still learning almost two years later. The noble and learned Lord, Lord Brown, said we are all more informed. A year from now, on 29 March, people will be even more informed.

The Government have given people the impression that there is no other option. When I give speeches, such as the one I gave this morning at Imperial College, I ask the audience, if you were given a chance to remain, would you remain? They say, "Do we have a choice?" And all the hands go up saying they want to remain. Yet the Government are driving this Brexit juggernaut off a cliff. When it comes to the British people having a choice as to whether to go over that cliff, the Government say, no, you have no choice, you are like lemmings who will have to follow us over that cliff. Is it fair to the British public? Is this respecting the will of the people? I say that it is disrespecting the British people.

6.15 pm

The noble Lord, Lord Wigley, the noble Baroness, Lady Wheatcroft, and just about everybody said, we all hate referenda. That is for good reason, but a country that has a referendum every year, sometimes several times a year, is Switzerland and when they have one, they can ask the Government to go back and think again, because democracy is all about having the choice to change your mind—and in a normal democratic cycle, not the 40 years of the noble Lord, Lord Grocott, but a normal, five-year democratic cycle. If somebody deceives you, they can win by 0.1%. If somebody lies to you, if somebody does not perform, if they are useless, if you do not like them, in five years' time you can throw them out. I do not think that this permanent decision can be imposed on the British people.

My last point is about youth. There are already two years-worth of 16 and 17 year-olds—750,000 a year. By this time next year, 29 March, that will be more than 2 million of our youth. I know that almost 100% of them want to remain but they have not had a say and this is going to be imposed on them. That is not fair. It is taking their future away from them and this amendment gives them the chance to have a say.

Lord Campbell-Savours: My Lords, if there are those outside this House who, on the basis of the Division list this evening or what they have heard in this debate, believe that they are getting a fair reflection of opinion in support of a second referendum, then they are mistaken. There are many of us who support a second referendum, and have done for several years, who will be abstaining because we believe that this debate is premature. We believe that it interferes with the Government's negotiating position and that later on this year will be the relevant time to have that great debate. At that stage, I hope it will be approved by Parliament.

Lord Shinkwin (Con): My Lords, I shall keep my remarks very short. I believe that the noble Lord, Lord Newby, hinted at the elephant in the room, which is respect for the clear majority who have already spoken in a once-in-a-generation referendum. He referred to the result of the referendum as being sacrosanct. Yet this amendment sticks two fingers up at the majority who voted to leave in that once-in-a-generation referendum. It tells them that we as a Parliament may have passed a law giving them the final say, confident that they would vote to remain, but that they did not repay our confidence, they failed the exam, and now there needs to be what amounts to a resit. But the once-in-a-generation referendum was not an exam and the 17.4 million people who voted to leave did not fail it. If we pass this amendment it will be Parliament that fails to respect the people. We need to respect the majority vote in that once-in-a-generation referendum as sacrosanct. Any noble Lord who truly respects the people and the fact that they have already spoken should oppose this amendment.

Baroness Hayter of Kentish Town: My Lords, we have heard the case that, having seen the terms of our withdrawal, Parliament should have the option of deciding whether to put those terms to a referendum, with the choice between yes to the terms and yes to stay in; with no other question on the ballot paper, such as better terms; and with the decision to hold a referendum to be taken by both Houses of Parliament, which of course gives the Lords a veto. Having only two options on the table may not be the best suggestion for what is now being called a people's vote, but let us put that to one side for a moment. I want to question the wisdom of asking the Commons to vote on an amendment to the Bill at this stage, which opens up the issue of whether we hold another referendum, given the implications of such a discussion right now for both our national debate and the negotiations with the EU.

On the former, what would it mean here at home? I see a divided country. The referendum may not have divided us, but it certainly provided evidence of that divide. London and Scotland feel quite a different nation from most of the UK on the Brexit question. Views are sharply divided—not helped by the Government, I am afraid. In June 2016, one might have expected a Prime Minister to reach out to the whole nation, including those hurt by the outcome, to bring the country back together. Sadly, instead, David Cameron walked away and the new Prime Minister, in her approach to the negotiations and the sorts of relationships we want to have with the EU after we leave, instead of trying to reflect the fact that nearly half the voters would have liked to stay in, took what I consider an overhasty decision to focus on a particular type of exit, which is really anathema to those on the losing side. Regrettably, she continues to listen only to those on the winning side—those who called for a

[BARONESS HAYTER OF KENTISH TOWN]
referendum, who campaigned for us to come out, who won the vote and who now want the hardest of Brexits: a go-it-alone version, leaving behind the very successful trading relationship we have now. This House has voted against coming out of the customs union, but the Prime Minister is still failing to bring the country together and build a wider consensus. She is turning a deaf ear to business, which is crying out for a better sort of Brexit.

I therefore wonder what will happen to the national debate about the sort of Brexit we want if, quite unnecessarily at this moment, we insert into the Bill the potential of a new referendum, with all the division that that will cause. It is unnecessary because the amendment we passed one hour and 25 minutes ago does not close off the possibility, though nor does it trail it. It gives the option as a potential, as indeed the Labour Party conference agreed some time ago, as my noble friend Lord Adonis reminded us, but my concern is that moving the current discourse on to the issue of a second referendum, when the real question before Parliament is the sort of deal we should be seeking, will foster more division and distrust, and it will let the Government off the hook about their disastrous negotiating strategy and the formulation of that strategy.

The external consequences of the amendment have already been mentioned. It is possible that the introduction of a new element of uncertainty—that the deal might need to go to a referendum—could make the necessary compromises in the current negotiations with the EU harder to achieve.

We do not rule out any form of democratic engagement, but we are not persuaded by this call now. We are not sure what exact question the referendum would ask because, if it is only out on the terms negotiated or out with no deal, that would be meaningless; out on the current terms or staying in may also not be the full range of options. We are not persuaded that this is the debate that Parliament or the people want at this moment. In the words of my noble friend Lord Campbell-Savours, it is premature.

There is a further issue. For the referendum to be accepted by the electorate, it would have to be supported more widely than just by those who favour a particular outcome; otherwise, it will be seen simply as a device to stop Brexit rather than a serious poll on the terms negotiated. At the moment, with just one exception—Nigel Farage—only one side is campaigning for a new referendum. Therefore, that is how I fear it will be seen.

We will abstain on the amendment. But more than that, I ask colleagues across the House to think twice before supporting a referendum now, given that that might further divide the country, rather than unite it; given that the option is always there anyway; and given that that would take the attention off the negotiations at this critical moment.

Lord Adonis: Why does my noble friend think that opinion will be less divided in October than it is today?

Baroness Hayter of Kentish Town: It may or may not be, but that will be an issue for then. The issue for now, surely, is the negotiations that are taking place and the maximum input and effect that we can have on them.

We need to use every bit of our persuasive powers to change the objectives that the Government seem to have set their red lines on. Not everyone will agree with me on that, but that is where the public debate should be at the moment. I have heard the arguments for a referendum. This is not the time to get the public debate back on to that rather than on the subject of the negotiations. I urge that we abstain on this amendment.

Lord Callanan: My Lords, I do not know if the noble Countess, Lady Mar, is in her place but I note that the *Companion to the Standing Orders* makes it clear that:

> "Arguments fully deployed … in Committee of the whole House … should not be repeated at length on report".

I therefore face a challenge today, as did my noble friend Lord Bridges during the passage of the European Union (Notification of Withdrawal) Bill, because we seem to have heard it all before. As he said then and I have said and the Prime Minister has said, our position remains unchanged from the time of the referendum that we will respect that result.

When voters walked into the polling booth on 23 June 2016, they were asked:

> "Should the United Kingdom remain a member of the European Union or leave the European Union?".

This question was put to the public as a result of an Act of Parliament passed by both Houses. The question was not, "Should the United Kingdom negotiate to leave the EU and put the terms of that departure to a further referendum?"—a point that was well made in the excellent speeches of my noble friend Lord Faulks and the noble Lord, Lord Grocott, on the Labour Benches.

Some noble Lords—possibly the Liberal Democrats—may wish that that had been the case, but it was not. The public, in the largest democratic exercise ever conducted in the United Kingdom, voted on that simple question and that simple question alone—a point made well by my noble friend Lord Shinkwin. Both sides in the referendum campaign pledged to respect the result; once the outcome of the vote was clear, that meant to leave the European Union. The public voted to leave and they expect the Government to deliver on that, not try to judge what they may have wished the question was. This promise was repeated in last year's general election in the manifestos of parties commanding more than 80% of the vote and to which more than half the noble Lords in this House are affiliated. It is on the basis of that commitment that we are here today: the Bill is a necessary component of delivering a successful Brexit. Fundamentally, it is about providing legal certainty, for businesses here and abroad, and for citizens in both the UK and EU—which was also a point well made by my noble friend Lord Faulks.

How would the amendment fit in with that purpose? Inserting a requirement for a second referendum would have exactly the opposite effect. This House will be all too aware that a second referendum would require a further Act of Parliament. What would that process

look like? What would the question be? What conditions would be attached? Would there be provision for a further referendum if the Liberal Democrats still did not like the answer? How long would it take to get the referendum legislation through the House and what would happen to business, industry and citizens in the meantime?

Furthermore, while we in this House, and in the other place, debate these issues, businesses and individuals will suffer from the uncertainty that it will bring, when what they really want is a continuation of the certainty provided by our successes in the negotiations so far. There would be legal challenges, I am sure, and perhaps clamour for a third referendum, maybe even a fourth—points well made by the noble Lord, Lord Howarth, and my noble friend Lord Dobbs. If we commit to continually looking over our shoulder, to holding a second referendum, we cannot be a strong or reliable partner in the negotiations.

6.30 pm

I know that many in this House attribute the best of motives to our negotiating partners in the EU, and it may surprise some noble Lords when I say that so do I. We all want the best outcome for citizens of both the UK and the EU. We cannot, however, achieve that if the future parameters of our negotiations are so uncertain. Both sides have demanded clarity and certainty from the other. Whether or not noble Lords think the vote on 23 June 2016 was a wise decision, or one well made, rather than second-guess the British people's decision to leave the EU with a second referendum I hope that they will this afternoon agree that the challenge facing us now is to make a success of it.

Even among those committed to leaving the EU, there are differences of opinion about what success means. We will continue to debate the elements of a successful deal. However, regardless of our vision of the future, to get there any Government must approach the negotiations planning for success—as we are doing—not failure. We must also have a vision that delivers not just for those who voted to leave, but for every citizen of the UK.

I am grateful to noble Lords for allowing me to present the clear government position again. I ask the noble Lord, without any great prospect of success—

Lord Purvis of Tweed (LD): The Minister is making his case by asking for clarification on what the question would be for ratifying the agreement. I ask the Government, however, for the same clarity: what will the question be in the Government's Motion on a meaningful vote in the House of Commons?

Lord Callanan: I outlined what the Motion would be last time: it would be to accept the deal or not to accept the deal. No simpler question can be asked.

I am grateful to noble Lords for allowing me to present the clear government position again. I ask the noble Lord, possibly without much hint of success, to withdraw his amendment. He will not be surprised to know that this is not a subject on which we will be reflecting further before Third Reading.

Lord Newby: My Lords, it has been an extremely serious and good debate, and I thank all noble Lords who have taken part. I will make just two comments on points that have been made.

First, a number of noble Lords have said that it would be treating people with disrespect, or contempt, if we gave them more power. I am sorry, but I have difficulty with this concept. It would be treating people with disrespect for a Government to try to ram a solution through the Commons without full opportunity for all the options to be debated and voted on. We have slightly dealt with that issue. In circumstances, however, in which the Commons voted against any deal, to say then that you are treating people with disrespect by letting them have a say seems—to put it mildly—a very curious argument.

Secondly, in response to the argument that this amendment is premature, I repeat what I said in my opening speech: from when this Bill becomes law to a possible final vote in the Commons—and in this House—is a period of approximately 20 weeks, during which there will be a six-week summer recess. In that interim period, there is—as things stand—no legislative vehicle proposed in which such a provision could be inserted. Far from being premature, therefore, this is an extremely timely decision.

I repeat the nub of our contention: if Parliament believes that a Brexit deal is not in the best interests of the country, it should have the courage of its convictions and vote against it. In those circumstances, there should be an option for the British people to have the final say. I beg to test the opinion of the House.

6.34 pm

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6.47 pm

Clause 9: Implementing the withdrawal agreement

Amendment 51

Moved by ***Lord Monks***

51: Clause 9, page 7, line 7, after "to" insert—

"(a) approval by Parliament of a mandate for negotiations about the United Kingdom's future relationship with the EU; and

(b) "

Lord Monks (Lab): My Lords, it is time—indeed, over time—that Parliament exerted influence on the conduct of the talks about the future relationship between the UK and the EU. I am talking about the relationship after Brexit. This is not some attempt to reverse Brexit; it is about applying our minds to what that future relationship will be. To bring this about, Amendment 51 proposes an earlier, extra step that would be additional to the vote already referred to in Clause 9 and Amendment 49.

Amendment 51 would provide that our negotiators work to a mandate approved by Parliament to guide them in the talks—not a straitjacket or a corset but a device to make sure that the Government come clean about what they are trying to do in the negotiations. We know a few things already: as we heard earlier, the Government aim to have a deal on the divorce ready for the autumn that would, I think, cover the money, the reciprocal rights of citizens, the Irish border and the transition agreement. It would also cover the future relationship with the EU—but only, I understand, in very general terms in a concluding section.

The talks on this crucial aspect are only just getting under way. Indeed, it was not until early March that the Cabinet, meeting at Chequers, managed to patch up some elements of a common position to take into this phase of the talks. This position seems to rely on selecting what we like and rejecting what we do not as though it is some kind of à la carte menu—the product, by the way, of a lot of wishful thinking with some of the measures which we have been made aware of. This approach appears, unsurprisingly, to be getting short shrift in Brussels, which is just not good enough for a country like ours in this very serious situation.

The amendment seeks a parliamentary vote on the main principles of what Britain would like that future relationship to be. In fact, no one outside the innermost court of the Prime Minister really knows what the UK is trying to achieve, except in the most general and vague terms. Perhaps even members of the innermost circle do not know; maybe they and others will learn a bit more after the meeting of the Cabinet that I understand is to take place on Wednesday.

From my trade union experience, I learned that if you enter talks without a clear idea of your objectives, you tend to end up negotiating more with your own colleagues than with your opponent. There are certainly signs of that happening in the Cabinet at present, if the Sunday papers are any kind of accurate guide.

The slogan, "It is time to take back control" was effective and powerful in the 2016 referendum. Surely it is now time for Parliament to recall that phrase and exert a measure of control over the British approach to talks about the future. It cannot be left just to fudges designed primarily to pacify different wings of the Conservative Party.

Critics of this proposal will certainly say that for Parliament to establish a mandate is unconstitutional. They will quote the convention that the Government cannot be instructed on how to conduct themselves when they are involved in international negotiations. However, this would not in fact be unprecedented. Parliament has stepped in and intervened in recent years regarding military interventions in the Middle East and Libya.

[LORD MONKS]

The decision on our future relationship with the EU is just as momentous as a declaration of war and too important for Parliament just to stand tamely on the touchline and play the role of spectator. It is too important for jobs, for prosperity and for peace in a continent with a troubled history. To give one example of how momentous this decision will be, a Canada-style free trade agreement, which is where the EU is currently heading, could on the Government's own figures cut the UK's GDP by a massive 5%. That would result in a smaller, poorer nation.

I do not know where a meaningful vote in Parliament on a mandate would lead. It is quite possible that it could endorse the Government's position, whatever that is, except that they are very clear that they are ruling out membership of the single market and the customs union and any continuing role for the European Court of Justice. It could happen that that position would be endorsed, or a meaningful vote could perhaps lead to the insistence on a sharp, clean break and a switch to WTO rules. Or it could, as I would prefer, aim for the UK to stay in the European Economic Area, perhaps via membership of a strengthened EFTA, thus retaining membership of the single market and the customs union. That is not an ideal position, but with our size we would certainly be more than rule takers. In my view, it is the best option available among some rather unpalatable ones that are consistent with observing the outcome of the referendum.

Whatever the outcome of a meaningful vote on a mandate, Parliament would have spoken on the future relationship and not left these matters solely in the fumbling hands of the Cabinet. After such a vote, it would be incumbent on us all to get behind the decision for better or for worse and to try to make it work for both the UK and the EU. So my message to the House today—and particularly perhaps to the other place—is: assert ourselves, do our democratic duty and uphold the sovereignty of this Parliament before it is too late to influence affairs. I beg to move.

Baroness Wheatcroft: My Lords, Parliament needs to know what the Government are trying to achieve in their negotiations. The original vision of having the benefits of EU membership without any of the perceived downsides has evaporated. For the second time this afternoon, I shall quote Sir John Major, for I can put it no better than he did. He said that,

"every one of the Brexit promises is—to quote Henry Fielding—'a very wholesome and comfortable doctrine to which (there is) but one objection: namely, that it is not true'".

If "cake and eat it" is off the menu, what is it that the Government are aiming to achieve in our future relationship with the EU? This amendment seeks to give Parliament some say in what the future relationship would look like before it is too late.

We will no doubt be told that it is foolish to try to tie the hands of the Government in their negotiations—but the noble Lord, Lord Monks, has more experience than most of conducting negotiations, and he convincingly introduced this amendment. My experience comes from the other side of the negotiating table, but it leads to the same conclusion: being able to say "my members" or "my board" or "my Parliament" would never accept such and such strengthens rather than weakens the hand of the negotiators. It would surely help the Government to have some idea of where the red lines are as far as Parliament and the House of Commons, in particular, are concerned.

This afternoon the Minister once more made very clear that the Government would like to deprive Parliament of a meaningful vote on whatever deal or no deal they negotiate. This House has demonstrated its objection to that, and I believe that the Commons will uphold that vote. Our system of democracy demands that Parliament should take back control of the Brexit process. Insisting on a meaningful vote is progress. This amendment goes one step further. It endeavours to give Parliament an input into the shape of the deal. We are led to believe that there are differing views within the Cabinet on whether the UK should have a customs partnership with the EU. But if there is a majority of MPs who insist on a customs partnership, would it not make sense for the Government to be aware of that while there was still a chance of negotiating it? If a majority of MPs believe that the country needs to be in the equivalent of the single market of the 27, would it not be sensible to establish that sooner rather than later? It sometimes seems that the only mandate in which the Government have an interest is that granted by the *Daily Mail*. Parliament surely should be granted as much say in the Brexit process as the tabloid press. This amendment would give Parliament the power to strengthen the hand of the Government in their negotiations with the EU and I urge the House to support it.

Lord Howarth of Newport: My Lords, is it not quite clear that what the Government have to seek to do is restore self-government with a minimum of economic dislocation? I do not see any point in Parliament denying the Government freedom of manoeuvre as they seek to achieve that.

Lord Campbell of Pittenweem (LD): My Lords, it is often said that imitation is the most sincere form of flattery, but I rather think, after our proceedings today, that repetition would not achieve the same objective. I have the advantage of following, yet again, the succinct appreciation of these issues by the noble Lord, Lord Monks, and wish to add only a few thoughts of my own. I will make a contemporary reference. The resignation of Amber Rudd from the Cabinet has not just had consequences for the Home Office but is generally regarded as having had very severe consequences for the balance of opinion within the Cabinet, which leads me to a point that has already been made by the noble Baroness. The requirement to state the terms of mandate might once and for all force the Cabinet to clearly indicate precisely what they are seeking to achieve. A mandate based on principles would not tie the hands of the Government. It would not put handcuffs on the Prime Minister or even, for that matter, Mr Davis. It would set out in a clear and unequivocal way precisely what the objectives were. That, as the noble Baroness has already indicated, would create an opportunity, emboldened by authority. It therefore cannot be argued on behalf of the Government that the passing of this amendment would in any way detract from their ability to carry out an effective negotiation.

7 pm

There has been some discussion about a meaningful vote. I am reminded of the professor of jurisprudence in the law faculty of Glasgow University who used to ask his students, almost within the first week, to write an essay on, "What does 'meaning' really mean?" I am not going to embark upon some philosophical discussion, but I will say that I believe a meaningful vote means a vote the outcome of which will be accepted. If it is thought to be anything less than that, the Government may find themselves in considerable difficulty justifying that they have allowed a meaningful vote.

The truth is that so far in these matters, once anticipated by Mr Davis as being "easy", we have no indication of anything other than the competing arguments within the Cabinet. It is sometimes said, as it has been this weekend, that the Prime Minister has the casting vote. If so, that is a pretty weak basis for determining what the attitude of the Cabinet should be and of course what authority the Cabinet—or, more properly, the Government—will have in seeking to carry out negotiations.

I have one last point, which I think is important. If Germany said that it wished to withdraw from the EU and the UK was one of the 27, it is very hard to imagine the UK providing the kind of easy exit it seeks for itself as those roles are reversed. I have in mind, as I think everyone does, the whole issue of Ireland—nothing to do with this amendment, perhaps, but a bellwether. Unless and until we know precisely what the Government's view is about Northern Ireland, then for many people, not least those on the island of Ireland in the north and in the Republic, there will be precisely that uncertainty that has rightly been criticised in the debates already today. For these reasons, I have no doubt whatever that this amendment should command the support of your Lordships.

Lord Hamilton of Epsom: I was not really intending to get involved in this debate. However, the noble Lord, Lord Campbell of Pittenweem, has gone on about the canard that we do not know what the Government want out of the negotiations. He then explained to us what the Government want out of the negotiations: as easy a deal as possible. It is quite straightforward what the Government want. They want a free trade deal. They want to go on doing business with the EU in the way that they have in the past, with as little change as possible.

I hear your Lordships say, "But we're not going to get that". That is probably true, but that is because the EU is not prepared to give us that. It is prepared to suffer when it comes to its trade in goods—as it sells so much more to us—for the benefit of punishing this country, because for some reason the EU is such a wonderful organisation that you have to punish people who want to leave it. We voluntarily joined the EU; why can we not be allowed to leave it voluntarily without being punished? That does not say much for it, does it? This is one of the problems that the Remain campaign had during the referendum: what was the narrative that was so wonderful about staying in the EU? The fact that no narrative could be produced was one of the reasons why the Leave campaign won.

So let us not mandate the Government to doing x or y, as the amendment suggests. It is quite clear what the Government want. They want a bespoke free trade deal that carries on business as we have done in the past. It does not look as if we will get it but that is what the Government want, and mandating it will not make the slightest bit of difference.

Lord Lea of Crondall (Lab): My Lords, I am very glad to follow the noble Lord, Lord Hamilton of Epsom. He spoke in rather a different tone from the previous speakers, my noble friend Lord Monks, the noble Baroness, Lady Wheatcroft, and the noble Lord, Lord Campbell, who have brought to this discussion what I might call a mature, thoughtful approach to a crisis facing this country that will become even more stark when we get to October.

A lot of people have mentioned today the relationship between the Lords and the Commons. I draw the House's attention to a creative opportunity that we have right now in the light of the report published on 13 March by the Brexit Select Committee of the House of Commons, chaired by Hilary Benn MP. By a majority in some cases but unanimously in others, it has produced something pretty much like the sort of remit that I imagine will make sense in terms of the detail that one would present to Mr Barnier, who has his own remit. Perhaps I may pick out one or two points from it to give the flavour.

The noble Lord, Lord Hamilton, says it is obvious, and everyone knows, what the Government want. I think that, on a scale of one to 10, we know about only two or three out of 10 what is in the negotiating mandate. If we were to make a constructive contribution then, first, there would have to be something in the mandate because otherwise on what criteria would anyone, including ourselves, judge the outcome of the negotiations? I return to the analogy that my noble friend Lord Monks drew with trade union negotiations. The two things are analogous in some ways, though not totally. What you do not do is go into cloud-cuckoo-land at the start and say to the employer—on an industry basis or a company basis; it does not matter at the moment—"Here is our claim: double the pay, double the holidays, halve the hours and double the pensions". There are two reasons why mature trade unions do not go down that route. First, you will not get what you have asked for, and what do you do when you come back to the executive? Does it call a strike? That would be a fantasy and it would not get anywhere. The second reason, of course, is that that trade union would not be taken seriously on the other side of the table. I know some trade unions can be satirised in that way, but then I suppose I could satirise Boris Johnson quite adequately if I put my mind to it.

With regard to the degree of specificity that is needed in a mandate at the moment, I shall read one or two of the proposals in the report of the House of Commons Select Committee. If the House of Commons is to be part of looking at a mandate, it does not matter who writes it down. The Government have yet to respond, by the way, to the report, which picks up a couple of points made by the noble Lord, Lord Campbell. I shall read just one or two:

[LORD LEA OF CRONDALL]

"The border between the Republic of Ireland and Northern Ireland must remain open, with no physical infrastructure or any related checks and controls, as agreed in the Phase 1 Withdrawal Agreement".

That is very difficult to implement, and things follow from it to do with the customs arrangement and the single market. If we are to get somewhere between cloud-cuckoo-land and the specificities, I must say to the noble Lord, Lord Hamilton, that there is no button to press that says, "Take back control. Job done". This has taken two years of an educational exercise—we are in the middle of a huge educational exercise. Whether or not people argue in the pub about it—and some people do—the fact is that it is a very complicated matter, and it is now understood a lot more than it was at the time of the referendum. Let us try to see how people could understand it a bit better. Surely it would be good if there could be more transparency from the Government. I am sure they would get more respect in Brussels, Paris, Berlin and the rest if they could be franker than they have been so far—although we know the reasons why they cannot easily be franker at the moment and why Parliament needs to give them a nudge.

To give another example, on crime and terrorism, the report says that,

"arrangements must replicate what currently exists in operational and practical cross-border co-operation. In particular, the UK must retain involvement with Europol and the European Arrest Warrant and continue to participate in the EU's information-sharing systems including SIS II".

It goes on:

"Institutional and decision-making frameworks must be identified to ensure that the UK is able fully to participate in foreign and security co-operation with the EU, to meet the challenges it shares with its neighbours in the EU-27".

Another example is:

"In respect of trade in goods, there must be no tariffs on trade between the UK and the EU 27".

There are a dozen such propositions that would be highly desirable in an adult democracy, which has been a democracy for 1,000 years, or whatever it is. Surely that is the minimum that we can expect: a little more transparency, please. Then people would know that they were being treated as adults and take it from there. We have a huge problem with the credibility of where we are all headed in the continued mention of October this year. I am not saying that the idea that we can get to this place by October is impossible, but it stretches one's imagination to see how all this will be done. A mark of our seriousness could be to make a proposition.

It is not a risk-free exercise for anyone, whatever their views, to put up a comprehensive proposition. The only way we can describe the arrangements from which we have to select is that they are all different trade-offs, or different package deals. Some people have seen a paper that a trade association produced on the different trade-offs on offer. The maximum at what you might call the remain end of the market would be something that does not look very different from where we are. Another, mentioned by my noble friend and increasingly the position of many industries, is to stay within the European Economic Area by moving from pillar 1, which is the EU, to pillar 2, which is EFTA, of which we were a member from sometime in the 1960s to sometime in the 1970s—a long time ago. It is an organisation that, on trade, works. No one doubts its position in the world. We must look at these practical alternatives. If we were to adopt the amendment, the House of Commons would find it a very constructive way forward to reach some accommodation, not only between the Lords and the Commons, which is a consideration, but between the Government and the people, as mentioned many times today. The amendment will provide constructive input, if the House will support it today.

7.15 pm

Baroness Hayter of Kentish Town: My Lords, in one way, it is difficult to imagine a more pertinent week for this amendment to arrive in this House. It is true that perhaps it would have been better if we had included it in the Article 50 Bill: if when, as we authorised the Government to fire the starting gun on our departure from the EU, we had laid down at that stage the requirement for the negotiating mandate which would have set out our future relationship with the EU and asked for it to be approved by Parliament.

As it turns out, that would have been good for the Government as well as for the country, as it would have forced the Prime Minister at that stage to fashion a mandate to find favour with Parliament: avoiding a further year of disputes, lobbying and, dare I say, manoeuvring within her Cabinet. Indeed, the Government's dithering and internal party arguments have held up parliamentary work on, for example, the Trade Bill, with 12 wasted weeks' delay on a crucial Commons vote—the equivalent of a 10th of the time allocated for the Article 50 negotiations. Such uncertainty has left the EU scratching its head as to what exactly the UK wants.

It must also drain the Prime Minister's time and energy as she seeks to reconcile the irreconcilable within her party rather than putting the country's interests first. The prime, perhaps the central, job of any Prime Minister is to defend and promote her country's interests. That is what she should be doing, rather than acting as a nursery teacher controlling unruly youngsters.

That behaviour rolls on. On the one side, she is under huge pressure from within her Cabinet to abandon even consideration of a customs partnership, with, we read, senior Brexiteers "preparing for a showdown" at this week's Brexit sub-committee. Incidentally, the showdown is in part led by Liam Fox who, in 2012, called for a new relationship with the EU based on,

"an economic partnership involving a customs union and a single market in goods and services".

At the same time, David Davis was saying that his preference was to remain in the customs union. So their former selves were looking towards that, and your Lordships' House, by its view on the customs union, has expressed a fear about a physical and regulatory break from our largest trading partner.

We also hear that from businesses, trade unions, environmentalists, those speaking about Northern Ireland and, possibly, from a majority in the House of Commons,

where, in due course, there will have to be a crunch vote on the shape of the customs union relationship, in particular. The Prime Minister will not be able to postpone that indefinitely. As the saying goes, "You can run, but you can't hide". Part of the reason that that is happening now is because we did not have parliamentary approval for the negotiating mandate at the start of the process.

The amendment demands that the articulation of our future relationship—what the Government want to achieve from the negotiations—should be spelled out and put to Parliament. Perhaps the noble Lord, Lord Hamilton of Epsom, is right in what he says about what that will spell out and what the mandate would include, but why not have it endorsed by Parliament?

We support the amendment, which would ensure that that negotiating mandate, which would cover trade and our future relationship with the EU, is approved not just by what is a rather divided Cabinet at the moment, but by Parliament, which is where the decision should lie.

Lord Callanan: My Lords, I begin by making it clear that Parliament has a critical role in scrutinising the Government's negotiating position. It is our responsibility as a Government to provide both Houses with ample opportunities for scrutinising both the approach we are taking to exiting the EU and any implementing legislation—and we are doing so.

The Secretary of State for Exiting the EU has provided an Oral Statement to the House after every negotiation round. He has provided evidence to the Select Committee on Exiting the EU five times, and has appeared before the Lords EU Committee four times. On 29 occasions to date, DExEU Ministers have given evidence to a wide range of committees, from Environmental Audit to Science and Technology. As my noble friend Lord Hamilton observed, the Prime Minister has laid out her intentions for the future economic and security relationship between the UK and the EU in several speeches, most recently in those made in Munich and in London's Mansion House. Her intentions were also made clear in the seven future partnership papers, where the Government set out their negotiating objectives across a number of areas, including customs, science and innovation. Government Ministers have made a series of speeches laying out their intent for various aspects of the future relationship between the EU and the UK.

The scrutiny received during these parliamentary appearances, and in the multitude of reports from the committees of this House and the other place, have been of great value, and have done much to help inform the Government's work so far. There has also been a wide range of engagement activity by government with key stakeholders across business, civil society and other interested groups. While there are some who think that Parliament should have a greater role in setting the terms of our negotiations, we simply cannot hold up the already tight negotiating timeline by providing for a further approval process prior to negotiations ending. It must be for the Government, not Parliament, to set our goals for the negotiations on the UK's exit from the EU, and to conduct them.

As I said in my response to the first amendment that we considered today, the Government have been clear from the start that Parliament will get a vote on the final deal, when Parliament will have the final say on the withdrawal agreement and terms for our future relationship, as soon as possible after the negotiations have concluded. Only if Parliament supports that Motion will the Government bring forward the withdrawal agreement and implementation Bill to give the withdrawal agreement domestic legal effect. The Government will then introduce further legislation where it is needed to implement the terms of the future relationship in UK law, providing yet further opportunities for proper parliamentary scrutiny.

Debates in this place and the work of the committees of both Houses represent valuable forums and opportunities for parliamentary scrutiny, and we have used Parliament's input to shape our approach to negotiations so far. Indeed, I conclude by quoting some wise words from our own House's EU Committee's fourth report of 2016-17, titled *Brexit: Parliamentary Scrutiny*:

> "Parliament should not seek to micromanage the negotiations. The Government will conduct the negotiations on behalf of the United Kingdom, and, like any negotiator, it will need room to manoeuvre if it is to secure a good outcome".

My noble friend Lord Boswell will no doubt not let me ignore the fact that the report goes on to call for the avoidance of "accountability after the fact", but I hope that the House will agree that the right response is not to go to the extremes of micromanagement by Parliament. I hope, therefore, that the noble Lord feels able to withdraw his amendment tonight.

Lord Monks: My Lords, I thank all those who took part in this debate, which has continued the theme of this afternoon and early evening about the relationship of the Executive to the legislature. This amendment goes to the heart of that relationship. The fact is that we are in a position where we know what the Government are ruling out very clearly; what we do not know is what they are ruling in. In fact, the debates taking place in the Cabinet, as I understand, this coming Wednesday, show that the Government are all over the show about the objectives that they have in the negotiations about the future relationship.

This amendment seeks to provide the means for Parliament to put pressure on the Government to come up with some clarity. There has been activity, yes—and the Minister laid out the wide range of things that have been going on in Parliament about Brexit—but the crucial issue of the future relationship of the UK to the EU is still vague or wishful thinking or a combination of the two. I think that the Government can do better than that and owe it to Parliament to do better, and this amendment is a way of putting pressure on our Executive and the Prime Minister to do something about that.

I will make a quick reference to the punishment scenario painted by the noble Lord, Lord Hamilton. There is a range of things on offer from the European Commission, including membership of the single market and the customs union—many things that would make it business as usual, such as in the EEA and so on. It is our Government who are ruling out those kinds of

[LORD MONKS]

things, which would provide as much continuity as we possibly can, which seems to be the objective of what the noble Lord was saying.

With all those points in mind, and bearing in mind the hour, I would like to test the opinion of the House on this amendment.

7.26 pm

Division on Amendment 51

Contents 270; Not-Contents 233. [The Tellers for the Contents reported 270 votes; the Clerks recorded 271 names.]

Amendment 51 agreed.

Division No. 3

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7.38 pm

Amendment 52

Moved by ***Lord Cormack***

52: Clause 9, page 7, line 9, at end insert—

"( ) It is an objective of Her Majesty's Government to make every endeavour to facilitate the enactment of the statute described in subsection (1) prior to the ratification of the withdrawal agreement by the European Parliament."

Lord Cormack: My Lords, Amendment 52 is grouped with Amendment 62 and I will address most of my remarks to the latter. Although I hope that my noble friend Lord Hailsham will not be cross with me, Amendment 52 deals rather more succinctly with the subjects that were dealt with in Amendment 49. As your Lordships' House has already passed that amendment by a substantial majority, and has therefore emphatically accepted the need to have a meaningful vote, and enshrined that in the Bill, it would be tedious of me to repeat the arguments or to ask your Lordships to vote. At the appropriate moment, I will say the appropriate words.

[Lord Cormack]

Amendment 62 is very important. It is a logical consequence of Amendment 52 or, now that we have put it in the Bill, Amendment 49. The meaningful vote must be underscored with a meaningful process. There is a great deal of uncertainty around what the meaningful vote will look like and what the consequences would be should Parliament decide—as I hope it will not have to—to vote against any agreement. Amendment 62 seeks to address the current uncertainty in the Bill around this process. It is possible that, if the withdrawal deal fails to get through Parliament, the UK could leave the EU with no deal at all and fall back on WTO terms, which the Government's own assessment shows would be the worst option, reducing growth, according to some estimates, by 8% over 15 years. Parliament must therefore have the right to request that the Government get back to the negotiating table for a better deal if that is the outcome. Amendment 62 would ensure that, if Parliament declines to approve the Government's Motion on the withdrawal deal, the UK would retain our current relationship with the EU and the Government would be required to request an extension of Article 50.

Amendment 62 is therefore a common-sense amendment, which would strengthen Parliament's ability to consider the withdrawal deal effectively, both in good time and in a position to send the Government back to the negotiating table while providing a degree of continuity and stability for our economy. This is very much a common-sense amendment, and if it is not pushed to a vote later this evening, because it will not be reached for some considerable time, I hope that we will have the opportunity to look at these issues again. It is important that we have a good deal, and it is crucial that we do not have no deal. This amendment is therefore a constructive one, and I very much hope that the sentiments behind it will commend themselves to your Lordships' House at the appropriate moment. I beg to move.

Lord Reid of Cardowan: My Lords, I will speak in favour of Amendments 52 and 62. Given the strictures on repetition, I will not rehearse again anything on Amendment 52, which would allow the British Parliament to have its say before the European Parliament is asked to approve any deal. I already made plain my views on that in Committee so I will stick to Amendment 62. With this amendment we are seeking to safeguard Parliament's ability to have a "meaningful" vote. It would have been handy if it had been linked with Amendment 49, but I realise the conflicting pressures that are on the Front Bench to decide the groupings. Nevertheless, Amendment 49 has taken a huge stride tonight in underpinning a meaningful vote. However, it is by no means perfect, and it has gaps.

Parliament's consideration of the withdrawal agreement will be a serious task—we all know that. Our debates this evening alone have shown the level of complexity and sheer number of issues which the withdrawal agreement will have to address in detail. Yet as the clock ticks onwards that exit day comes ever closer—it is now within a year—and if there is no withdrawal agreement, we lose guaranteed access to our biggest market, certainty on the Irish border, and confidence for British citizens living and working in the rest of Europe and for the European citizens who are here. Given the timescale, those are immense risks.

7.45 pm

Amendment 62 is pretty straightforward by comparison with many of the amendments this House has had to consider. It would mean that, should Parliament, which means the House of Commons, decline to support the withdrawal agreement, and only in that circumstance—so let there be no objections about complexity, deadlines or the obfuscations that might take place—the United Kingdom would retain our current relationship with the EU and the Government would request an extension to Article 50 so negotiations could continue. I do not pretend, particularly after the learned contribution of the noble Lord, Lord Kerr, this afternoon, that there will be an automatic response to that, and I suggest that we do not enshrine it in a request for constant visits from the Secretary of State for Brexit, since that is unlikely to lead to conducive circumstances. However, I put it to the House that compared to the alternative, which is to fall off the edge of the cliff, that ought to be done by any responsible Government under those limited circumstances in which Parliament declines to support the withdrawal agreement.

The intention behind this amendment is to give certainty and continuity to our businesses, economy and jobs, and it would also give reassurance to the House of Commons, and the whole Parliament, that would allow it to focus on the detail of the withdrawal agreement without the added pressure of a no-deal exit.

It is by now obvious that Parliament could have reason to decline to accept the withdrawal deal. It is increasingly clear that untangling the United Kingdom from the European Union has raised more challenges than were envisaged and, some would argue strongly, more challenges than opportunities, and the latest draft withdrawal agreement has done little to give any reassurance on that point. It could not give us a solution to the Irish border question, and we do not have any detail on our future trade relationship with the European Union.

It is not as if items such as that were unpredictable. Indeed, they were not only predictable but predicted by any number of noble Lords in this Chamber. Yet we arrive, some 18 months after we started, and are hitting the obstacles that so many people predicted. So there is no assurance for anyone that the knowledge that they are a problem will mean that the Government will be able to resolve them, since they have not done so up to this point.

There are two key issues for our future. They should be the central planks of the agreement, and we cannot afford to get them wrong. As it stands, what we have is not a withdrawal deal but a transition plan. On the day the latest draft of the withdrawal agreement was published, the Secretary of State for Exiting the European Union—God bless him—told us that the implementation period, after exit day, is,

"a platform on which we build our future relationship".

Therefore, during the extended transition plan we will not have a deal but a platform on which a deal may be built at some unspecified point in the future.

Moreover, there have been reports in recent weeks that our future relationship with the EU might be an annexe to the agreement and not within the agreement itself. We are now a year away and we do not know for certain whether or not we will have the detail of our trade relationship with the EU in the withdrawal agreement, or, even if we have some detail, whether it will officially be part of the agreement which Parliament will be asked to approve. It is conceivable that the actual withdrawal agreement may contain little more clarity than we already have. We may be a further year on, but no nearer the objective of clarity of what the deal is.

Offering reassurances on the Irish border and good intentions to finalise the detail of our future trade relationship are warm words, but having those warm words in some unspecified agreement after we have left the EU is liable to leave us in a very dangerous limbo indeed. In those circumstances, I believe Parliament would be justified in saying no and asking the Government to go back to the negotiating table—not to conduct negotiations and not even necessarily to set the direction of negotiations, but to go back to the table rather than fall off the cliff with no deal.

Lord Hamilton of Epsom: What evidence does the noble Lord have that you get a better deal when you go back to the table than the deal you have already got?

Lord Reid of Cardowan: The noble Lord may be able to predict whether it will be better or worse, but any deal that is acceptable to the British Parliament would be better than the disastrous situation of no deal at all. But that may need time. Why have an artificial deadline cutting us off from the conclusion of a deal, which may be there in the bones or, in the famous words of the Brexit Secretary, as a "platform"—and deny ourselves the opportunity of having the alternative of a cohesive deal rather than no deal, which I think would be the worst of all worlds? This is an opportunity that we should take.

A lot of the debate on Amendment 49 was about the ideological motives of those who are handling this. As my noble friend and occasional protagonist Lord Grocott keeps pointing out, I was a reluctant remainer. I was sceptical about the eurozone and the bureaucracy and unaccountability of the European Union, but on balance I wanted to stay in because all the challenges that we face are global: cyber, terrorism, trade and the environment. Being part of a larger bloc is, on balance, worth it. Therefore, my approach to this is pragmatic, not ideological. I admit to being confused by the ideological positions of the leaders of the major parties. We appear to have the leader of one party who is ideologically inclined to remain in the European Union but doing her best to get us out of it, and a leader of the other party who is ideologically inclined to remove us from the European Union who appears to be doing his best to keep us in part of it. I am confused about the ideologies that are supposed to be driving this on all sides of the House.

I believe that we should take what the noble Lord, Lord Cormack, called a common-sense position. It is possible that the vote on the final deal could be little more than a deal or no deal choice, where a rejection of the Government's Motion would mean the UK exiting the EU with no deal on WTO terms, which would be the worst possible option for the UK. That is not according to me, in my lack of wisdom, experience, depth and analysis, but according to the Government's own impact studies. I believe that we must insure against that, which is what Amendment 62 seeks to do.

The Secretary of State told the House of Commons that the agreement will deliver the "exact same benefits" as our EU membership. That is basically what the noble Lord, Lord Hamilton, said our objectives were. As it happens, that is also the commitment of the Opposition Front Bench, which has adopted it as one of its six tests. Amendment 62 simply safeguards this commitment by guaranteeing that we keep our current benefits until a withdrawal agreement has been reached that can match our objectives. As the noble Lord, Lord Cormack, said, it is a common sense, pragmatic amendment. It has no political motivation and no ulterior motive, other than the objective of preserving the best for this country. That is what this whole debate is supposed to be about.

It is my great pleasure to support Amendment 62. I am grateful to the noble Lord, Lord Cormack, for indicating that, if time constraints prevent us pushing this to a vote later tonight, we may come back to it at another stage.

Lord Deben (Con): My Lords, I do not think that this is really about the European Union. This is about parliamentary sovereignty. I have to say that I do not understand why it is that the Government do not want Parliament, in the end, to be in a position to make the decisions which these two amendments make possible. It seems to me, in any case, that that would be valuable to the Government in negotiation, because it would enable them to say that a deal, if both sides want a deal, is one that has to get through Parliament. However, I do not want to go down that route. I want to go down the route of parliamentary sovereignty.

This is the most important decision we have made for a very long time—perhaps the most important peacetime decision that we have made ever. There are people in this House on either side of the debate and I would not be able, even if I wished to, to pretend that I was not absolutely committed to one side. But I am also a parliamentarian, and it is clear to me that there is no reason why Parliament should not make sure that it is able to make a proper decision on this issue and to make a decision that does not leave the nation in an impossible position. All that these two amendments really do is to ensure that there is a sensible programme into which Parliament is "properly"—I use that word in almost a technical sense—conjoined.

Why should one not want this? Well, one might not want it because it is not properly drafted. Of course, the technique of Governments of all kinds is to say that they would be very happy to go along with something but unfortunately there is this or that technical reason why it does not work. Maybe that is so, but I would therefore ask the Government this: if it is technically wrong, would they come before the House with the amendments that would make it technically right? If they do not, they are saying that in this most important issue of all, the Executive are going to make

[LORD DEBEN]
the decision, and that they wish to leave themselves open to making the circumstances in which Parliament cannot make a sensible decision. They would be saying to Parliament, "Vote for us or total disaster and collapse". This is the technique of dictators down the ages: "Me or chaos; me or something much worse". This House should insist that the decision is in Parliament's hands. That means avoiding circumstances in which it is possible for the Executive to say, "However bad this is, anything else would be very much worse".

My noble friend Lord Hamilton is also arguing from a clear, previous position—so we are in the same situation. He asks whether we have any evidence that going back for a further negotiation would be better. I have been in business since I was 22, except for when I was a Minister, and I have never started by saying that if the negotiation was not successful I was not prepared to go back and see if I could do better. That is how you run businesses and make money. It is how you improve the circumstances. I do not know in advance whether I can achieve something better, but I would never say that I would never go back and put myself into a position in which I could not negotiate again.

So I say to my noble friend that all this amendment says is that if Parliament decides that a negotiated agreement is not satisfactory, then, and only then, the Government will have to go back and seek something better.

8 pm

Lord Hamilton of Epsom: Is the negotiation with the EU not somewhat unique, because you are negotiating with 27 different countries?

Lord Deben: It is unusual to negotiate with 27 different countries, but I have negotiated with large numbers of different people on the other side. That is one thing that we just have to accept. It is, like anything else, a negotiation. If we think that it is so unique that we cannot do it, we should not have started the negotiation in the first place. It does not make any difference if you have a second negotiation: it is the same position that you had with the first negotiation. The fact that it is with 27 different countries makes no difference because it does not change from the first negotiation to the second. I do not think that my noble friend has a point on that.

The real issue is the fundamental fact: the amendment does not operate unless Parliament has voted in a particular way. The Government's answer to the amendment must therefore be that they have a reason not to let Parliament continue to be involved after such a vote. The Government do not think that Parliament will take such a decision. They are very sure—and I have listened to government speakers again and again—that they will produce a result that will be cheered by Parliament. We will all be thrilled with what they have been able to achieve. I would be very suspicious if the Government's answer is that they do not think they will get that sort of result and therefore do not want to get themselves into a difficult position. I am assuming that, whatever agreement they have, it will be a good one and this amendment will never come into operation.

The only reason for the amendment is to be a backstop for the circumstances in which the Government do not achieve what they tell us they can achieve and they therefore produce something that is so unacceptable that Parliament decides that it cannot accept it. The Government have to say, "What happens then?". Unless they accept the amendment or some technically different one that suits them, their only answer can be, "We the Executive will decide". That is why this is not about the European Union. It is about the powers of Parliament and it is why I am surprised at my noble friend Lord Hamilton, who was chairman of the 1922 Committee, who protected and defended the rights of Members of Parliament and who believes and believed in the nature of Parliamentary democracy. It is why I do not understand why this divides the House.

This should be something that both leavers and remainers—and those who wander between and those who are confused—all of us, should accept that we want Parliament to be in a position to accept and to decide. This will not work unless Parliament has decided that it does not want the agreed solution. The amendment will not come into operation unless that happens. Surely it is not too much to ask that the Government say, if we get to that point, that Parliament should have the right to ask the Government to go back and try again.

Lord Adonis: My Lords, I am a great admirer of my noble friend Lord Reid and therefore, if he presses this to a Division later on in the evening or at whatever hour of the night we get to it, I will of course support him. I have nothing against the contents of the amendment because it is clearly desirable that, if we cannot support the Government's treaty, the default should be that we stay in the EU unless the House of Commons has a better set of propositions that it wishes to agree to.

However, my concern is that there is a certain element of unreality to the proposals to try to bind the hands of the House of Commons as to what it may or may not do in the autumn. One of two things will in fact happen when the Prime Minister presents her treaty. The House of Commons will either vote for it or vote against it. There are no other alternatives. If the House of Commons votes against the treaty, that is, to all intents and purposes, a Motion of no confidence in the Government. There has not been an incident since Gladstone's Home Rule Bill in 1886, which was rejected by the House of Commons, where the central plank of a Government's policy was rejected outright by the House of Commons. The idea that there could be a further negotiation after that is entirely unrealistic. The negotiation would have been concluded with the European Commission and the Council of Ministers, and ratified or not by the European Parliament and so forth. It is not realistic in the real world to expect that there would be further negotiation.

In the eventuality that the treaty is rejected, there are only two things that could conceivably happen. Either there will be an election because the Government have been defeated on what is in effect a Motion of confidence—it might take a formal triggering Motion under the Fixed-term Parliaments Act to produce it—or there will be a referendum, which we discussed earlier.

A referendum could happen if the House of Commons itself resolved that there should be one immediately after the defeat or perhaps as an amendment to the Motion that the noble Lord, Lord Callanan, has said would be tabled. Everything else beyond that seems to be superfluous. The policy of the Government will then be the outcome of the referendum or the outcome of that election. A Government will have to be formed after the election, which will have to have a European policy and that will then be the policy of the Government that they would seek to negotiate in Brussels. There would either be some amendments to the treaty, if that is possible or—as I hope there is a Labour Government—there will be a decision not to proceed with Brexit, or there would be a referendum and we would proceed with the outcome of that referendum.

I say all that mainly to my noble friend on the Front Bench and her colleagues in the other place. There is no point in engaging in this displacement activity at the moment and making it sound as if we are being very tough on Brexit by placing ever more elaborate manacles and handcuffs on what might or might not happen in the vote in October. The only thing that really matters is the attitude of the Labour Party when the Government present their treaty. Either we are in favour of it or we are against it. If we are against that treaty, I can assure my noble friend that everything else will take care of itself. If we are against the treaty and vote against it, we do not need all the protections in this Bill. One of two things will happen. Either there will be another referendum or there will be an election. If there is an election, what matters is the policy of my party in that election. Will we or will we not proceed with Brexit if we win the election? Very simple facts of political power come into play.

What happens in Parliament after that will depend on those decisions. Ever more elaborate provisions in this Bill are, I say respectfully, entirely beside the point because they miss the reality of political power. That is that there has to be a Government, they have to have a policy and that can come from only one of two ways. Either a new Government are returned if this Government are turned out on the treaty or there is a referendum that will determine it.

I am entirely in favour of everything in my noble friend's amendment and I hope that it will be warmly welcomed from the Front Bench, but what really matters, I say to my noble friends, is the policy of the Labour Party when the Prime Minister presents her treaty. If we are against the treaty and we are successful, there has to be either an election or a referendum. I am afraid that there are no alternative options on offer.

Lord Reid of Cardowan: With the leave of the House—and the noble Countess, Lady Mar, if she is in—I want to say something. I used to say to a friend of mine—he was an acquaintance, really—in the Militant Group that I wished I was as sure of one thing as he was of everything. There is an unusual hint of that in what my noble friend just said. It is not true that you can ordain in the future in politics the inevitability of one or two courses. In the wise words of Harold Macmillan, when asked what he was most frightened of, "Events, dear boy, events". I would therefore be very cautious about taking that view—although my noble friend is perfectly entitled to ask the Labour Front Bench what the party's position is—on the inevitability of history. Great philosophers have made that mistake before. If I am correct and he is wrong, it would be wise to have some form of plan or safeguard for each contingency. All we are trying to do, in a non-ideological and non-partisan fashion, is say, "Let us have a common-sense plan for the contingency that Parliament votes this down". There is a huge complexity about what might happen afterwards and none of it is unavoidable or predictable in advance.

Lord Adonis: My noble friend makes a very good point, but all of those further eventualities would be so much clearer if my party's policy were clear in the first place.

Lord Balfe (Con): My Lords, it is always a pleasure to agree with people from the Labour Party. I certainly agree with that final remark: it would be nice if the Labour Party's policy were a little clearer. I have known—I would not say that I have had the pleasure of knowing—the Leader of the Opposition all the time he has been in politics. I cannot recall a single occasion, from the referendum in 1975 through all the treaties, when he has supported anything to do with Europe. I suspect that part of the reason for the difficulties of the Opposition today is this squabble at the top. The feeling among one or two leading Members of the Labour Party is wanting to stay in the European Union—certainly in the customs union—and the feeling right at the top is, "over my dead body". I ask the Opposition to start supposing; that would be a big step forward.

I rose to speak because I put my name to both of the amendments. I want to look at the role of the European Parliament in particular. We talk about parliamentary sovereignty but two Parliaments are involved in this. I listened to what was said by the noble Lord, Lord Hamilton, but we are negotiating not with 27 countries, but the European Parliament, which has a position, and the Council, which has a position and, through Monsieur Barnier, someone to pull that position together. Amendment 52 says,

"prior to the ratification of the withdrawal agreement by the European Parliament".

Amendment 49 is slightly better worded, in my view, because it says,

"debated and voted on before the European Parliament has debated and voted on the draft withdrawal agreement".

Although I put my name to Amendment 52, I concede that Amendment 49 has a better form of words. We cannot assume that the European Parliament will go along with the position of Mr Barnier. The European Parliament has its own rapporteur on withdrawal: Mr Guy Verhofstadt, whose job is to reach a common position in Parliament.

8.15 pm

In Brussels on Wednesday evening, the Bureau of the European Parliament—its political decision-maker and equivalent of the Cabinet—will devote its entire meeting to the Brexit strategy and where it thinks it

[LORD BALFE]

should go. What are we doing to get the European Parliament on our side? I know that we are visiting lots of capitals, but not that long ago, I spoke to a Foreign Minister from one of the middle-sized, new European countries. Everybody talks about Brexit, so I asked him, "What do you want?" He said, "Well, I think we'll follow Berlin, unless there's a particular local interest". I asked him why and he said, "They're putting all the intellectual drive behind this. We're demanders, not payers into the European Union and we think Berlin will get us a good deal out of these negotiations". So, I counsel people, "Don't think that you can go round Europe and split them". Even the Hungarians—the only people to join us in voting against Jean-Claude Juncker as President of the European Commission—are not particularly inclined to move and come to an independent position to help the Brits, because they see their national interest as getting in with the other 27. I do not think that we should underestimate that. As far as the 27 are concerned—this is true in Parliament as well—we are leaving. We are going through the door. They are all going to be left in there together, and they are not going out of their way to cause trouble. Virtually every country in the EU has a vested interest in the solidarity of the European Union's position in these negotiations.

When this comes to the European Parliament it will have some demands—and I know not what they are—to make of Barnier. There will be a common position. Barnier will be at the meeting on Wednesday. I am sure he will report on his visit to Ireland at the beginning of this week and you will see a European Parliament position emerging.

It is very good that we mention prior to the votes in the European Parliament in Amendment 49 because this is where Amendment 62 is useful. It gives a signpost. It says what will happen and that it happens only if the House of Commons declines to approve. At that point, before the European Parliament has agreed to the deal, we say that we would like to maintain the existing position and extend the period set out under Article 50—something that can be done only by a unanimous decision of the Council, but one on which the Parliament would be consulted. The European Parliament will have a consultation role and, frankly, if it has rejected the extension, I doubt the Council will go down the road of granting it.

I say to my colleagues on the Front Bench, please put some work into explaining your position to the European Parliament. We could start with slightly closer relations with the MEPs who represent the United Kingdom. There does not appear to be, shall I say, a high degree of collaboration and consultation between the two sets. I know that Richard Corbett has been here to give evidence but I think we need to put in a bit more work in the European Parliament and I invite the Minister to tell us what the Government's strategy is to get the European Parliament on side.

I finish by saying that Amendment 62 is not trying to do anything outrageous. It is setting a very simple signpost. It comes into effect only if the House of Commons—not the House of Lords—declines to approve and then it says quite clearly what happens. It asks for the status quo and an extension of time so that something else can be worked out. I think Amendment 62 is very reasonable. I would even hope that the Government might think about accepting it because it offers us a way forward. I hope that we will feel able to take it.

Baroness Hayter of Kentish Town: My Lords, the case has been made that should Parliament fail to approve the Government's withdrawal deal, the Government should pause the Article 50 process and go back to the negotiating table. That might appear to be a sensible, common-sense—in the words of the noble Lord, Lord Cormack—possibly even essential proposal. Indeed, it was one of the arguments we used when we urged the Government to remove the fixed date for exit in the Bill—we will return to that next week but I am sure they are aware of that—to give the flexibility they may need in exactly those circumstances.

However, I fear that the particular route of Amendment 62 runs counter to the whole thrust of what we have just agreed in Amendment 49. Should the Government's deal be voted down, the consequences of that failure to negotiate a satisfactory outcome and to win the support of Parliament for it would indeed be extremely serious. Amendment 49 says that in those circumstances it should be the Commons rather than the Government which starts to take charge. The Commons may well decide to take the route suggested in Amendment 62 with a quick letter to the EU asking it to consider an extension. It might consider as an alternative that it wants a referendum. It might decide that it wants to withdraw the Article 50 trigger altogether rather than just extend it, as set out in the later Amendment 57 from the noble Lord, Lord Wigley.

However, today is not the time to speculate which of those would be the right outcome for the House of Commons in those circumstances. We cannot know now and we certainly should not try to second-guess the correct option if there is not a majority in the Commons for the deal that has been negotiated.

It would be a shame if in any way the amendment appears to put the initiative back into the hands of Ministers, rather than the Commons. Amendment 49 said it was for the Commons, not the Executive, to take the next step should we find ourselves in that position. On that basis, we will be abstaining on Amendment 62—assuming that it is dealt with tonight, rather than early in the morning. Our reason is that it is tangential or even superfluous—rather than objectionable—and could be seen to conflict with what we have just agreed at 5 pm today in Amendment 49. It narrows, rather than widens, the options the Commons would have should the final deal be voted down.

Lord Reid of Cardowan: I welcome the constructive nature of my noble friend's criticism, if you follow me. I am not sure that the two are incompatible. I am not sure that the House of Commons can actually, in international relations, speak for a sovereign state the way that a Government have to speak for a sovereign state. I take it from what my noble friend said that she is not ruling out the idea but objects to the imperative nature of it and the apparent conflicts with what was passed earlier. In that case, I hope that she and the Government will engage in seeing how we could reconcile those apparent differences.

Lord Callanan: I thank noble Lords for their contributions to this debate. I remain as confident as I was debating the first group that we will reach a positive deal with the EU and that Parliament will want to support it. However, the noble Lord proposes that, in the event of Parliament rejecting the deal, we should seek an extension of Article 50 and stay in the EU. An extension to Article 50 is not for the UK to decide alone. It would require the unanimous agreement of the European Council. This should not come as a revelation to any noble Lords, as this point was made clear before and during the passage of the notification of withdrawal Act.

I do not think it is by any means certain that in the event of having agreed everything, only to find that nothing is subsequently agreed, it would be in the UK's or the EU's interest to reopen, for an undefined and potentially endless period, our withdrawal negotiations. I know that many noble Lords take a great and affectionate interest in the European project. It is not right to seek to extend our negotiations and act as a block to the EU's ability to address its priorities.

Here at home, this amendment touches on the points we discussed in the previous groups today. Again, it is not the role of the legislative branch to instruct the Executive on how to act on the international stage. I realise that EU exit might have changed some noble Lords' minds on this position, but this would be a constitutional shift potentially larger than our departure from the EU and is not something to be entered into via an amendment at this stage of the Bill.

We are, however, absolutely committed to giving Parliament the final say and, in line with the request in the noble Lord's Amendment 52, we will make every endeavour for this vote to be held before the vote in the European Parliament. Of course, this House and the other place will also want sufficient time to consider the deal and to debate it. The noble Lord's statutory commitment to our political goal could place these in tension. As we cannot control the timetable of the European Parliament, if it chooses to rush to a vote faster than would allow this Parliament to properly debate the deal, we would not want to try to force this House to a vote before it is ready.

In reply to my noble friend Lord Balfe, we are engaging extensively with the European Parliament. Indeed, I have met with Richard Corbett, as well as many other MEPs. We have been engaging at a ministerial level, from the Prime Minister downwards. I myself have visited Brussels and Strasbourg and attended many meetings and discussions with numerous MEPs from all of the political groups. I am pleased to tell my noble friend that there is a lot of support for a good and constructive deal with the United Kingdom in the European Parliament. His point is well made. We are engaging extensively with it; I myself am doing so.

As noble Lords will know, the UK and the EU have the shared objective of reaching an agreement by October 2018. That ensures sufficient time for the vote to take place, in both this House and the other place, before the vote in the European Parliament and substantially before our exit day. This vote will have to be prompt to leave the requisite time for the passage of the withdrawal agreement and implementation Bill, to which we are also committed.

I hope that I have reassured the noble Lord of the Government's commitment to delivering a timely vote and that a statutory direction to an extension to Article 50 is not appropriate. I therefore ask that he withdraws his amendment. Let me make it crystal clear that I cannot give him any false hope that I will reflect further on this issue between now and Third Reading, so if he wishes to test the opinion of the House he should do so now.

Lord Cormack: My Lords, I have no intention of seeking to test the opinion of the House on Amendment 52 because we have already passed Amendment 49.

Lord Callanan: I should say that the same argument applies to Amendment 62.

Lord Cormack: I do not know whether I am grateful for that or not, but I made it plain at the very beginning that I would not ask the House to vote on Amendment 52. The House has passed an amendment with similar intentions by a large majority. I trust that the Government will reflect on the implications of your Lordships' views as expressed in the Lobbies earlier.

Before I seek leave to withdraw Amendment 52, I say to my noble friend that although we share his hopes that the deal will be a good one and we would love to be able to share his expectations, various things have happened that make us concerned. We wish him and his colleagues well in the negotiations. We hope that the House of Commons, in particular, and your Lordships' House will feel able to commend them, but we do not yet know, and it is important that we have safeguards in the Bill. Although now is not the right moment to press Amendment 62—my noble friend does not give much hope for us on that—I repeat what I said and what the noble Lord, Lord Reid, said in his admirable speech, underlined as well by my noble friend Lord Deben and the noble Lord, Lord Balfe: this is a common-sense amendment which is a logical follow-up to Amendment 49. I am sorry that the Official Opposition do not feel able to commend a vote and therefore I do not think there is any point or purpose in having one tonight, but we shall seek methods by which we can keep this issue on the agenda and have occasion to return to it later on Report, because there are amendments where we can refer to these things again and perhaps at Third Reading, too. I beg leave to withdraw Amendment 52.

Amendment 52 withdrawn.

8.30 pm

Amendment 52A

Moved by ***Lord Judge***

52A: Clause 9, page 7, line 10, leave out subsection (2)

Lord Judge (CB): My Lords, I bring this amendment with support from all sides and wonder whether your Lordships would be kind enough to listen to me while I read to you the effect of Clause 9(1) and (2) taken together:

[LORD JUDGE]

"A Minister of the Crown may by regulations … make any provision that could be made by an Act of Parliament (including modifying this Act)".

By contrast with primary legislation, which has been through all the legislative processes in both Houses, with all the opportunity for discussion, debate, rethinking, amendment and, above all, scrutiny that are inherent in our processes to create primary legislation, this clause vests power in a single individual, a Minister, one man or woman, to promulgate new laws by regulation drafted in their own departments. What is worse, that single individual is by regulation empowered to override, repeal or amend primary legislation which has been enacted after both Houses have been through the processes which I have just described.

I have said before, and venture to repeat myself, that in a democracy that is a remarkable lawmaking power given to a single individual. Vesting such power in a single individual is a very dangerous constitutional habit. Clauses such as this are inserted into primary legislation with what I at best can say is casual indifference. It would be interesting to be able to know, and we never shall, when a Minister signing off proposed primary legislation questioned the inclusion of such a clause. Was it last year, 10 years ago or maybe 20? Even more, would it not be wonderful if a Minister not only questioned it but insisted on its removal? I cannot imagine anybody here thinks it happens very often. Such clauses go into Bills like confetti strewn about at a wedding.

What about us, Parliament? We have not been as assiduous as we should have been. As I have said before—I am sorry, it is a mantra that you will hear me repeating—the last time the Commons rejected a statutory instrument was in 1979, just about 40 years before exit day. There was a much more recent example in this House, as all noble Lords will remember, but the proper exercise of those powers by this House was treated as if it had created a constitutional crisis. It had not, of course, but many thought that it had. On the basis that the scrutiny process of regulations in the Commons has become obsolete, this power to make new law and override existing law by ministerial regulation is effectively synonymous with ministerial proclamation running the country.

The very same House of Commons which is said to have given that dangerous Henry VIII these powers would regard our efforts to control them, our distortion of our legislative processes, as at the very best pusillanimous. It is a remarkable feature of Clause 9(2) that it actually repeats words in that notorious Act of Proclamations 1539. The Act provides that royal proclamations were to be obeyed,

"as though they were made by Act of Parliament".

That is why I read out what our current provisions are proposing to put in. I think that it is a shameful echo. For lawmaking purposes, it means that one man's or woman's word is equivalent to the entire parliamentary process. In 1539, that very same Commons—I regret that it was the Commons, not the Lords—did something that it is never given credit for. Remember that it was dealing with Henry VIII and Thomas Cromwell. But the Commons expressly qualified that very wide grant of powers by making the provision that the words should not be understood to mean that anyone,

"of what estate, degree or condition soever",

should have,

"their inheritances, lawful possessions, offices, liberties, privileges, franchises, goods … taken from them … nor that by any proclamation to be made by virtue of this act, any acts, common laws (standing at this present time in strength and force) nor yet any lawful or laudable customs of this realm … shall be infringed, broken or subverted, and specially all those acts standing this hour in force which have been made in the King's Highness' time".

Occasionally one needs to reflect on the courage of the Commons to stand up to Henry VIII all those years ago. History has been unkind to it. The Speaker ended up in the Tower. It was on an almost certainly trumped-up charge of dishonesty and fraud, but that was where he ended up. Those noble Lords who think that Thomas Cromwell lost his head because Henry VIII did not find Anne of Cleves bonny and buxom in bed should think again. The reason he lost his head was that for the first time in the whole time when Henry VIII relied on him he did not get from Parliament what the King wanted. So let us remember the express qualifications in that notorious Act of Proclamations. They are magical words and we today have forgotten about them—we do not include them.

These particular Henry VIII clauses are about as pointless as they can ever have been anyway. They do not come into force before the "meaningful vote"—no further words from me on that—and they may not be exercised anyway after exit day, which is less than 12 months away. What is the point of them? The opportunity for exercising these powers, if Parliament chooses to give them to the Minister, are minimal, and such opportunity as there will be will be diminished by the requirement in Amendment 83C for the Minister to explain why it is reasonable for these powers to be exercised. I trust the Minister will accept, and indeed perhaps indicate to the House, that it is perfectly sensible, if the Minister is giving good reasons for any decision, for the Minister to explain which pieces of primary legislation it is proposed to amend, repeal, revoke or tamper with. Then at least the scrutinising process can say what it is we are looking at.

I am using a ridiculous example to make my point: the Statute forbidding Bearing of Armour 1313 says that you must not come within one mile of Parliament armed. Okay, we can get rid of that—I suppose—because we have modern Acts to deal with the problem. But I make this trivial point because we need to know what it is considered that we should interfere with before it is possible for us to say that there are good reasons for doing so. I beg to move.

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, if Amendment 52A is agreed to, I cannot call Amendment 53 for reasons of pre-emption.

Lord Lisvane (CB): My Lords, Amendment 53 in this group is in my name and those of the noble Baronesses, Lady Hayter of Kentish Town and Lady Wheatcroft, the noble Lord, Lord Tyler, and—most recently and much to be welcomed—the noble Lord, Lord Callanan. In Committee I had occasion to speak

about the legislative Damascus road so I am very glad that in respect of this issue at least the Minister has added this highway to his travel plans.

I respectfully commend my noble and learned friend Lord Judge for his excoriation of Henry VIII clauses. It is a very poor rejoinder to say that the exercise of these powers is subject to the way that Parliament deals with statutory instruments, whether they be affirmative or negative, because too often that is an occasion for merely perfunctory examination. Over a period of time—and I have looked at quite close quarters at the way that the threshold between primary and secondary legislation has moved upwards over the past couple of decades and more—it is ultimately subversive of the primary legislative process.

If my noble and learned friend presses his amendment, I will of course support him, but if he chooses not to do so or fails to convince your Lordships, I will fall back on my amendment, to which the noble Lord, Lord Callanan, has so helpfully added his name.

Lord Rooker: My Lords, I had not intended to speak in this debate, which is way above my pay grade, but in answer to the question asked by the noble and learned Lord, Lord Judge—which I invite the Minister to get briefed on—about how this has been allowed to happen and when, I say that it would not have happened in David Renton's time. He was the Member for Huntingdonshire in the other place and was still active here at 92, taking parliamentary draftsmen apart on a weekly basis, under the Government of whom I had the privilege to be a member. I am sure the noble Lord, Lord Lisvane, recalls this. He was meticulous. He chaired a report in the other place in the late 1970s on the drafting of legislation. It was his life's work. He could pick apart these issues. No one is doing that these days and it is allowing slipshod work by parliamentary draftspeople to get on to the statute book, and it is about time we did more about it.

Lord Tyler (LD): My Lords, I am a signatory to Amendment 53, as the noble Lord, Lord Lisvane, said, and I want to contribute one very small thought to your Lordships. Many of us will recall that at the outset of consideration of this Bill by your Lordships' House, there were many attacks in anticipation that we might amend it. But the very fact that the Minister has signed our amendment indicates that your Lordships' House is doing its job. That is the whole point of our presence in the legislative process.

Ministers were egged on and convinced by the more incendiary Back-Benchers in the other House, and the tabloid media, that it would be outrageous if your Lordships' House amended in the tiniest detail this wonderful Bill that was going to be put in front of us. The Minister has now helped us do some amending. We have already had seven changes, I think, improving the Bill, with a large majority in some cases. So I plead with the Minister to recognise in future that we are doing our job when we improve this Bill. It did not come to us perfect. It will go back to the other place a great deal better than when it came to us. I hope that there will not be so many incendiary attacks on your Lordships' House in future by curious Back-Benchers in the other House.

Incidentally, I yield to nobody in wishing to reform your Lordships' House, as some noble Lords will know to their cost. I was a strong supporter of the agreed Cross-Bench 2012 Bill. I now find it rather odd that the people who want to reform this House, or indeed to abolish it, are the very people who stood in our way on that occasion.

8.45 pm

Lord Goldsmith (Lab): My Lords, I start by thanking my noble friend Lord Rooker for reminding us of the work of Lord Renton. Those of us who were privileged to serve in this House with Lord Renton, and others who served in the other House with him, will well recall what my noble friend said about his work. We would do well to remember it and so I thank my noble friend for reminding us.

As for the amendment moved by the noble and learned Lord, Lord Judge, it would be very difficult, if not impossible, not to feel the force of the logic that he so powerfully expressed. As the noble Lord, Lord Lisvane, said, it is not a very strong response to say that there are protections in the way in which statutory instruments will be presented to this House and the other House. I add to that the fact that there are other protections this House has said are necessary, at least in relation to certain changes, for example those which might affect elements that require—as this House has said—special protection when it comes to the use of the delegated powers this Bill is intended to provide.

Having said all that, there remains a strong logic in what the noble and learned Lord, Lord Judge, has said, and I think we all hope that is carefully considered by the Government, for both this Bill and future Bills. It is fair to say—like the noble and learned Lord, Lord Judge—that at least this Bill has some restrictions on the way these powers may be used, and I commend his requirement—his request—that when Ministers give reasons for the use of these powers, we understand just what they have in mind. This House and the other place should look carefully at that. That said, we will wait to see what the noble and learned Lord will do with his amendment.

What is being said about Amendment 53 is to be welcomed. That should not be overlooked. The noble Lord, Lord Callanan, has added his name to this amendment. It is one of the few occasions—I think the only occasion—when one gets five names on an amendment: when a Minister sees the error of his ways and adds his name to the amendment. That remark may be churlish of me—the noble Baroness, Lady Goldie, is nodding vigorously—but the important point is that we welcome the Government's acceptance of that amendment. That was the most egregious part of the Henry VIII clause: that it should be possible to use it to amend even this very Bill, which your Lordships have spent so many hours and days debating. It is, therefore, good to see that go.

I ask the Minister—I think it may be the noble Baroness—to confirm one thing. Amendment 53 omits the words "including modifying this Act", which currently appear in the clause. My belief is that those words were there because without them it would not be possible to use the power to amend the very Act in

[LORD GOLDSMITH]

which the power appears. I believe that is stated in parliamentary counsel's guidelines on clauses such as this.

I very much hope the noble Baroness will confirm that when she responds to the amendment. I know that attempts were made through the usual channels to make sure that whoever responded to the debate had notice of that question. I hope, therefore, that she has been adequately briefed on it. I think, however, that your Lordships will want confirmation that that is the purpose of this amendment. It was certainly the purpose when it was tabled: that it should take away this most egregious possibility of being able to use the power to amend the very Act itself. I will give the noble Baroness time to get clarity on that, but I can assure her that attempts were made through the usual channels to ensure that she was not taken by surprise by it. I do not know quite what happened.

In any event, we would certainly want Amendment 53, when we get to it shortly, formally moved by the noble Lord, Lord Lisvane, and I look forward to supporting it then. In the meantime, I wait to see how the noble and learned Lord deals with his amendment.

Baroness Goldie (Con): My Lords, let me start on a positive note. My noble friend Lord Callanan was indeed pleased to add his signature to Amendment 53, tabled by the noble Lord, Lord Lisvane, which will remove the ability under Clause 9 to amend the Act itself. I note that this amendment is supported not just by the noble Lords in whose names it lies but by the Delegated Powers and Regulatory Reform Committee of this House. It was one of that committee's recommendations for the Bill and, given that the Government are happy to support this amendment, we are pleased to be in such illustrious and learned company. It is a heady experience, I have to say.

I am sure that noble Lords will welcome this amendment to a part of the Bill that has continued to cause concern to many throughout its passage. It is important to explain why the Government included such a measure at the time of introduction—this may partly address the point raised by the noble and learned Lord, Lord Goldsmith. When the Bill was first drafted, this provision was not an attempt to hold open a back door to circumventing or undoing any of the protections or constraints in the Bill. Rather, it was seen as a necessary step to provide the flexibility to respond to developments in negotiations. Indeed, the fact that aspects of the Bill may need to be amended, depending on the outcome of these negotiations, still remains. Our acceptance of this amendment does not reflect a change in that regard. Rather, the decision to introduce in due course a withdrawal agreement and implementation Bill, which will give effect to the implementation period, the citizens' rights agreement and the financial settlement, among other provisions of the withdrawal agreement, provides another door through which the Government may make all the changes required.

Without a strong justification for retaining Clause 9's ability to amend the EU withdrawal Bill once it becomes an Act, the Government are indeed content to remove that ability. As with our amendment to remove Clause 8, I hope this shows the Government's commitment to working with Parliament and I reassure the noble and learned Lord, Lord Judge—

Lord Kerr of Kinlochard: Before the Minister moves on, can she clarify what the answer is to the question asked from the Opposition Front Bench? On the face of it, if the words "including modifying this Act" are removed, it leaves simply this sentence:

> "Regulations under this section may make any provision that could be made by an Act of Parliament".

Do you make a substantive change by withdrawing those words? It is not clear to me that you do.

Baroness Goldie: I listened with interest to that point, but I am not sure that I entirely agree with that construction of the change to Clause 9(2). Amendment 53 means that we will not be able to amend the Bill when it is an Act. It therefore restricts the scope of the power, which seems to have met with the satisfaction of those who have put their names to it. As I have said, that is a positive and, I hope, a helpful reassurance from the Government.

Lord Goldsmith: Can we just agree that, as far as the noble Baroness and the Government Front Bench are concerned, it is the belief of the Government that removing the words as proposed in the amendment to which the noble Lord, Lord Callanan, has put his name, would preclude the power in this clause being used to amend the Bill once it becomes an Act?

Baroness Goldie: In short, yes—with this caveat. The Government regret that we are not able to be signatories to Amendment 52A, in the name of the noble and learned Lord, Lord Judge, because, as he has indicated, it seeks to remove Clause 9(2) completely, thereby removing the power to amend primary legislation. However, it is always a joy to listen to the noble and learned Lord's eloquent and well-informed contributions.

Let me explain the Government's position. Even with the introduction of the withdrawal agreement and implementation Bill, Clause 9 residually serves as a supplementary measure to implement the more technical elements of the withdrawal agreement that will need to be legislated for in time for exit day. These technical amendments may need to be made to primary legislation in exactly the same way as in secondary legislation, so we cannot accept limiting the power in the way sought by the noble and learned Lord. However, I say to him, as he specifically raised this point, that the new transparency procedures for such regulations would require the Minister to make clear in the supporting memorandum what legislation was being amended. I hope that reassures him.

The Government believe that whether a change is made to primary or secondary legislation does not always reflect the significance of the changes being made. Equally, the level of detail involved may be better suited to secondary legislation. I hope that noble Lords will understand the Government's reasoning on this and will welcome the Government's compromise through the removal of the ability to amend the Act.

I repeat the categorical assurance I have given to the noble and learned Lord, Lord Goldsmith, on that point. This further demonstrates the Government's commitment to restrict the scope of the powers sought wherever practical. I hope this amendment is enough to reassure the noble and learned Lord, Lord Judge, and that he will withdraw his amendment.

Lord Judge: My Lords, we have made some progress. If the use of this extraordinary power—extraordinary in the sense of the power rather than extraordinary in the sense of the number of times it is used—will be limited to dealing with technical amendments, which will be explained by highlighting the legislation under consideration, we have made some progress and I shall not test the opinion of the House today.

However, Henry VIII clauses are unacceptable save in the most special circumstances. Although I shall not divide the House today, I shall watch as each new Bill comes before us, in connection not only with Brexit, to make sure that the Minister looking at the first draft of the Bill asks why it contains a Henry VIII clause, why it is needed and what it is for so that we do not suddenly find a whole cluster of Henry VIII clauses bursting through at the seams such that we are unable to control them. We have made some progress. It is not enough for the long term, but for tonight we have done very well. I beg leave to withdraw the amendment.

Amendment 52A withdrawn.

Amendment 53

Moved by ***Lord Lisvane***

53: Clause 9, page 7, line 11, leave out "(including modifying this Act)"

Amendment 53 agreed.

Amendment 53A

Moved by ***Baroness Goldie***

53A: Clause 9, page 7, line 13, after "taxation" insert "or fees"

Amendment 53A agreed.

Amendment 54 not moved.

Amendment 54A

Moved by ***Baroness Goldie***

54A: Clause 9, page 7, line 15, after "offence," insert—

"( ) establish a public authority,"

Amendment 54A agreed.

Amendment 55 not moved.

The Deputy Chairman of Committees: My Lords, before I call Amendment 55A I must inform noble Lords that there is an error in the Marshalled List. Amendment 55A should read:

"The condition in subsection 3(e)",

and not 2(e).

9 pm

Amendment 55A

Moved by ***Baroness Massey of Darwen***

55A: Clause 9, page 7, line 17, at end insert—

"(e) make any provision without giving consideration to Part I of the United Nations Convention on the Rights of the Child ratified by the United Kingdom.

(3A) The condition in subsection 2(e) is fulfilled if, and only if, a Minister of the Crown lays before both Houses of Parliament—

(a) a Ministerial Statement committing to give due consideration to Part I of UNCRC ratified by the United Kingdom when carrying out duties and functions that were within the competence of the EU before exit day, or when exercising powers under this section or powers under section 7 to prevent, remedy or mitigate deficiencies; and

(b) a comprehensive audit setting out how children's rights will continue to be protected across the United Kingdom after exit day, particularly in areas where children's rights are not currently protected under domestic law but were, before exit day, in EU law."

Baroness Massey of Darwen (Lab): My Lords, together with many noble Lords, I have always fought for the rights of children, to protect children, to engage children and to empower children. I have to declare an interest now that I am chair of the Council of Europe Sub-Committee on Children. I am also active in children's issues in the UK.

The amendment explores the potential impact of Brexit on children. I thank the Minister for Children, who along with his staff met me a couple of weeks ago. I hope the Government are listening today. I do not intend to call a vote on this amendment but I want to strongly draw attention to how important it is to consider children in all aspects of our discussions on Brexit. I hope that after this debate we will have further talks with Ministers about the rights of children, and that they will guarantee that children's issues are monitored throughout the discussions.

Despite the Government's stated commitment to the UN Convention on the Rights of the Child and their reassurances that children's rights will not be affected by the departure of the UK from the EU, it is clear that both the foreseeable and unforeseeable impacts of the UK's withdrawal on children's lives have not been thoroughly considered in the Government's proposals as contained in the withdrawal Bill. This has already been raised as a concern by MPs, Peers and children's organisations alike, given that the legislation and protections derived from our membership of the EU affect so many aspects of children's lives, from consumer and environmental protections to cross-border safeguarding and anti-trafficking measures.

We have already drawn attention to the need to ensure that we do not go backwards in the protection of children's rights during and after Brexit. This is about preserving existing rights and protections for children and making sure that our exit from the EU does not erode or undermine them. We have heard many assurances from the Government that they are fully committed to children's rights and protections and to the UN Convention on the Rights of the Child.

[BARONESS MASSEY OF DARWEN]

They maintain that their ability to safeguard children's rights will not be affected by withdrawal from the EU and that these issues will go into domestic law. However, it is a serious matter that we know that decisions taken at central government level, which have a significant impact on children's lives and well-being, are not taken with the principles and provisions of the UNCRC in mind. For example, assessments of the potential and expected effects on children's rights are not yet routinely carried out, and we know that in 2016 the UN Committee on the Rights of the Child, which monitors the implementation of the UNCRC, recommended that the UK ensure that all the principles and provisions of the convention be directly applicable in law in the UK, which is currently not the case.

That is why I have tabled an amendment requesting a government commitment, in the form of a ministerial statement, to consider the UN convention when making legislative changes as a result of EU withdrawal. Despite assurances to the contrary, our current domestic legislation is not comprehensive enough to ensure the full protection of children's rights after our exit from the EU. The Human Rights Act and the Children Acts of 1989 and 2004 provide important but insufficient protections. While retaining the Charter of Fundamental Rights would be extremely useful and welcome, the amendment would ensure additional protection for children and their rights.

In preparation to leave the EU, as the statute book is amended, we should be wary of any changes that affect children in a contrary way. There is a real risk that children's rights will not be considered. That could have serious implications for children in a number of areas, namely data protection; cross-border co-operation in child safeguarding and anti-trafficking efforts; paediatric clinical trials; food safety and labelling; TV and media advertising; environmental standards and protections; the rights of migrant children to access healthcare and education; and cross-border family law.

Currently, under EU law, trade in goods and services between EU members has to ensure that children's welfare is protected. Any new trade deals that the UK embarks on after Brexit must include adequate safeguards to ensure that children are not put at risk.

As things stand, the Government's proposed delegated powers would allow them to make important decisions on EU withdrawal, decisions that could have a significant impact on children, with little or no parliamentary scrutiny. This makes it even more imperative to have a ministerial statement of commitment that government departments will consider the UNCRC in their EU-related decision-making during and post Brexit. Such a commitment would demonstrate and guarantee a clear willingness by the Government to ensure that there will be no going backward in children's rights protections after leaving the EU.

Current efforts by the Department for Education to develop training for officials on the UN Convention on the Rights of the Child and UNICEF's child rights impact assessment template to be used as a development tool across government departments are welcome, and represent a useful resource, but they are not sufficient by themselves. I also seek from the Government a guarantee that the training of officials on the UNCRC and the impact assessment tool on child rights will be used across government departments to secure and ensure that children's issues will not be solely the responsibility of the Department for Education. Cross-departmental working is very powerful, but how will it be ensured?

A precedent for an audit to protect children's rights has already been set by the Scottish Government. I urge the UK Government to do likewise. I hope to continue discussion with the Government about this and to convince them that this is an important issue which cannot be overlooked. I beg to move.

Lord Judd (Lab): My Lords, I congratulate my noble friend on having put the amendment before us. I am sure the Government will take it seriously; I cannot believe that they would do otherwise. I want to make only one point. The convention is terribly important. It is clear time and again that, in our affairs in the UK, it is not yet fully operative. If there are ways in which we have been enjoying the strengthening of its operation by our membership of the European Union, it is doubly important, following any exit from the European Union, that those issues are covered closely by our own arrangements. I am sure that an audit is a realistic and practical suggestion which also deserves attention.

Britain played a very important part, as it so often has in international affairs, in the construction and drawing up of the convention. Many distinguished Conservatives were behind the operation. Because of that commitment—it was not just a matter of getting something on paper; it is how it is actually applied—what my noble friend has proposed and the way she has emphasised it this evening shows that the Government need to give the issue serious attention and to give her the assurances she seeks.

The Earl of Dundee (Con): My Lords, we discussed two key aspects of protecting children' rights post Brexit in Committee.

The first is the need to guarantee that our present level of cross-border co-operation should not diminish. Here, my noble friend gave me an assurance, for which I am grateful, that the United Kingdom's current security arrangements in Europe will continue; and, in particular, through the effective agencies now deployed, including Europol, the European arrest warrant, Eurojust and ECRIS.

The second matter, focused in the amendment before us, is that, post Brexit, UK domestic law and its deployment should manage to reflect and be guided by the United Nations Convention on the Rights of the Child. My noble friend also gave a commitment on this in Committee: that UK domestic law would always reflect and be guided by UNCRC. Following that resolve, it should not be necessary that UNCRC be incorporated within UK law. Yet perhaps my noble friend the Minister may be able to support what this amendment implies: that a Statement to the House should be made at another time, as convenient, setting out more broadly the Government's commitment to children's rights, while also indicating the work that is going on across government and in the United Kingdom to promote and protect these rights.

My noble friend the Minister might possibly agree as well that such a Statement such could usefully include an undertaking to offer on certain relevant policies impact assessments on children's rights.

Baroness Meacher (CB): I support the amendment, to which I have added my name. I shall speak for no more than a minute, or possibly a minute and a quarter, in view of the time. While the UK has been a significant advocate for children's rights globally, our domestic legislative environment refers only scantily to the rights of children. The Minister must be aware that there are no legal financial sanctions in this country for non-compliance with some of the principles and provisions of the UNCRC. Ministers claim that, because we have ratified the UNCRC, we do not need the protections afforded through our EU membership—but there is no point in children having rights on paper if there is no way to enforce them.

The Minister will be aware of the case of Hughes Cousins-Chang, in which the High Court relied not only on the UNCRC but on EU laws, directives and guidance to challenge the Government when that person's rights were inadequately protected domestically. What legal and financial sanctions and safeguards does the Minister have in mind for children in our future world? Will the Minister please respond to this point?

Baroness Lister of Burtersett (Lab): My Lords, I simply want briefly to challenge the central plank of the case made by the noble Lord, Lord Callanan, in Committee that the Government remain fully committed to children's rights in the UNCRC. He said:

"The rights and best interests of children are already, and will remain, protected in England".—[*Official Report*, 5/3/18; col. 932.]

That is strongly contested by the children's sector, which argues that that protection is piecemeal, inadequate and inferior to that in Scotland and Wales because there is no UK-wide underpinning constitutional commitment to children's rights such as exists at EU level. In contrast to the rosy picture that the Minister painted, in its latest observations on the UK the UN Committee on the Rights of the Child,

"regrets that the rights of the child to have his or her best interests taken as a primary consideration is still not reflected in all legislative and policy matters".

It calls on the Government to,

"ensure that this right is appropriately integrated and … applied in all legislative, administrative and judicial proceedings and decisions as well as in all policies, programmes and projects that are relevant to and have an impact on children".

Whereas the Minister claimed that incorporation of the convention is unnecessary because the UK "already meets its commitments" under it through legislation and policy, the UN committee recommended that the Government,

"expedite bringing our domestic legislation … in line with the Convention to ensure that",

its,

"principles and provisions … are directly applicable and justiciable under domestic law".

Far from meeting our commitments under the convention, refusal to accept this amendment would fly in the face of the letter and spirit of the UN committee's recommendations and would be seen as a betrayal of children's best interests by the children's sector.

Baroness Butler-Sloss (CB): I was President of the Family Division. It is interesting that, as far as I know, in domestic family law, nothing whatever is said about rights for children up to the age of 16. There are some medical rights for children aged over 16. In the human rights convention, nothing is said about the rights of children, which makes the United Nations convention absolutely crucial.

I add just one further point. In 1988, I was the author of a report on the Cleveland child abuse inquiry. My second recommendation was that children ought to be viewed as people and not objects of concern, which is how our domestic law looks at children. It is a very serious matter. If we do not have the protection of the UN Convention on the Rights of the Child in its various articles, we will fall very seriously behind—and that is why I support the amendment.

9.15 pm

Lord Storey: My Lords, on these Benches we also support this important amendment. It is easy to lose contact with this in the great issues of our time—trade, customs unions and defence—but children are really important. As has been said, and as the Minister herself will know from her Scottish experience, our devolved nations perhaps take this issue more seriously than we do in England. The Scottish Government have recently committed to undertaking a comprehensive audit, looking at ways to further embed the principles of the United Nations Convention on the Rights of the Child. The Government have previously said that they take children's rights extremely seriously. It is now time to make this commitment clear, as we go through this unprecedented period of change. Let us please give our children and young people that reassurance.

Baroness Howe of Idlicote (CB): My Lords, I support the amendment in the names of the noble Baroness, Lady Massey, and other noble Lords. I want to concentrate on the area of online child protection because, as some noble Lords may know, I have followed this subject over the years and the EU has had an important responsibility for it. Child sexual abuse online affects children of all ages and backgrounds and is now perhaps the biggest challenge to our child protection authorities. A recent report by the NSPCC revealed that, in 2015-16, the number of police-recorded offences relating to indecent images increased by 64% in England, 50% in Wales, 71% in Northern Ireland and 7% in Scotland. In 2016, the Internet Watch Foundation identified over 57,000 URLs containing child sexual abuse images and in its most recent annual report found that two-thirds of child abuse content online is hosted in Europe.

Methods of engaging illicitly with children online are ever more technically sophisticated, and are perpetrated by extensive, highly organised cross-border criminal networks. While child protection is a devolved matter and each of the four nations of the UK has its own guidelines and definitions, it is an issue that can be effectively addressed only through strong cross-national co-ordination and collaboration. The EU has developed a harmonised legal response and facilitated cross-border co-operation to tackle this. In particular, the EU sexual exploitation directive introduced clear minimum standards

[Baroness Howe of Idlicote]
for sanctions and measures to prevent abuse, combat impunity and protect victims. It includes provision for co-operation with Europol, supports constructive dialogue between member states and industry, and adapts criminal law to account for technological developments.

Many of these provisions have now been incorporated into UK domestic law, but legal responses are only part of the solution. We need continued investment in educational and technical resources and to be able to gather data and other forms of intelligence from the investigative authorities abroad. Maintaining co-operation with EU policing and criminal justice agencies and mechanisms is the best way to achieve this. We must not forget that the UK has played a significant and leading role in EU cross-border agencies, sharing our expertise and learning from others. As Peers will know, the outgoing head of Europol is British. My fear is that we may lose influence in these agencies. We have a lot to contribute to make sure that those agencies and mechanisms work effectively to keep children safe, not just in the UK but across Europe. Will the Minister tell the House how she plans to ensure that the UK will continue to use our considerable expertise to help shape EU policing and criminal justice agencies?

Online abuse comes in other forms too, including the widespread manipulation of children through exploitative online advertising, and the use and abuse of children's personal data without their knowledge or understanding. Such practices affect children in potentially more profound ways than adults, and can significantly compound their vulnerabilities as they progress into adulthood. A strong commitment to a broader framework for children's human rights, that promotes the rights and interests of children over and above those of commercial operators, is surely the best way of addressing this and other forms of online exploitation of children.

The Lord Bishop of Leeds: My Lords, I briefly add my support for this amendment. It seems that much of the debate about EU withdrawal has been about economics, deals and trade, and we cannot speak of children in terms of deals or trade. Some of the most vulnerable people on our continent are children. Perhaps the most important thing is that they are the future as well as the present, and they will not forget how they have been seen and how they are regarded. So I strongly endorse the statement made by the noble Baroness earlier that children are people, not a project. I support the amendment.

Baroness Sherlock (Lab): My Lords, this has been an important short debate. I congratulate my noble friend Lady Massey of Darwen on the way she introduced it and on her ongoing battle to protect the rights of our children, and I expect to hear much more from her on that many times in the future.

As we have heard today, at EU level a number of key legislative mechanisms work in conjunction with each other to ensure that children's rights are protected when EU law and policy is being developed, applied and interpreted: the ECHR, the EU charter and, crucially, the UN Convention on the Rights of the Child. As we have heard, the key issue is that measures enacted at EU level, whether or not they directly target children, are interpreted and applied by member states in a manner that is consistent with international children's rights standards. It is the loss of that that so many people inside and outside Parliament are concerned about. The inadequacy of domestic legislation in doing that job has been articulated so well by my noble friends Lady Massey and Lady Lister, the noble and learned Baroness, Lady Butler-Sloss, the noble Lord, Lord Storey, and the noble Baroness, Lady Meacher. The case is compelling.

This amendment would go some way to try to rectify that by ensuring that Ministers cannot make regulations under the relevant section of the Bill without reference to the parts of the UNCRC ratified by the UK. The Government would therefore have to commit to Parliament that they would give due consideration to Part 1 of the convention before using powers transferred from the EU, and, crucially, they would have to set out an audit of how children's rights will continue to be protected in the UK after exit day. The importance of an audit and an impact assessment—a point made by the noble Earl, Lord Dundee—cannot be understated. Or do I mean overstated?

We all share the same goal: that we should create and maintain a society in which all children are valued, safe and able to flourish. The right reverend Prelate the Bishop of Leeds made that point clearly: children are people and are our future as well as our present. But as a society we have learned slowly that the risks to children's safety are not always obvious, nor is it always obvious which are the actions that can pay positive dividends in helping them to flourish. If we do not intentionally look at the implications of generic actions for children, there will be unintended consequences. My noble friend Lady Massey gave some good and powerful examples of that, and the noble Baroness, Lady Meacher, gave a good case of how international law has to be used to defend those rights. It is crucial that we retain appropriate mechanisms for ensuring that due regard is paid to children's rights when policy and law are being developed.

The Minister will have heard the concerns expressed from around the House and that the Government's previous reassurances have not served to reassure Members or key people outside. I have two simple questions for the Minister. Does she understand why people are so concerned about what will happen to the status of children's rights in the UK after Brexit? If so, what will the Government do to ensure that, as the Bill brings EU legislation into domestic law and transfers powers from the EU to Westminster, fundamental rights for children are not weakened in the process, either deliberately or accidentally? I look forward to her reply.

Baroness Goldie: My Lords, I am grateful to the noble Baroness, Lady Massey, for raising the important issue of children's rights through this amendment. I know that both the noble Baronesses, Lady Massey and Lady Meacher, met the Children's Minister recently to discuss these matters. I fully accept that the intention behind this amendment is clearly an honourable one. However, it would in effect add no further value to preserving current safeguards on children's rights within the Bill. This is because the amendment implies that the EU offers additional duties or functions to safeguard

children's rights above or beyond those that exist in the UK. That concern may stem from the Government's proposal to not retain the Charter of Fundamental Rights, subject now to further consideration when this Bill returns to the other place. However, if the charter no longer applies once we exit the EU, this would not impact on the UK's ability to protect and safeguard children's rights, as I shall endeavour to explain.

The amendment also states that there are some children's rights which are not currently protected under domestic law but are under EU law. Again, however, we do not accept their construction. The noble Baroness, Lady Sherlock, raised the important point about what these rights are and what will happen to them on exit. Children's rights are, and will remain, protected in England primarily through the Children Act 1989, the Adoption and Children Act 2002, and the Children Act 2004.

Baroness Butler-Sloss: As one of those who was involved in the drafting of the Children Act, my recollection is that it is entirely devoted to the welfare of children and their best interests. I cannot remember a single word about rights. Parents have rights and responsibilities, but not children.

Baroness Goldie: I defer to the noble and learned Baroness's prowess in this area—I would not seek to usurp it for one moment. I am merely giving that Act as an example of part of the framework that currently exists in statute to protect children. If parents indeed have responsibilities under that Act, presumably that confers benefit on the children. Additionally—and I was interested that noble Lords did not refer to this—the European Convention on Human Rights as a whole offers protection of children's rights, and this is implemented by the Human Rights Act 1998. Children are not excluded from these provisions.

I also want to make clear to the House that the overall package of children's rights protections set out in domestic legislation can be challenged in the usual ways in the event of a breach of a specific provision of domestic legislation. This will continue to be the case following our withdrawal from the EU.

A number of contributors raised the interesting question of sanctions against breaches. I have no specific information on that but I will undertake to investigate and, if I can procure any information, I will certainly write to those who raised that specific aspect.

As has been stated during previous debate on this—and I thank those who have provided helpful contributions—the Government take very seriously the need to ensure that proper checks and balances are in place so that we continue to safeguard and promote children's rights. The intention behind this amendment is clearly to create additional safeguards. However, I suggest that sufficient measures already exist which will not be affected by our withdrawal from the EU.

It is important to recognise that all state parties undergo rigorous periodic reporting rounds on the UNCRC, to which a number of contributors referred, consisting of intense scrutiny and challenge. The last reporting round concluded in 2016, with the United Nation's concluding observations published in July of that year. In response, the Government reiterated their commitment through a Written Ministerial Statement in October 2016. In January 2022, the Government will submit their next UK periodic report for the United Nations Convention on the Rights of the Child to the UN. This report will primarily address the UN recommendations that came from the last reporting round, which, as I say, concluded in 2016. In addition, next year the Government will be submitting a mid-term report to the UN Human Rights Council on the 227 United Nations recommendations, many of which relate to children's rights. This report is a voluntary commitment of the UK, aimed at keeping all UN recommendations under review in advance of the next universal periodic review's dialogue, expected in 2021.

9.30 pm

A further crucial element of scrutiny on child rights specifically comes from the appointment of Children's Commissioners. England, Wales and Scotland all have Children's Commissioners in post. The Children's Commissioner for England has a statutory duty to promote and protect the rights of children and may monitor the implementation of the UNCRC as part of the primary function of promoting and protecting the rights of all children. I would like to thank all the current commissioners throughout the United Kingdom for the valuable work they do.

Finally, the Joint Committee on Human Rights scrutinises the UK's compliance with its human rights obligations, including its child rights obligations, contained in a range of international treaties. A member of that committee also sits as an observer on the UNCRC action group. I trust that this reassures noble Lords of our wholehearted commitment to children's rights. I have tried to demonstrate how all existing safeguards will remain in place as we leave the EU, and that robust measures are already in place to continue scrutiny and give assurance that we continue to protect children's rights.

Again, I thank the noble Baroness for the amendment, but ask that it is withdrawn, given the reasons I have set out. I do not want to proffer false hope and I will not be reflecting further on this issue between now and Third Reading, so, if the noble Baroness wishes to test the opinion of the House, she should do so now.

Baroness Massey of Darwen: My Lords, I will not test the opinion of the House tonight, as I said earlier on. I simply thank all those who have spoken so passionately in this short debate about the protection of the rights of children. It is a pity that we have to be speedy because it is late, but I will certainly continue my pleas—and I know others in the House will continue theirs—to the Government not to forget children or treat them as projects or objects. Children are not small adults: they are children.

I thank the Minister for her reply, but I still need proof of the Government's commitment to support the United Nations Convention on the Rights of the Child. I have noticed in debates on these issues that the Government tend to contradict themselves and sometimes indeed get things wrong. I do not know if the Minister is aware of the report of the Joint Committee on Human Rights that was severely critical of the

[BARONESS MASSEY OF DARWEN]
attitude towards children and what was happening about them. As I said, I need proof that the Government are serious about this and will indeed make a Statement on it before long.

We need to get our laws in tandem with European and global laws on children. I have heard the same arguments from the Government which keep coming up. They say that we will cover this in domestic law. I have no proof of that and we should be very careful about making such statements. The devolved nations have a much healthier respect for this issue. I have examples of very good practice which I hope will be listened to.

We heard tonight some brilliant and condensed speeches and I repeat that the Government must take this issue very seriously. I hope that they will also commit to working in a cross-departmental way and not leave everything to one department. I hope that they will come up with cross-departmental awareness and a Statement on this. Will we really, finally implement the UNCRC, which has been critical of the UK in many instances? It has criticised our standards very often and we should take it seriously.

Finally, many of us have been looking at this for a very long time. Children's rights and children's protection are becoming more complicated. The noble Baroness, Lady Howe, mention online issues. They are international problems, not just UK problems. Trafficking is an international problem. Child abuse and exploitation is an international problem. We cannot not be part of all this. We must move forward, with international bodies, to protect our children and our family laws. I beg leave to withdraw the amendment.

Amendment 55A withdrawn.

Amendment 56 not moved.

Amendment 57

Moved by ***Lord Wigley***

57: After Clause 9, insert the following new Clause—

"Failure to approve or agree to terms of withdrawal

It is an objective of Her Majesty's Government to ensure that—

(a) in the event of Parliament not approving the terms of the United Kingdom's withdrawal, or

(b) in the event of there being no agreement with the EU,

notification of the United Kingdom's withdrawal from the EU under Article 50 of the Treaty on the European Union be revoked."

Lord Wigley: My Lords, the first objective of the proposed new clause is to test whether the Article 50 notice is revocable. If so, its second objective is to suggest that in certain circumstances the Government might avail themselves of that option. Clearly, that could be an issue if we find ourselves with a no deal Brexit or a breakdown in negotiations at the very last moment. We touched on aspects of this in an earlier debate.

There have been no rulings on the revocability of Article 50. It is widely assumed that the interpretation of the treaty could ultimately be a matter for the Court of Justice of the European Union, although I noted the qualifications outlined earlier by the noble Lord, Lord Kerr, in that context. The parties to the Gina Miller case assumed that notice of withdrawal is irrevocable. However, a preponderance of academic opinion maintains that it is revocable. One attempt to refer to the CJEU for a ruling was dropped—the Dublin case—on the basis of costs, as I understand it. Another—the Edinburgh case—is in the process of being appealed.

There is considerable opinion that an Article 50 notice could be revoked. Professor Closa has raised a number of formal and substantive objections to the assumption of Article 50's irrevocability; the most compelling one draws on a comparative assessment of international law and practice under which a withdrawing state is bestowed a cooling-off period, allowing it to change its decision. Furthermore, Donald Tusk, President of the European Council, has asserted in his political capacity that on conclusion of the Article 50 negotiation process, the status quo could be maintained, meaning that if the UK was not happy with the agreed terms of Brexit, it could opt to continue to be a member of the EU.

The interpretation of Article 50, if one were needed, would be a matter of EU, not UK, law. The EU treaty is silent on the matter of revocability, but under Article 267 of the TFEU, there could be a role for the CJEU in determining whether an Article 50(2) notice can be withdrawn if a member state that has served notice of an intention to withdraw changes its mind. There is a general principle of international law, set out in Article 68 of the Vienna Convention on the Law of Treaties, that a notification of intention to withdraw from a treaty,

"may be revoked at any time before it takes effect".

This provision does not override any specific arrangements in a treaty, but are questions about the decision to trigger Article 50 under national constitutional arrangements relevant to the CJEU? If a court of last instance has some uncertainty as to the correct interpretation of EU law, it must refer a question on the interpretation of EU law or the EU treaties to the CJEU, but not, I stress, if the national court decides that something is clear "beyond reasonable doubt". This is known as the "acte clair doctrine" and has been established in the case law of the CJEU. The courts have not ruled on revocability. I therefore contend that the amendment is both valid and necessary and I beg to move.

Baroness Hayter of Kentish Town: My Lords, for the reasons I have given before, the amendment restricts what we did on Amendment 49 so I have some queries about its wording. However, on the question of revocability, if we came to a point in Parliament where we were looking at the next steps, should the deal not be accepted, it would be important for Parliament to know as far as the Government do the advice on this.

There are examples of legal advice given to the Government being disclosed to Parliament where it has been relevant to an Act before it. Clearly, the Government will have got legal advice on the question posed by the noble Lord, Lord Wigley; can the Minister indicate whether that could be shared with Parliament?

Lord Callanan: My Lords, I understand the intention of the noble Lord, Lord Wigley. He is concerned, as are many other noble Lords, with the consequences of failing to reach an agreement with the EU or the equally unpropitious scenario of Parliament rejecting the terms of a deal that has been reached. The noble Lord's amendment goes even further than that tabled by the noble Viscount, Lord Hailsham, in that it dictates, rather than leaves open, what should happen next in the event that the UK and the EU do not reach an agreement on the terms of our withdrawal; or if Parliament does not approve the terms of the withdrawal agreement, our notification under Article 50 should be revoked.

As I have explained already today, it is not constitutionally acceptable for Parliament to dictate the conduct of diplomacy in that way. Moreover, we are confident that we will reach a positive deal with the EU which Parliament will support. This is indisputably in the mutual interests of both the UK and the EU. Parliament will have a clear choice: to accept the deal we have negotiated or move forward without a deal. Ultimately, if Parliament chooses to reject the deal then we will leave the EU with no deal in March 2019.

The Government have always been clear what the outcome of failing to reach a withdrawal agreement would be. We are leaving the EU and will leave with a deal or without one. It is not a scenario that anybody relishes, least of all me, but it is also not one that should come as a surprise. The UK voted to leave the EU, Parliament voted to trigger the notification of withdrawal Act and the Government are honour bound to deliver on that instruction. We have been clear throughout that as a matter of firm policy we will not seek to revoke our notice under Article 50.

I therefore hope that the noble Lord will withdraw his amendment. I cannot give any false hope that I will reflect further on this issue between now and Third Reading, so if the noble Lord—

Baroness Hayter of Kentish Town: Do I take it from that that the Minister is not going to answer my question?

Lord Callanan: You can take it from that, yes.

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 Pannick (CB): Will the Minister please give an answer to the question posed by the noble Baroness?

Lord Callanan: I am not in a position to share confidential government legal advice on this matter.

Lord Wigley: Well, no doubt the House has taken good note of that comment and at some time in the future perhaps that information will become available. I am struck by the Minister's supreme confidence that this course will be followed to an inevitable conclusion, as I am sure many noble Lords are.

As we heard in earlier debates, that may not be the inevitable conclusion. It may well be that the House of Commons in its wisdom not only rejects the deal that the Government have negotiated but in the process rejects the Government themselves. At that point, whether by a general election or some other process, the question may well arise as to the irrevocability of Article 50. Noble Lords have a right to know the advice that has been given because it would be very pertinent indeed in those circumstances.

However, having said that, I believe the question may well be tested in the courts and therefore, I beg leave to withdraw the amendment.

Amendment 57 withdrawn.

Amendment 58 not moved.

Amendment 59

Moved by ***Lord Dubs***

59: After Clause 9, insert the following new Clause—

"Maintenance of refugee family unity within Europe

(1) A Minister of the Crown must make appropriate arrangements with the aim of preserving specified effects in the United Kingdom of Regulation (EU) No. 604/2013 (the "Dublin Regulation"), including through negotiations with the EU.

(2) "Specified effects" under subsection (1) are those provisions, and associated rights and obligations, that allow for those seeking asylum, including unaccompanied minors, adults and children, to join a family member, sibling or relative in the United Kingdom.

(3) Within six months of the passing of this Act, and then every six months thereafter, a Minister of the Crown must report to Parliament on progress made in negotiations to secure the continuation of reciprocal arrangements between the United Kingdom and member States as they relate to subsection (1)."

Lord Dubs (Lab): My Lords, this is a very modest amendment. Its aim is to maintain after Brexit one of the main existing legal routes to safety for unaccompanied child refugees—a route that has been working fairly effectively for quite some time. Of course, we know that in the absence of legal routes to safety the people traffickers have a field day, as was mentioned in the earlier debate on the Convention on the Rights of the Child. I have had a number of discussions with Ministers—the noble Lord, Lord Duncan, and the noble Baroness, Lady Williams—in the last few days. We have not reached full agreement, but at least we know where we differ.

9.45 pm

The background is that, in addition to Section 67 of the Immigration Act 2016, there is the Dublin treaty, which we call for short Dublin III. Essentially, it enables unaccompanied child refugees who are in one EU country to join relatives in another. For example, a Syrian child in, say, France could join an uncle in Sweden. Strictly speaking, this does not grant automatic asylum status, merely the right to join a relative, at which point there needs to be an application for asylum. Of course, not all of these will be granted. Nevertheless, it is a method to safety and a safe route. This arrangement will stop when we leave the EU unless a new arrangement is negotiated.

I am simply saying: could we keep in being something that has worked pretty well up to now? There is nothing dramatic about that. I am not asking for

[Lord Dubs]

anything new, just not to stop something that is working fairly well. The amendment's purpose is to establish that the Government will negotiate with our EU partners to maintain this legal route to safety. It is simply to say that it might stop when we leave the EU; let us not let it stop and negotiate its continuance.

I say negotiate because we cannot achieve this unilaterally. It requires the consent of and co-operation with our EU partners. Clearly, if there is, say, in France a child with a relative in Britain, the French will not automatically say, "You can transfer that child to Britain". There has to be an arrangement for that. After all, the best interests of the child must be taken into account. They have to be paramount.

The Ministers said that they were not too unhappy with what I was trying to achieve, but they did not want it in the Bill—I am giving the Minister his argument to save him having to repeat it. I simply say this: by having it in the Bill, we will maintain something certain and specific. There is no breach of a principle to say that we should put it in the Bill, whatever the Government will say a bit later on.

As I said, the scheme has worked pretty well. I am not sure about the exact numbers, as there is some dispute about them, but I have had various figures, ranging up to 800 or even more who have been transferred to the UK up to now under Dublin III. Maybe the Minister could confirm the figures or in any way indicate whether I have them wrong.

These children have mainly come from France, but also from Greece and some other countries. The particular routes I am concerned about are those in France and in Greece. Noble Lords will be aware that the conditions are pretty desperate. In the Calais area, where the Jungle has been removed, I saw for myself that people—children and others—are sleeping under the trees, with very little support. The weather has been pretty cold. In Greece, whereas in Athens the situation might be slightly more stabilised, on the islands it is pretty desperate. Some of the children are simply sleeping rough. They have no accommodation at all. I do not need to spell out the dangers that these children face. It is a very difficult situation and they are extremely vulnerable.

Is there any alternative other than what I am suggesting? There is a limited option that United Kingdom entry clearance officers may allow applications outside the Immigration Rules. That is a possible way forward. The trouble is, it works very seldom. Between 2013 and 2015, 20,000 such applications were made to achieve family reunion. Of those, only 51 were granted. There is reluctance on the part of entry clearance officers to deal with things that are outside the rules. That is why we need them specifically in legislation.

In the general arguments on behalf of child refugees, I have never argued that Britain should take them all; I have argued that we should take our share. But in this case, our share would be those who have relatives in this country. There are other European countries where child refugees have relatives where they can and do join them, but it is particularly from France and Greece that I have my concerns.

I say this in conclusion. I believe that public opinion in Britain is essentially humanitarian and essentially says, "Yes, we accept that child refugees are vulnerable, and we should take at least some of them". The Government would be flying not in the face of public opinion but with it. I realise that the Home Office has had a difficult patch in the last little while, which has made it a bit more difficult for some of the informal discussions I have had to take place before almost the last minute. Without wanting to sound too pompous or patronising, I think that a Home Office commitment to a humanitarian cause would not go amiss in terms of the reputation of the Home Office and of this country. I think that I have made my case. I beg to move.

Lord Bassam of Brighton (Lab): My Lords, my name is joined with that of the noble Lord, Lord Dubs, on this amendment. I think that if I was to make a lengthy speech in support of the amendment the House would not thank me. It is much better that we try to resolve the matter.

I want to thank the Minister for our meeting earlier today with the noble Lord, Lord Dubs. It was very useful but also quite instructive. I think that we were agreed that we were not far apart in what we were both seeking to achieve. Where we differ fundamentally is that the noble Lord and I share the view that we should put such a provision in the Bill.

There was a lot of resistance when the noble Lord tried to do this with his original Dubs amendment. Some of the arguments then were exactly the same. They were: "This isn't something you should try and commit to legislation". Well, I think it is, because it sets a benchmark and a threshold, and it gives an instruction. The Government are often keen to tell us that they have been instructed on things, and we need from time to time to be clear about what we are trying to achieve in negotiations. This is one of those occasions.

We should not resile from our humanitarian commitment. This evening, by supporting the amendment in the name of the noble Lord, Lord Dubs, we will be fulfilling that commitment. I therefore hope that the House comes speedily to a conclusion in this debate, so that, if we have to, we can divide on it and give support to the noble Lord on a very important matter to which I think we all wish for a happy outcome.

Baroness Butler-Sloss: My Lords, I, too, have put my name to the amendment. As the noble Lord, Lord Dubs, has pointed out, we are talking about the rights of children. This is not just a humanitarian question; it is about a number of children across Europe who have a right to come to this country at the moment because their family is here.

Having gone to Calais last summer and having with Fiona Mactaggart, the former MP, written a report on what was going on in Calais and Dunkirk, I know that the plight of children there who have not yet been processed is dire. The plight of children in the Greek and Italian camps is very poor. Therefore, the way in which Dublin III works is patchy, but, as the noble Lord, Lord Dubs, has said, it works to some extent. Please let me repeat: we are talking about children with rights and not advancing arguments based exclusively on humanitarian grounds.

I was lucky, with the noble Lord, Lord Dubs, to be at a different meeting from that referred to by the noble Lord, Lord Bassam, in which we met two Ministers, the noble Baroness, Lady Williams, and the noble Lord, Lord Duncan. We had useful discussions. I entirely accept the genuineness of their offers to the noble Lord and me. They are trying hard to placate us. They have expressed good intentions which are, as far as they go, valuable, but they are aspirations as to what might happen at a later date. They are talking about the possibility of an immigration Bill and of another Bill later this year, or what they call in lovely general terms a vehicle into which this sort of thing can be placed. As far as it goes, that is good, but it does not go far enough.

I would like the House of Commons to have time to discuss this amendment if this House passes it, as I hope it will, so that, by that time, Ministers will perhaps have got their act together to be able to make much more concrete offers to the House of Commons. Therefore, it is important that we support this amendment at this stage so that at least the other House has the chance to consider it. I will therefore vote for the amendment if the House divides.

Baroness Sheehan (LD): My Lords, I shall say just a few quick words as my name is also attached to this amendment. In essence, what the amendment boils down to is that without the UK's continued participation in Dublin III, which would be the case if Brexit were to happen, an unaccompanied orphan in Europe, among others, could no longer apply to be reunited with close family members while an asylum claim is being processed. Brexit is about many things but it is not about doing away with one of the very few safe and legal routes that exists to bring some of the most vulnerable children to the UK.

Since this amendment was debated in Committee we have witnessed the maelstrom that has raged over the inhumane treatment of the Windrush generation. Across the Commonwealth, how the Windrush scandal plays out is being watched with concern and our reputation is on the line. I say to the Government that at a time when we are trying to redefine our place in the world and looking for good will and support from friends across the globe, to be seen as a nation that is trying to isolate itself from responsibilities to people seeking sanctuary, some of them very young, will not do us any favours.

The Britain that the world knows and that the British people, by and large, recognise is the Britain that has always spoken up for values and principles that enshrine in international law the rights of vulnerable people who, through no fault of their own, find themselves destitute and place themselves at our mercy. We have a proud history of welcoming them and I should like us to continue to do so. So should the noble Lord, Lord Dubs, decide that the Government's moves are not enough to satisfy him and wish to seek the opinion of the House, we on this side of the House will wholeheartedly support him.

Baroness Hamwee (LD): My Lords—

Lord Goldsmith: My Lords, my noble friend Lord Dubs, in moving this amendment, described it as a modest proposal. It is modest in two respects. First, for the reason that he gave: all he seeks is to replicate the current arrangements, already approved by Parliament and in operation at the moment. That is not a great change at all from where we are. There is a second reason that it is modest: I pay tribute to his modesty in producing this amendment, having fought for the previous amendment, having persevered, and he is absolutely right to ask the House again to support it. I hope the House will.

It sounds as though the Government are entirely in agreement with the objectives. They agree on the need to protect the most vulnerable children and to provide this way of safety for them to claim asylum where appropriate. It sounds as if the only difference may be over the way to deal with it. Everybody, including my noble friends Lord Dubs and Lord Bassam, the noble Baroness, Lady Sheehan, and the noble and learned Baroness, Lady Butler-Sloss, whose names are on the amendment, recognises that this will require negotiation with other countries, because we cannot do it entirely on our own. Does the Minister agree that if this House were to say in a clear vote tonight what it thinks the Government should do, and put it in the Bill, that will actually strengthen the hand of the Government when they come to negotiate with other countries and others? They will be able to say, "This is what our Parliament wants"—assuming that the other place agrees. Those circumstances will make it much easier to negotiate; that may be the only point.

I am not going to take any more of your Lordships' time: I think it is time either for the Government to accept the amendment, as I hope they will, or, if they fail to do so, for my noble friend Lord Dubs to divide the House, in which case we will strongly support him through the Lobby.

10 pm

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Duncan of Springbank) (Con): I thank the noble Lord, Lord Dubs, for moving his amendment and giving us an opportunity to speak about this further. We sometimes attach additional epithets to noble Lords in this House, such as "gallant" and "learned". Perhaps the noble Lord, Lord Dubs, should be the "noble and compassionate" Lord. I appreciate what he is doing. It is for that reason that my noble friend Lady Williams and I have met the noble Lord and the noble and learned Baroness, Lady Butler-Sloss, on a number of occasions. The noble Lord, Lord Bassam, said that we must be clear about what we are trying to achieve. That has been the purpose of those meetings.

I will state very clearly what we are trying to achieve in the negotiations. The Government have been clear that when we leave the EU we will seek to maintain a close and effective arrangement, including practical co-operation with the EU and the member states on illegal migration and asylum. Combating illegal migration and having efficient and effective asylum systems will continue to be a priority on which we will work closely with our EU partners. As part of that arrangement, and subject to the negotiations, the UK will seek to agree with the EU a series of measures to enable unaccompanied children in the EU to join close family members in the UK or another EU member state,

[LORD DUNCAN OF SPRINGBANK]
whichever is in their best interests. However, it is important to remember that any such agreement will require agreement and implementation by individual member states.

After the outcome of the negotiations is known, we will bring forward the appropriate legislation as necessary. At that stage this House and the other place will have an opportunity to be clear in their engagement with, and any desire to amend, that piece of legislation. The Government are very clear about what they are trying to achieve in the negotiations. We share the desire of the noble Lord, Lord Dubs, that family reunification rights for the purposes of considering claims for asylum and the systems to deliver them should remain in place once we have left the EU. There can be no dropped ball, diminution or loss—there needs to be continuity, seamless in its effect. It can be nothing other than that.

In my discussions with the noble Lord, Lord Dubs, we spoke about the Dublin III approach. The sad fact is that in many cases Dublin III is simply not fit for purpose. That is perhaps the greatest tragedy of all. Across the EU we look to that as though it sets a benchmark when in truth it is doing nothing of the sort—indeed, quite the reverse. In some instances there is opposition within member states to the functioning of Dublin III. Of course, Dublin III will evolve into Dublin IV, but Dublin IV will not come before the next European elections. That is unlikely simply because of the timetable. It is not for me to draw your Lordships' attention to what we might expect in those elections but we must be cognisant of them. We have seen in election after election a growth in parties whose views about the wider issues of migration are perhaps not to be applauded and which are quite the reverse of the welcoming approach that we in this Chamber might believe needs to be stressed.

The danger is that we are recognising a benchmark inside the EU that even the EU itself does not believe is fit for purpose. We need to go beyond that. That is why I like to think that we are not seeking to measure ourselves against Dublin III but rather setting in place very clear measures which are safe and sure and address the very matters that the noble Lord, Lord Dubs, has raised. If we seek to use the EU as a benchmark, we will do a disservice to the very people who would need to draw on these elements. That might seem an odd thing to say, but noble Lords who have spent any time attending to how the Dublin III measure are evolving will recognise that that is one of the central problems.

I am aware that there are challenges ahead as we enter into the negotiations. A number of noble Lords have asked why this is not therefore placed in the Bill. What we are saying is that at the appropriate point these elements will be front and centre of a Bill before the other place and this House, offering exactly the opportunities that your Lordships would wish to have—at the right time. To bring them forward and try to put them into the Bill now—into what is, in effect, a pre-negotiation settlement—will cause us difficulties. That is why we have sought to be as forthright as we can about our intention, our ambition and our method. We do not wish to see these rights undermined or lost; we wish them to be sure and safe. It is for that reason that we have moved in this way. I appreciate that there is a desire to return this to the House of Commons, perhaps with the idea that we can again emphasise how exactly we will take these matters forward. That is your Lordships' prerogative. I would argue that in the other place the same discussions may lead to a very different result, and that might send a message that this House might prefer not to be sent.

It is a difficult issue, because we are sending, I hope, a very clear message: the UK remains committed to the very elements that the noble and compassionate Lord has brought before us on this and a number of other occasions. We remain committed to them. They will be front and centre in our negotiations, and we have engaged directly with the noble Lord on this matter.

We have also recognised that when that point comes—when legislation or appropriate vehicles are required—there will be an opportunity, in both this House and the other place, to address the very matters that the noble Lord has raised today. On that note, I hope and wish the noble Lord will feel able to withdraw his amendment, recognising that there will be further opportunities for the noble Lord to fight with the same passion on this matter, as I do not doubt he will continue to do in the future. I hope, therefore, that he will withdraw his amendment.

Lord Dubs: My Lords, I am grateful for the support of Members of the House for this amendment. In a curious way I also thank the Minister for his support for the principle that I am trying to establish.

It seems to me that the clearest message of support for the amendment would be to pass it tonight. Anything else would look as if we were hesitating and not totally certain. I am sure the Minister and his noble friend Lady Williams are quite sincere in wishing to support the principle of the amendment. The signal we send, however, will be a different one. I do not see putting this in the Bill causing any difficulty. We ask only that the Government should have a basis for negotiating to achieve the end that we are talking about. If Dublin III gives way to Dublin IV, the Government will have the flexibility to negotiate on that basis. The proposition is clear, and I ask for the support of the House. I beg leave to test the opinion of the House.

10.08 pm

Division on Amendment 59

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Amendment 59 agreed.

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10.18 pm

Amendment 60

Moved by ***The Earl of Clancarty***

60: After Clause 9, insert the following new Clause—

"Rights and opportunities of young people

It is an objective of the Government, in negotiating a withdrawal agreement, to ensure that the rights and opportunities of British citizens aged under 25 and resident in the United Kingdom are maintained on existing terms including—

(a) retaining the ability to work and travel visa-free in the EU, and

(b) retaining the ability to study in other EU member States, including through participation in the Erasmus+ programme, on existing terms."

The Earl of Clancarty (CB): My Lords, Amendment 60 seeks to maintain opportunities for young people to travel, work and study freely within Europe and to ensure that these opportunities are not diminished. I am very grateful to the noble Lord, Lord Judd, for adding his name to this amendment. I should say now that I am not going to divide the House on this because of the late hour.

Consideration for the young people of this country should be a major—perhaps even, it could be argued, the major—consideration of the negotiations, because young people are the future of the country, a point that was made in a different context this evening. This amendment is fundamentally about equal opportunities for young people. If the Government cannot guarantee, or at least pledge to try to achieve as far as Europe is concerned, opportunities for our young people which are at the very least equal to those of the majority of young people in the rest of Europe, our withdrawal from Europe will be worthless on that count alone.

I was struck by the forcefulness of some of the comments that were made in Committee, and it is worth repeating a couple. The noble Lord, Lord Judd, who is in his place, said:

"The feeling of dismay and disappointment among young people is hard to overestimate",

while the noble and learned Baroness, Lady Butler-Sloss, talked about her eldest grandson being,

"incandescent with anger that he is about to be deprived of the right to look for a job anywhere across Europe".—[*Official Report*, 14/3/18; cols. 1741-42.]

I find those observations, which are representative of how young people feel—the huge uncertainty and, yes, the anger—difficult to square with the lack of urgency in the Minister's reply in Committee in which he tried to conflate the wishes, as he put it, of young and older people. Those needs, rather than wishes, are not necessarily the same. For many young people, travel, work and study are bound up together as part of the experience of broadening horizons, of exploration as well as career development. It needs to be understood that, while the young have energy, they will very likely have neither the financial resources nor, as yet, the standing of established professionals. Of course professional people have their concerns as well, but if opportunities are diminished, including those afforded by Erasmus+, it will be young people from less privileged backgrounds who will be the first to suffer from increased costs, restrictions, bureaucracy and indeed the loss of those opportunities themselves. It has to be added that changing attitudes and expectations will invariably be reduced and narrowed if these opportunities are diminished.

I will not repeat the detailed and passionate arguments that we heard from many Peers in Committee about Erasmus+. I will say simply that we absolutely need to remain a member of a programme that is of benefit not just academically but for sport, apprenticeships, schools and even budding entrepreneurs—and, significantly perhaps, for the intercultural skills that all study, work and travel abroad at their best develop. I hope that the Minister will agree that we should continue to be involved in the development of Erasmus+ and not act as though this is something that we may be withdrawing from.

I have two questions on this for the Minister. If he cannot answer them today, perhaps he could put his answers in writing. First, universities, including in the Russell Group, are worried that the message that we are fully involved at least until the end of the 2020 programme, which the Government have said we will be, is not getting through to everyone, students at home and abroad included. The Government can be more proactive in spreading that message. Accordingly, will the DfE put out a document outlining its position on Erasmus+ akin to that put out in March by the Department for Business, Energy and Industrial Strategy on Horizon 2020? That would be extremely helpful.

Secondly, in reply to this amendment in Committee, the Minister said on participation:

"We will take a decision when we see what the successor programme is".—[*Official Report*, 14/3/18; col. 1747.]

That was a very worrying answer. The Government should be helping to influence the shape of the programme to make it even better than the current one already is.

Frankly, surely we know already that what it will have to offer will be well worth our participation. The universities know this, as does every expert in this House who spoke in the Erasmus debate in Committee. So will the Government now indicate when they will negotiate our participation to ensure the smoothest transition between the current programme and the next?

I repeat that travel, work and study for young people within Europe is a question of equal opportunities. I remind the Government that, despite the result of the referendum, 75% of under-24 year-olds voted to remain across every section of society. If Brexit is to be successful, we should realise that a Brexit that ignores the needs and demands of young people will be a failure and the Government ignore those needs at their peril. I beg to move.

Lord Judd: My Lords, I am very glad to support the amendment. The world is totally interdependent. Any future for Britain will depend on working out a relationship and practical participating role for Britain within that international, global reality. The young understand this, and this is why there is so much disillusion and disaffection among the young in particular with the whole process of Brexit. The young want to belong to the world and they want Britain to be part of the world.

If we are to have a future as a nation, our educational system depends—it is not an add-on—on the international dimension in which, from the youngest age through to postgraduate degrees, people understand that they are part of a world community and see the world dimension of the study that they are undertaking. The presence of students from other countries and their sharing of experience and perspectives is part of the educational process. It is not just a matter of whether there is more income for universities, it is a matter of the educational process itself and the quality of education. That matters.

Travel is terrifically important, because people want to form relationships. That must start with our immediate neighbours in Europe, and we want people in Britain who will understand and instinctively see the implications of what may be happening in Europe and how Britain can play a part in meeting the challenges that arise.

The amendment is vital in bringing home that reality about the young. The young have a great sense of betrayal—that is the word that has been used to me—by having their futures put, as they see it, in jeopardy as a result of what we are doing with the Brexit legislation. Here is a chance for the Government to redeem the situation, to redeem their reputation and to show that they will take second place to no one in their international commitment.

Baroness Humphreys (LD): My Lords, I was pleased to speak to a similar amendment in the name of the noble Earl, Lord Clancarty, in Committee, and I am equally pleased to support the amendment now. At this point in the evening, I do not intend to detain your Lordships longer than necessary, so my intervention will be short.

All that the amendment asks is that the Government, as part of the withdrawal process, negotiate a continuation of the EU rights that my generation has enjoyed for those under 25. The vital point at the basis of this issue is that the EU passport that we all hold is not just a passport, it is a visa. It is a right to live, work and study in any of the current 28 countries in the EU and to move between those countries at will.

The Government underestimate the frustration and anger that some young people feel at the removal of their rights to freedom of movement and, under Erasmus, to study abroad. On more than one occasion during debate today, Members of your Lordships' House have referred to the divisions caused by the Brexit vote, but there is no greater potential division than that between the conflicting visions of our country's future: our young people seeking to move forward in the openness of the EU and some older people seeking the comfort of the past.

Is it not time that the Government showed young people that they understand their concerns? The Government have recently been accused of institutionalised indifference on many issues. Perhaps the amendment affords them the opportunity to disprove that description.

Lord Bilimoria: My Lords, I support my noble friend Lord Clancarty on Amendment 60, and speak specifically on the Erasmus programme. I speak as a university chancellor and chair of the advisory board of the Cambridge Judge Business School. The Erasmus programme is 30 years old, and I ask the Minister whether we are to throw away 30 years of that wonderful initiative. Employers—I speak as one—value the Erasmus brand. Hundreds of thousands of British students have benefited from it.

Are we committing to staying in the Erasmus programme well beyond the transition period? Are we committing to it permanently? Otherwise, what happened in Switzerland could happen to us. When Switzerland voted to restrict EU migration, it was taken out of the Erasmus programme. It had to spend extra money to put a new programme in place. Do we want to go through all that?

The most important thing about the Erasmus programme is that it is for everybody. It covers a wide variety of subjects and involves 725,000 European students—a huge number—and Britain is one of the most attractive destinations. Will the Government keep their promise to maintain and protect all funding streams for EU projects in the UK? Most importantly, it enables students who would not otherwise be able to afford it to go and travel and study abroad.

I reiterate what has been said. This is about our youths—and when I speak to students around the country in schools and universities, 100% of them want to remain in the European Union. The least that we can do is to ensure that the Erasmus programme is open to them and not take their future away from them.

10.30 pm

Lord Puttnam (Lab): My Lords, having not pressed my amendment on a very similar subject in Committee, I would like to speak briefly in making one point. The word "overwhelming" has tortured this House over the past many months—the notion that somehow or other the 52:48 majority was overwhelming. According to the *Oxford English Dictionary*, overwhelming equates to massive; it is not massive—it is narrow and marginal.

[LORD PUTTNAM]
What is overwhelming is the overwhelming support for remain from young people generally in this country, amounting to around 70% of all young people and 80% in the case of young people with graduate degrees.

The point that I would like to make to the Minister—and I hope very much that he might agree with this—is that those 80% of young people are the ones we will absolutely rely on to drive this country post Brexit to any form of economic success. We are going to absolutely rely on them, so do not diminish their feelings, emotions and belief in Europe by pretending that in any way, shape or form that the narrow victory in the referendum represents the views or wishes of the overwhelming majority of young people in this country.

Lord Hunt of Kings Heath (Lab): My Lords, the noble Earl has done a great service in bringing this amendment back after a very good debate in Committee. Although much of the focus tonight has been on Erasmus, his amendment actually goes wider. However young people voted in the referendum, and whatever the outcome of the Brexit negotiations, the Government have said that post Brexit they want a closer partnership with the EU. Given that, there is a mutual interest in ensuring that young people enhance the opportunities that they have to work, enjoy, travel and get experience between ourselves and countries of the EU. The Erasmus programme is, of course, vitally important in that regard. The noble Lord, Lord Bilimoria, can speak with great experience, and he will know that since its start 600,000 young people, mainly, from the UK have taken advantage of it.

The Minister was sympathetic in Committee; he made it clear that the Government would expect that opportunities that arise for mainly young people will continue in future. But I want to bring him back to the point that the noble Earl raised, which was that he said that the Government would need to see what the successor programme was to Erasmus before committing on whether to support it or not. Tonight's debate is really about encouraging the Minister to say that, of course, first of all, we should be talking to the EU about the successor programme. Secondly, whatever the technical details, it would be inconceivable that this country, one way or another, would not wish fully to embrace the successor to the Erasmus programme. I very much hope that the Minister will be able to signify that because he took a constructive approach in Committee, he will go just that little bit further and give us that kind of commitment.

Lord Callanan: I thank the noble Earl, Lord Clancarty, for the opportunity to discuss these important issues yet again. However, the purpose of the Bill is to provide a functioning statute book on exit day, regardless of the outcome of negotiations. It is our intention that the planned withdrawal agreement and implementation Bill will implement the major elements of the withdrawal agreement, which will include the agreement on citizens' rights. This amendment seeks to make it an objective of the Government to achieve a particular outcome in the negotiations on our future relationship with the EU, effectively tying the Government's hands. It is focused on the withdrawal agreement, but these matters are for our future relationship with the EU, which this Bill does not seek to address.

We have been clear that, after our exit from the European Union, there will continue to be migration and mobility between the EU and the UK. We have agreed an implementation period based on the current structure of rules and regulations. This will mean that UK nationals will be able to live and work in the EU as they do now until 31 December 2020. Looking to the future, the Prime Minister has set out her vision for our deep and special future partnership with the EU. She acknowledged that UK nationals will still want to work and study in EU countries, just as EU citizens will want to do the same here, helping to shape and drive growth, innovation and enterprise. She made it clear that businesses across the EU and the UK must still be able to attract and employ the people they need, and that the Government are open to discussing how to facilitate these valuable links.

Our science and innovation policy paper, published in September, said that we will discuss with the EU future arrangements to facilitate the mobility of researchers, academics and students engaged in cross-border collaboration. It remains in our best interest to ensure that businesses across the EU and the UK continue to be able to attract and employ the people they need. As has been said many times in this Chamber, and in the other place, we recognise the value of international exchange and collaboration through both work and study placements abroad. That applies to students from the EU and from many other parts of the world as well. Increasing language skills and cultural awareness aligns with our vision for the UK as a global nation. We will continue to take part in the specific policies and programmes which are to the UK's and the EU's joint advantage, such as those that promote science, education and culture.

As the House will now be well aware, no decisions have yet been taken on UK participation in the successor Erasmus+ programme after 2020. As I said in Committee, this is simply because the scope of the future programme has not yet been agreed. In response to the specific questions from the noble Earl, Lord Clancarty, we have made clear to Parliament our commitment to 2020 and this is detailed on the Erasmus website. I will write to the noble Earl with more detail on his other question. Future UK participation in such programmes will form part of the negotiations on our future relationship with the EU. The Government have been clear that there are some specific European programmes that we may want to continue to participate in as we leave the EU. This will be considered as part of the negotiations. Once again, I also reassure noble Lords that, whatever the outcome of those negotiations, we will underwrite successful bids for Erasmus+ submitted while the UK is still a member state, even if payments continue beyond the point of exit. Therefore, applications for funding from UK institutions should continue as normal—and they are.

For these reasons, I ask the noble Earl to withdraw his amendment, as I think he indicated he would do. However, I am unable to give him any hope that I will reflect further on this issue between now and Third

Reading so, although he said he is not going to, if he really wishes to test the opinion of the House he should do so now.

The Earl of Clancarty: My Lords, I thank noble Lords who have taken part in this brief debate and the Minister for his reply. He gave the same reply on Erasmus as he has given previously and it is not good enough. We need to be in discussions now about shaping the new Erasmus programme; otherwise, I am worried that it is going to drift. I am sure that universities up and down the country are extremely worried about this. One thing the Government need to understand is that if opportunities for young people are diminished, we diminish the country as a whole. That is a major reason why we need to maintain these opportunities. These experiences, then, are not only for the sake of young people, important as that is, but society as a whole, because those experiences are brought back and reinvigorate us. We need to keep this going, and indeed expand it, not risk the possibility that we will shut these opportunities down. Young people need to have every opportunity in Europe to develop their future, and we need to allow them to do that. The Government cannot give that assurance. However, with regret, because of the late hour I beg leave to withdraw the amendment.

Amendment 60 withdrawn.

Amendment 61

Moved by ***Lord Berkeley***

61: After Clause 9, insert the following new Clause—

"Single market: frontier controls

If no agreement is reached with the EU on frontier controls, taxes and charges, the free movement of goods and services, the Digital Single Market, standardisation and the full involvement of the United Kingdom in European Agencies by the day on which this Act is passed, then the Government's negotiating objectives under Article 50(2) of the Treaty on European Union shall be on the basis that the United Kingdom will seek to remain fully in the Single Market."

Lord Berkeley (Lab): My Lords, I am moving this amendment on behalf of my noble friend Lord Bradshaw, who could not be here tonight, but the amendment is also in my name and that of the noble Lord, Lord Bilimoria It is slightly different from some of the previous ones we have debated today. It suggests that, if no agreement is reached with the European Union on frontier controls and all the other things in the amendment, the Government's negotiating objectives should be on the basis that the UK will seek to remain fully in the single market, which I and many other noble Lords see as an alternative to the hard or cliff-edge Brexit, or whatever we like to call it. The first Division that we won a few days ago on Report was on the customs union. That was a good start, but I invite the House to go a little further. Although the customs union is good, quite a lot of problems would still be attached to it, particularly on the jobs and frontier control issues.

On the economy, we read every day of fears of job losses, the economy going down, and of worries from many companies, large and small, about the effect of Brexit. I suppose that the motor car manufacturers are some of the most frightened. The Society of Motor Manufacturers and Traders believes that that there will be a £4.5 billion additional cost in tariffs, let alone all the other bureaucracy I shall come on to, and the RICS reckons that there will be the loss of 200,000 construction jobs if we are not in the single market.

Many noble Lords will have read the recent leaked government analysis of the drop in the economy if we go for a hard Brexit—in the north-east a 16% drop, and in the West Midlands a 13% drop—whereas in the UK overall there would be a 1.5% drop if we remained in the single market and an 8% drop if we ended up on WTO terms. It is worth my saying before the Minister does that the Government do not recognise these figures, but we all get used to the Government not recognising the figures they do not like. We will see what happens.

On the issue of frontier controls, 38 cross-border agencies are involved. With some of them the checks have to be done at frontiers—I include the Northern Ireland-Republic land frontiers in these remarks—and the paperwork, even with a customs union, can be pretty horrendous. We could spend hours debating customs, food standards, food legislation, and the need for pallets to be disinfected when they come into the European Union. Seed potatoes cannot be taken from inside to outside, so I do not know what will happen if a farm straddles the border in Ireland and the seed potatoes in one half cannot be taken into the other half, which sounds interesting. Other issues, among many, include animal and plant health, rabies, foot and mouth and pharmaceuticals.

Just to give one example, there is a transporter that moves goods for Morrisons from here to Gibraltar. Every lorry has to be checked for the point of origin of the goods, each having its own document, before the Spanish authorities will permit the vehicle to leave the UK on its route to Gibraltar. Heaven only knows how that will improve when we have left.

10.45 pm

It is also worth reminding noble Lords that one of the most heavily used frontiers at the moment on the eastern side of the European Union is with Turkey. A shanty town has built up around it and the average queue is three days. Three days would take the traffic jam from Dover probably half way round the M25 and back again.

The other problem, which some noble Lords may have read about in the *Sunday Times* business section this weekend, is to do with rules of origin. I will not bore the House with the detail, but the article covered a whole page and it was absolutely frightening. Rules of origin have to be established for any manufactured goods going in or out of the EU, which some goods do several times. The paperwork that that creates is absolutely amazing.

The other issue at the frontiers is the traffic jams that will happen in Kent. We have customs checks on, I believe, about 5% of the 10,000 trucks that go across each day—90% of which are foreign registered, which we discussed recently in another Bill. If this changes, checks will have to be carried out on about 95% of trucks. Again, I do not see how that will happen, and I

[LORD BERKELEY]
believe that, true to form, there have already been some suggestions from customs to say that we should not check anyone and just let them go through. I cannot believe that that is a sensible solution.

There is, however, a solution to all this: stay in the single market. I will run through very briefly the benefits of that for goods, services, investment and the free movement of people, which are the issues that we are talking about. We have debated here before the free movement of people. Legislation is not needed to limit it, as we see in Belgium at the moment. It would probably involve people having to have identity cards, but that has already been suggested and most of us have some form of identification which, while not an identity card in name, could easily be one.

The issue of goods is very important because, in the single market, you can retain the common specification, the rules of origin that I mentioned, and standards, which are so important in the areas of food and the environment. Again, we have debated already the importance of services to UK industry, particularly the financial sector, and that investment is good for the City and for the recipients of EU funds.

The key is to avoid these awful queues and the checks and bureaucracy that would go alongside them, not just at the frontier but in every factory, warehouse and anywhere else that goods were being prepared to go across the frontier. This will add cost and complexity.

I still believe that staying in the single market would comply with the referendum result to leave the EU. It is not the people who have decided that we are going for a hard Brexit but the Government. It is their decision. I think that we could still agree to leave and comply with the referendum but get out of all these pitfalls. The amendment does not require the Government to do down the road of a single market now. I believe that they should accept it and go on trying to reach agreement, but, if they fail by the time the Bill gets Royal Assent, surely it behoves the Government to choose a safer, simpler solution compared to the alternative, which is probably the cliff edge. It would give industry time to adapt to the many small changes that would be required.

Does the Minister have any comments about this? What is going to happen at the frontiers? We do not know—except that the electronics will probably not work. He may say that we are still in negotiations. I know that lots of civil servants are working very hard, and some of them pretty effectively, to try to find solutions. But the comment that I hear from them is that they cannot really make progress without political direction, of which there is very little. I am offering Ministers a face-saving option. If after two years they have not reached agreement, let us go for the single market. I beg to move.

Lord Bilimoria: My Lords, I put my name to this amendment and back up what the noble Lord, Lord Berkeley, has said. In today's economy, business is integrated and transactions are global, with goods moving across borders every minute of the day. Our biggest customers are right on our doorstep in the EU—27 countries and half our trade. It is not just finished goods, but ingredients and components. In food and drink, my industry, I can give an example. Bailey's Original Irish Cream is made in Dublin and goes across the border into Northern Ireland. It is bottled there, comes back into Dublin and is exported to the EU and around the world absolutely seamlessly.

Some 2.5 million lorries pass through Dover. How will we cope if there is any disruption over there? Some 70% of the UK's food imports by value are from the EU, and 60% to 65% of agricultural exports are to other member states. Any delays on these goods, many of which are perishable, would raise food prices. Some 1.5 million trucks go through the Channel Tunnel. The list of border operations is so complex. What preparations have been made if there is to be a hard Brexit to put up all the infrastructure required, prevent any delays and have a frictionless border?

Some 69% of freight transport goes to the EU as lorry traffic. The FTA has spoken out very clearly for the whole industry. It represents 50% of the UK's lorries and 90% of rail. It has warned very clearly of 15-mile queues at Calais if border checks are introduced. We need to remember what happened in 2015 with the French ferry workers' strike. If trucks coming from the EU are treated like non-EU trucks, the ports will be in permanent gridlock. Does the Minister agree? The other aspect is Ireland. From Ireland, goods go to Europe across the UK. It takes trucks 10 hours from leaving Dublin to get to Europe. If they had to go around, it would take them 40 hours, with considerable disruption.

I conclude with a point made by the noble Lord, Lord Berkeley. Yesterday, in the *Sunday Times* there was an article in which a company boss said:

"We suddenly caught Brexit blight".

The article says that:

"A wrinkle in international trade rules is scaring away companies in Europe from British suppliers".

It talks about a Bristol-based company where the customers which used to give orders well in advance—in Germany and Scandinavia—are suddenly stopping the orders because of rules of origin. The supply chain is worried about this. The local content will not be of 50% value. With many industries such as the car industry, components that are made in the UK are well below 50%. There are companies here that just do not have the capability to move from under 50% to 50% or 60%. It will take many years to be able to have that capability domestically, and we will not be able to do it competitively.

The article concludes by saying that companies like this one in Bristol,

"will gradually be 'evolved' out of the supply chains of EU manufacturers that do not want the hassle of providing paperwork for components bought outside the bloc".

It will, says the company,

"be death by a thousand cuts".

That is what we are facing. We had a vote on the customs union in this Bill and it is critical because it marks the frontier between hard Brexit and a soft Brexit.

In the *Financial Times* recently, one leading British political analyst was asked to predict what would happen. He said that Brexit will not happen because there is no version of Brexit that can get a parliamentary

majority. There will be no parliamentary majority if we cannot handle this particular situation in this amendment.

Lord Liddle (Lab): My Lords, I rise briefly to support my noble friend and the noble Lord, Lord Bilimoria, on their remarks. We know that the Government do not have a policy on this issue. We can read in the *Financial Times* that there will be a great debate tomorrow. The Minister smiles, but he knows perfectly well that it is true that the Government have not resolved the question of what customs model they will go for. This is an extraordinary situation. It is now 22 months since the Brexit vote and yet the Government have not got a policy on the fundamental point of how we will make Brexit work. It is a failure of massive proportions on the Government's part. I want to hear an apology to business from the Minister for the fact that the Government's political divisions have basically led to a situation in which business is facing a serious cliff edge. They call themselves the "party of business". What serious claim have the Benches opposite to be the party of business, given the way they have behaved since the EU referendum?

I also say to my own side that I fully support the amendment we passed on the customs union. I was greatly cheered up by it. It is a breach in this wall of stupidity that the Government have erected, but it is not a complete solution to the business problems that people have talked about. It does not solve entirely the problem of customs checks because of rules of origin and issues with agricultural produce and all the rest. It certainly does not solve the Northern Irish border problem on its own. It does not address the fundamental economic point that it completely neglects services—the dynamic part of our economy where our exports are growing, where we have a strong surplus and which is our economic future. This is a terrible, woeful neglect on the part of the Government of the key, dynamic, entrepreneurial sectors of the British economy. How can they claim to be the party of business?

Baroness Hayter of Kentish Town: My Lords, the issue raised by the amendment is key to how we depart the EU. Indeed, the urgency of sorting out the logistics, costs and procedures of being outside our current trading arrangements has already been made clear. It should not need repeating that 44% of our goods exports go to the EU, with more than 50% of imports coming from the EU, making the mutual case for continued tariff-free trade unanswerable.

As the CBI says, should the current arrangements—a simple single form for our exporters—change to,

"a 12-page form for each batch of goods",

where,

"Every consignment will also need a VAT registration and certificates of origin, declaring how much of each product has been made where",

costs will rise disproportionally. Indeed, one major retailer foresees,

"a five- to ten-fold increase in border documentation",

should Britain leave the customs union, with a possible extra 200,000 UK businesses having to make customs declarations for the first time.

As we have said, the high degree of integration between UK and EU supply chains means that any new friction—bound to be slow and costly—would force businesses to adapt the way they do business, including over choice of supplier and extra storage space for just-in-time models and such issues. We have already heard of the food and drink industry: 90% of imports and exports of food and non-alcoholic drink are with the EU or those countries with whom the EU has trade arrangements. For manufacturing, according to the EEF, agreeing a preferential set of rules of origin with the EU will be crucial given the complexity of the supply chain and the origin of component parts.

We know all that; we have heard about it in this House before and have heard it again this evening. What I did not know until last week—maybe the Minister can correct what is being said—is that not one single Minister from his department has been down to the Port of Dover to see the problems that will arise there. Lorries coming from outside the customs union are currently subject to about 45 minutes of checks and the same would happen if we were outside the customs union. We understand that neither he nor any of his colleagues has been down there to witness that. Perhaps he could put us right.

The concentration on solving the issues highlighted by the agreement are real ones which we support. Clearly, as I think those behind me know, we might have a little difficulty with some of the words in this amendment but the issues raised by it, which the Government must solve, are ones to which we clearly would add our support.

11 pm

Lord Callanan: I thank the noble Baroness for her comments. Amendment 61, tabled by the noble Lord, Lord Bradshaw, but moved by the noble Lord, Lord Berkeley, seeks to maintain the UK's participation in the single market if agreement is not reached in the areas of frontier controls, taxes and charges, free movement of goods and services, the digital single market, standardisation and UK involvement in European agencies. As a result of the significant progress made in negotiations, we are increasingly confident that we will secure a deal with the EU and that the prospect of leaving negotiations without a positive agreement has receded significantly.

I will say a little more about our objectives in the areas mentioned in the noble Lord's amendment. First, on frontier controls, we have thought seriously about how our commitment to a frictionless border can best be delivered. Noble Lords will recall the Government's clear position on this, which I touched on in my earlier remarks. On taxes and payments, the Government are committed to making cross-border trade as frictionless as possible after the UK leaves the EU and will take the necessary steps to ensure the UK economy remains strong in the future. On goods, a fundamental negotiation objective is to ensure that trade at the UK-EU border is as frictionless as possible. That means we do not want to see the introduction of any tariffs or quotas. To achieve this, we will need a comprehensive system of mutual recognition and the UK will need to make a strong commitment that its regulatory standards will remain as high as the EU's. That commitment, in

[LORD CALLANAN]
practice, will mean that UK and EU regulatory standards relating to industrial goods will remain substantially similar in the future.

As a number of noble Lords have mentioned, the UK's services sector is a global success story. The Prime Minister has set out the Government's objective of breaking new ground with a broader services agreement than ever before, with new barriers to trade permitted only if absolutely necessary. We want to agree an appropriate labour mobility framework that enables UK and EU businesses and self-employed professionals to travel to provide services to clients in person. We are open to discussing how to facilitate these valuable links. Given that UK qualifications are already recognised across the EU, and vice versa, it would make sense to continue to recognise each other's qualifications in the future. An agreement that delivered these objectives would be consistent with the mutually expressed interest in an ambitious services agreement.

We have also been clear that, by virtue of leaving the single market, the UK will not be part of the EU's digital single market strategy, which will continue to develop after our withdrawal from the EU. This is a fast-evolving, innovative sector, in which the UK is a world leader so it will be particularly important to have domestic flexibility to ensure the regulatory environment can always respond nimbly and ambitiously to new developments.

We will want to explore with the EU the terms on which the UK could remain part of EU agencies, such as those that are critical for the chemicals, medicines and aerospace industries—the European Medicines Agency, the European Chemicals Agency and the European Aviation Safety Agency. We are confident that a deep and special partnership is in the interests of both sides, so we approach these negotiations anticipating success.

In response to the comments of the noble Baroness, Lady Hayter, about Dover, Ministers have met representatives from the Port of Dover on a number of occasions, most recently on Monday 23 April. Furthermore, DExEU civil servants have an ongoing dialogue with the Port of Dover and Eurotunnel.

With that information, I hope I have provided a clear picture of the Government's objectives for negotiating a deal with the EU in these areas and that the noble Lord will feel content to withdraw his amendment. I reiterate that 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 Berkeley: My Lords, I am grateful to all noble Lords who spoke in this short debate. Apart from the Minister they all expressed concern about the state of the negotiations and where they are going. The Minister gave us a very positive view on how the negotiations were going, to such an extent that one is tempted to believe that by the time the Bill receives Royal Assent they will all be agreed. There is the slight problem that it takes two to agree. As we have heard on many occasions, it is not just the European Commission but the many other European agencies there. If the Minister is that positive and hopeful about all these agreements, it is tempting to argue that he should accept my amendment because it will not be necessary.

However, he did not say anything about the rules of origin, which the noble Lord, Lord Bilimoria, also spoke to at length—we both read the same paper at the weekend. It is a very serious issue, as he said. Without agreement on the rules of origin I do not think there will be much free movement of goods across the frontier. I do not think we will be able to agree rules of origin in a couple of months. It is a very long drawn-out issue.

I was also concerned when the Minister said that we are having nothing to do with the single market and the digital agenda. If we are outside the digital agenda, we shall have very serious problems in many sectors of trade with the European Union. I rather hope the Government will look at this again. The Minister mentioned the agencies. He did not mention the railways agency this time, but I am sure he mentioned it in previous debates.

I shall read carefully what the Minister said. I will not divide the House at this late hour because we will all fall asleep before we finish, but I know we shall come back to this. Talking to the people of Dover, the harbour board, Eurotunnel and everyone else is one thing; it is probably almost too late to make it work with the massive changes that could happen. I leave noble Lords with a thought: if you live in Kent, near Ashford, and you have continuous traffic jams of trucks on the motorway during Operation Stack, usually caused by either a strike in France or the weather, I cannot see that there will be many people voting for Brexit in Kent by the time this is all over. With that aside, I beg leave to withdraw the amendment.

Amendment 61 withdrawn.

Amendment 62 not moved.

Amendment 63 had been withdrawn from the Marshalled List.

Amendment 64

Moved by ***Baroness Young of Old Scone***

64: After Clause 9, insert the following new Clause—

"Replication of EU law: consultation on impact and equivalence

(1) This section applies to regulations (whether or not under this Act) which—

(a) are designed to replicate a provision of EU legislation (with or without modifications), or

(b) amend or replace legislation which was made under section 2(2) of the European Communities Act 1972 or which was otherwise made for the purpose of giving effect to EU obligations.

(2) Before making the regulations a Minister of the Crown must publish a statement that the Minister is satisfied that a draft has been published in such a manner, and for such a period, as to give persons representing interests affected by the regulations a reasonable opportunity to consider and make representations about—

(a) the environmental, social and other impacts of the regulations, and

(b) equivalence with EU legislation.

(3) The period referred to in subsection (2) must not be less than 3 months, except where the Minister includes a statement that—

(a) the Minister is satisfied that 3 months' notice could not reasonably be given in the circumstances, and

(b) as much notice was given as the Minister considers reasonably practicable.

(4) This section ceases to have effect on 31st December 2021 unless the Secretary of State by regulation continues it."

Baroness Young of Old Scone (Lab): My Lords, my noble friend Lord Judd and the noble Lords, Lord Tyler and Lord Lisvane, have also put their names to this amendment. It is a variation on a similar amendment debated in Committee, but it now includes a sunset clause to restrict the scale of its application, which the Minister expressed concern about at that stage. It is, of course, put forward in a spirit of helpfulness to the Government, although I find that a bit difficult to say at this time of night. It encourages the Government to seek wider advice and assistance in spotting any errors in the large number of statutory instruments—between 800 and 1,000 in addition to the normal numbers—that will need to come forward as a consequence of the EU withdrawal Act. I am concerned about possible flaws in the statutory instruments because of the large number of them, the pace at which they will have to come forward, the lack of staff with sufficient experience in some government departments and the overall pressure of Brexit-related legislation.

It is important that the statutory instruments are available for scrutiny before being formally laid, as once they are laid they cannot be amended under either the affirmative or negative procedure. The only option then would be to seek to annul any flawed statutory instrument. That is the nuclear option which would run the risk of leaving gaps in the legislation on exit, which I am sure the Government would not wish.

I thank the Minister and his team for meeting me and the noble Lord, Lord Tyler. The noble Lord, Lord Callanan, was quite rightly keen that consultation should not mean three months for all subjects great and small. The Government have now laid amendments and given formal assurances on this issue, as have some individual government departments. I welcome the pre-scrutiny proposed for the negative procedure statutory instruments, which would mean that they were published as "negatives in draft" and would give a 10-day window for commentators to express concerns about their substance before they were formally laid.

I understand that Defra, which is likely to have about 10% of the statutory instruments, is putting in place a high-level group of external commentators who will advise on the adequacy of the consultation process—a sort of consultation on consultation. It would be good if Defra and any other departments planning this mechanism could press forward so that we might see how this would work.

In their response to the Lords Constitution Committee's report, the Government have undertaken to lay requirements on Ministers to make statements in explanation of statutory instruments in certain circumstances—for example, where a criminal offence is created or where an urgent statutory instrument is brought forward—but it is likely that such statements will be published only when the SI is laid formally and it is therefore too late, as I have outlined.

I am sure that the Government are committed to preparing this torrent of statutory instruments in as open a way as possible to make sure that the process of transfer of the snapshot of EU legislation into UK law is as uncontentious as possible. The amendment gives the Minister a real opportunity to flesh out this commitment and would place on the parliamentary record the full range of formal and less formal means of consultation and debugging planned by the Government. I beg to move.

Baroness Jones of Whitchurch (Lab): My Lords, I support Amendment 64, which has been ably explained by my noble friend Lady Young. She has attempted to address one of the many practical challenges which will face us in the run-up to Brexit day. We know that we will have to process a large number of statutory instruments in a very short timescale, so how can we be assured that mistakes and oversights do not slip through the net in the rush to meet the deadlines?

We have a particular interest in this issue from an environmental perspective, especially as so many of the regulations will transfer environmental protections—but, obviously, the challenge spans all sectors. We know that civil servants in Defra are already under intense pressure. They are already working on a number of EU-related Bills, including on agriculture, fisheries, environmental standards, and animal welfare and sentience. They also face other pressures from the Secretary of State to modernise other animal welfare and environmental policies. Their number and expertise have been significantly cut and, although new staff have now been taken on to help with Brexit, they do not have the wealth of experience that previously existed. Without safeguards of the kind proposed by the amendment, mistakes in drafting will occur without any means to correct them.

In Committee and subsequently, the Minister took steps to reassure us that pre-scrutiny and sifting processes will be put in place, but the proposals to date have only a partial impact and do not address the more fundamental challenge of delivering proper scrutiny and ensuring that regulations are fit for purpose. So we very much welcome the proposals in Amendment 64. They would give space to allow those affected by the regulations, NGOs and parliamentarians to see the draft wording and have an input before the final version. This is about driving up quality and delivering good governance and I hope that the Minister will welcome the proposals in this spirit.

The amendment focuses on those issues that have a wider environmental and social purpose, where errors and omissions would be more keenly felt. As my noble friend has explained, a new sunset clause of 2021 has now been inserted so that this does not inadvertently become the new norm. I hope the Minister will take this proposal in the positive and constructive form that my noble friend has intended and that she will feel able to support it.

11.15 pm

Baroness Goldie: My Lords, let me say that the Bill does not in any way alter the Government's long-standing commitment to proper consultation, a concern articulated by the noble Baronesses, Lady Young of Old Scone and Lady Jones of Whitchurch.

Amendment 64 would effectively place a statutory requirement to consult, for a period of three months, on all legislation which will affect EU-derived domestic legislation, whether from the Bill or elsewhere. This would effectively reduce the time available to prepare the regulation by three months. I suggest that that could be profoundly undesirable. As we have previously detailed in this House, departments are keen to engage with stakeholders on current matters and on the progress of the negotiations, and will continue to do so where this is possible and where it does not negatively impact on the negotiations in any way. To be fair, I think that the noble Baroness, Lady Young, did acknowledge that.

The consultation process requires resources and time from government and stakeholders. To be frank, we want to focus the energies of those inside and outside government on the most important measures, rather than having them occluded by the sheer volume of consultations on minor matters that could arise under these amendments. I appreciate the concerns that we have heard throughout this debate, but I hope the House will accept at the least that a great many instruments will be technical and minor and designed to ensure continuity. A specific legal requirement to consult, as the amendment envisages, could affect our negotiations with the EU by forcing our legislative plans to pre-empt those discussions. It also risks consulting on a legislative proposal that does not accurately take account of ongoing negotiations.

The noble Baroness's amendment focuses on the legislation we have made in the UK to implement our EU obligations and the changes that might be made to that legislation in the period immediately after our exit from the EU. This is a point I know many are concerned by and I know that some noble Lords have not yet been completely satisfied by the Government's commitments on the protections that will apply to that legislation. The noble Baroness, Lady Young, referred to the government amendments: the amendments to Schedules 7 and 8 will ensure that the exercise of the powers under the Bill are transparent to Parliament and to the wider world. Indeed, our provision in Schedule 8 will also go further than the 2021 deadline in the noble Baroness's amendment and will require, for all time, Ministers making amendments by powers in other Bills to explain any changes they make to regulations made under Section 2(2) of the ECA and set out the good reasons for them. These statements will have to be laid before Parliament and will have to explain the impact of the amendments and any relevant law, including EU law.

It is clear from this that there will be no evading transparency when future Governments divert or update the legislation they will inherit from our EU obligations. I say to the noble Baroness, Lady Jones of Whitchurch, that I think that that is a formula for very robust parliamentary scrutiny. I hope the noble Baroness understands why the Government cannot accept this amendment.

Lord Judd: My Lords, the noble Baroness has referred to the fact that many matters will be minor and technical. This is exactly the point. What may seem minor and technical to administrators and government may be very big issues indeed for some of those who will be affected, particularly in the environmental sphere, and whose co-operation in making a success of whatever is being done is vital.

I also ask the Minister: is it not true that the whole point about so many environmental issues is that they cannot be resolved within the context of the UK alone, but have an international dimension? Fisheries is a very good example. It is for that reason, which plays right into the community here, that we have to be very careful about referring to things as "minor" or "technical". Sometimes they are life-and-death matters to people who really are on the front line.

Baroness Goldie: The noble Lord makes a perfectly valid point, with which I have some sympathy, but I am endeavouring to deal with the points raised by the noble Baroness, Lady Young of Old Scone, in the context of her amendment. I am pointing out that it is not that there will not be consultation or robust parliamentary scrutiny. There will be an opportunity for parliamentarians in both Houses to identify the very sorts of concerns to which the noble Lord has referred.

I have set out the Government's position. I hope the noble Baroness understands why the Government are unable to accept this amendment, and I urge her to withdraw it. I confirm that the Government do not propose to reflect further on this issue between now and Third Reading, so if she wishes to test the opinion of the House, it would be appropriate to do that now.

Baroness Young of Old Scone: I thank the noble Baroness, Lady Jones of Whitchurch, and the noble Lord, Lord Judd, who have had the stamina to stay this late to speak to this amendment. The Minister's response was disappointing. The undertaking that departments will engage with stakeholders where possible does not give me a lot of confidence. I understand that consultation takes up time and resources and that it needs to be focused on the important rather than the minor. But, as the noble Lord, Lord Judd, has just said, many technical and minor amendments can have major impacts.

I am not convinced that the statements and the transparency promised by the government amendments to the later schedules will fit the bill because, if I understand correctly, they are very much about statements made at the time when the statutory instrument is laid, by which time it is too late to make further amendments. It really is into the nuclear option situation, where only an annulment can then happen.

I had hoped that the Minister would use this opportunity to reassure the House generally and the wider audience about the real commitment the Government have to trying to make sure that we get all these statutory instruments right first time. I only hope that the debates we have had on this proposition

and the continuing discussions we have with government departments will reveal that that intention does exist, even if it has not been laid out in the parliamentary domain tonight. In view of the time, I beg leave to withdraw the amendment.

Amendment 64 withdrawn.

Amendment 65

Moved by ***Baroness Smith of Newnham***

65: After Clause 9, insert the following new Clause—

"Rights of EU citizens

(1) A Minister of the Crown must by regulations made by statutory instrument make provision to maintain, preserve and protect the rights of any citizen of an EU member State who was lawfully resident in the United Kingdom immediately before exit day, and in particular to continue their right to be lawfully resident in the United Kingdom.

(2) 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."

Baroness Smith of Newnham (LD): My Lords, the hour is late and many of our noble colleagues have already left. Your Lordships might therefore hope that I will finish quickly—but I am rather keen to raise certain issues and reiterate them yet again in your Lordships' House for the sake of the millions of EU citizens resident in the United Kingdom whose rights and concerns over the past two years have not been met. They have not been reassured.

Immediately after the referendum, questions were raised in your Lordships' House about the rights of EU citizens legally resident in the United Kingdom on the day of the referendum. Amendment 65, in my name and those of my noble friend Lady Ludford, the noble Lord, Lord Judd, and the noble Baroness, Lady D'Souza, raises again the rights of EU citizens.

When the matter was first raised there was cross-party agreement that the rights of EU citizens needed to be guaranteed. The only people who disagreed were, initially, the noble and learned Lord, Lord Keen, who was speaking on behalf of the Government, and the noble Baroness, Lady Stowell, then Leader of the Lords. The reasons they spoke against guaranteeing the rights of EU citizens immediately were associated with the fact that the then Home Secretary felt that the rights of EU citizens could not be immediately guaranteed. The then Home Secretary is now the Prime Minister, and it would appear that her views have not changed. The rights of EU citizens, then as now, are seen as bargaining chips in the wider negotiations.

Over the past two years we have heard again and again that there is not going to be a problem—that the rights of EU citizens will be assured. Once we have the withdrawal agreement, life will be fine. For many millions of people, however, that does not seem a likely scenario. As it is late, I will not quote at length from a book that I received last week, but it is worth reminding your Lordships of the sort of testimonies included the book, which is called *In Limbo*. In it, one German national says that she is one of the people inadvertently caught up in a problem. She came to the United Kingdom, married and had children. Then, however, she stayed at home as a homemaker—twice during the past decade. Nobody told her that a requirement for permanent residency was that she should have comprehensive sickness insurance—so she does not now know whether she will have a right to remain.

So far we have heard from Ministers in your Lordships' House and the other place that the rights of citizens can be guaranteed. The assumption is that there will be a withdrawal agreement and that the rights will be guaranteed. As we have been told on so many occasions, however, the EU withdrawal Bill is meant to assume that we leave the European Union on 29 March 2019, and it will be fit for purpose whether or not there is an agreement—deal or no deal. The rights of EU citizens will, however, not be guaranteed in the absence of a deal. So far, the agreement that in December 2017 started to look at the rights of EU nationals is predicated on the idea that there will be a withdrawal deal.

I would be most grateful, therefore, if the Minister could further enlighten the House, the 3.6 million EU citizens resident in the United Kingdom, and their families: spouses, partners, children and parents. Altogether there are far more than 3.6 million EU citizens, all of whom are wondering what will happen in the event of no deal. Even if there is a deal, how will people demonstrate that they have the right to be here? What are Her Majesty's Government doing to give security to those citizens? In particular, in the light of the Windrush debacle, what certainty can the Minister give to those EU citizens who have come to live and work here, thinking that they were wanted, just as those on the "Empire Windrush" thought that they were wanted? Unless we have an amendment like Amendment 65 on the face of the Bill, millions of people will continue to live in insecurity and uncertainty.

In summing up, I raise the question of the rights not just of EU citizens but of EEA nationals from Iceland, Norway and Liechtenstein. They also have rights of free movement that are essentially consequent on the rights of EU citizenship. What thinking have the Government done about the rights of those citizens? Further, what are the Government doing about the rights of Turkish nationals, who also have rights associated with the Ankara agreement, which of course we are linked to as a member state of the European Union? Once we leave, what rights will those citizens have?

Finally, it has been brought to my attention that a Bulgarian MEP will be coming to the UK next week. He is in the process of trying to help Bulgarian citizens, because Bulgarian and Romanian citizens resident in the UK are less likely than their fellow EU citizens from other member states to have met the five-year residency criterion by the time we leave the European Union. They have had free movement rights only since the start of 2014, so there is a lot more insecurity for Bulgarians and Romanians. This MEP has tried to put together a portal to explain to Bulgarian citizens what rights they have. I am hoping that that portal will be rather more effective than the Government's software and that it might even be readable on an iPhone.

What sort of information are the Government giving alongside their reassurance to these citizens? If those assurances cannot be given, can we be assured that

[Baroness Smith of Newnham]
some sort of amendment can be made to the Bill so that citizens' rights will be guaranteed in the event of a deal or no deal?

11.30 pm

Lord Judd: My Lords, the issues raised and, if I may say so, powerfully argued in her speech by the noble Baroness are grave. People came to live here in the expectation that they would be welcome, of course, and that they would contribute to our economy, which would be appreciated. But most importantly they came here in the context of European citizenship, understanding that as part of being a European citizen they had every right to move here and establish their lives here. We, by our moves to leave the European Union, have circumscribed the rights of citizenship. This is in history a dramatic and grave event. We really have a responsibility to ensure that what people did in good faith—and in terms of citizenship—is preserved. If we have any claim at all to being a responsible nation in the global community, citizenship must be regarded as one of the most precious elements in human life. The need to be certain beyond doubt about what the position of these people will be is therefore essential.

The other point is that we are already seeing the consequences of not having settled the issues. The health service is having still more problems because people feel unable to commit their families to living here. I am involved in several universities and there is evidence that people who wanted to come and make a contribution in our universities as academics are thinking twice about it because they are not sure what their status will be. That applies also and not infrequently to people who are already here and considering promotion or some other job within the university environment. These are just examples, but these matters are urgent.

I remember absolutely clearly that when we had just had the referendum, the response from the Government was quite encouraging because it was said by the Prime Minister and others that, without any doubt, this matter would be given priority above all others. Where is the evidence of this priority above all others? We really need some convincing answers from the Minister this evening.

Lord Berkeley: My Lords, I spent this weekend with a couple whom I have known for a long time. She is German and he is British. They have children and she taught at a European school for 20 years. She said, "You know, ever since the vote two years ago I've been looking for an answer. I haven't had one and I'm just fed up". She has lived in the UK for 20 or 30 years and her conclusion was that the Government are now so untrustworthy, so devious and so unwelcoming that she is thinking of taking her family back to Germany, or perhaps Holland or somewhere. That is a common message that we have heard from many noble Lords and it is disgraceful that these citizens have been used as bargaining chips for the last two years. I hope that the Minister will give us some comfort that this period of real worry for their families will soon come to an end.

Baroness Ludford (LD): My Lords, as has just been said, the price of the Government's failure to accept the advice of this House and its EU Committee to offer a unilateral guarantee to the 5 million affected citizens is being paid by those citizens in anxiety, distress and distrust. As a result of taking the bargaining chip approach mentioned by several noble Lords, rather than a simple, light-touch, declaratory procedure, there are mounting concerns about the process, not least in the light of the Windrush scandal. There may be tens of thousands or hundreds of thousands of people in that group, but there are 3.5 million EU and EEA citizens here and 1.5 million UK citizens in the EU 27, so altogether that is 5 million people. What assurances can the Government give about the staffing and capacity of the relevant section of the Home Office that will deal with the settled status application process and about the testing plans? Those of us affected by the TSB fiasco are very conscious of the need for good testing and communication plans for customers.

My noble friend mentioned what is apparently the current plan, which means that people will not be able to apply online from Apple devices, such as iPhones, only from Android devices. Apparently Home Office officials told MEPs last week that people could borrow their friends' Android devices to complete the process. That seems a little bizarre. Will an offline process be available for people without digital skills or access to computers? What are the plans for communications, appeal and redress? We know that the draft withdrawal agreement requires independent oversight of the process, but can the Government give us more of an idea of the practicalities and of how they plan to make sure that vulnerable people are not excluded? A report last week from the Migration Observatory expressed concern about people potentially being excluded. The Government have been ruled to be acting illegally in trying to deport rough sleepers, who are not necessarily in breach of EU free movement law. Is everybody to be included? Have the Government set a cost? Today's letter from the representative of the European Parliament, Guy Verhofstadt, to the incoming Home Secretary, Sajid Javid, says that the European Parliament expects there to be a cost-free process for applicants and raises other systems issues. He also raises the crucial issue of the need for full rights under the new EU data protection law—the GDPR—to apply, not the Government's planned exemption. Without these rights, if something goes wrong, people will not be able to find out and get their data corrected. That is a cause that these Benches have championed, and we look forward to others coming on board with that demand.

Can the Government clear up something that has been bothering me? What exactly are they saying about comprehensive sickness insurance? We have had evidence, and this has been said by Ministers in public, that there will be no need to demonstrate the holding of comprehensive sickness insurance as part of the application process for settled status, but the draft withdrawal agreement seems to imply that there will still be a requirement to hold it. So is there a difference between having to hold comprehensive sickness insurance and having to demonstrate it as an evidential requirement?

Could the Government clarify exactly what will happen to people who in the past were told they needed CSI? What happens in the application process?

Could the Government clarify the omission from the draft withdrawal agreement of free-movement rights among the EU 27 for Brits who are settled in one of the member states? There is huge concern, particularly among people whose job requires them to move around. I see the noble Lord, Lord Callanan, in his place. He and I have depended in the past, as Members of the European Parliament, on the skills of freelance interpreters and translators. Not only do they move around between Brussels and Strasbourg but they might work for other international organisations or businesses, so they live in one member state but travel all over the EU. They need the right to work across borders within the EU 27. What exactly accounts for the gap in the withdrawal agreement?

We do not know what will happen about post-Brexit immigration but it looks as though it will be very similar to EU free movement, except with a lot more red tape, bureaucracy and cost, and less freedom. That is not a terribly good bargain. We are suffering a lot in the process of the Government's Brexit demands on citizens, and I ask for some answers.

Baroness Hayter of Kentish Town: My Lords, I would have hoped that the noble Baronesses, Lady Ludford and Lady D'Souza, and my noble friends Lady Smith and Lord Judd would not have needed to table this amendment. It should have been self-evident that those living here who arrived with the reasonable expectation of their right to remain on the same terms would have had that guaranteed by the Government.

Sadly, though, it has proved essential that the movers table the amendment since EU residents retain a level of anxiety born not just of the referendum result but of the Government's subsequent actions. First, at the time of the Article 50 Bill, the Government refused to guarantee their existing rights and chose instead to use them as bargaining chips, as we have heard, using their majority in the Commons to overturn your Lordships' amendment. Secondly, more than a year later, there is still no cast-iron guarantee, despite Ministers promising early agreement on this. Indeed, the Government have failed to implement what the Prime Minister said in December would be on offer to EU citizens, and we therefore need to put it into law. That is a priority for the Bill. We cannot wait until December to give these people certainty. They have decisions to make—on schooling, jobs and homes, and perhaps on marriages and children—and need to know where they stand.

Thirdly, in Committee, the noble and learned Lord, Lord Keen, who is not in his place now, insisted that,

"you can only have the domestic law once you have the international treaty, because it is from the international treaty rights and obligations that you allow the domestic rights and obligations to be brought into our domestic law".—[*Official Report*, 7/3/18; cols. 1078-79.]

I do not know if he was deliberately misunderstanding what we were asking but, in effect, he was saying that the withdrawal agreement must come first and that without it the Government would refuse to guarantee existing residents their existing rights. That is not necessary in the treaty. It may be a decision by the Government but it is certainly not the case in law. We are not asking that the Government wait until we hear from the EU 27 how they will react to our citizens living there. We are asking the Government to affirm now something it is in the UK Parliament's gift to decide: what rights we will give to EU citizens currently living here legally.

Lastly, we need this because of the disastrous mishandling, which has just been mentioned, of another group of people also living here quite lawfully: the Windrush generation. Given their overwhelming right to be here, the length of time of their residency and the contribution they have made to the economy, is it any wonder that more recent—albeit equally legal—residents, EU citizens, question whether vague promises of concern will harden into legal guarantees?

The amendment is necessary, morally right and legally justified, so I hope that, even at this late hour, the Government will accept it.

11.45 pm

Baroness Goldie: My Lords, let me make clear that the rights of EU citizens living in the UK are extremely important. I will address my remarks to the context of the amendment. Some broader questions outwith the amendment were asked; I do not propose to deal with them.

The amendment would do little to protect the rights of EU citizens lawfully resident here in the United Kingdom, and is actually less than what we have already agreed with the European Union.

We are in negotiation, we want a deal and we are straining every sinew to work towards a deal. There is now manifestation of progress on that front, because, following the March European Council, the EU and the UK have agreed to protect a broad range of rights that EU citizens and their family members who are resident in the UK on exit day currently enjoy, but also to extend that protection to those who arrive until the end of the implementation period. This agreement, which was published in draft on 19 March, provides them with certainty about their future rights and allows them to carry on with their lives much as they do now.

The Government have already committed that the withdrawal agreement and implementation Bill will directly implement the withdrawal agreement—including the agreement on citizens' rights—in UK law by primary legislation. To implement the citizens' rights agreement, we are introducing a new settled status scheme in UK law for EU citizens and their family members covered by the agreement. We plan to open the application process on a voluntary basis in late 2018, so that people can get their new status at their earliest convenience. This does not require regulations to be made under this power, as the necessary provision can be made through Immigration Rules made under the Immigration Act 1971.

The UK settled status scheme will fulfil the part of our agreement with the EU under which member states can require people to apply to obtain a status conferring the rights of residence, as provided for by the withdrawal agreement, and be issued with a residence document conferring that right.

[Baroness Goldie]

These individuals will have until June 2021 to make an application to obtain their new UK status. During this time, they will enjoy the rights to live and work freely in the UK as conferred by the withdrawal agreement. After that period, if no successful application has been made, no status will be held and they will not enjoy those rights. However, we have agreed with the EU that where there are reasonable grounds for missing the deadline, they will be allowed to submit an application within a reasonable further period. Any application that is made, but not decided, before the end of June 2021 will still be within scope of the withdrawal agreement protections.

As the House will be aware, we have now agreed with the EU a time-limited implementation period. The purpose of this is to avoid a cliff edge and give people, business and public services in the UK and across the EU the time they need to put in place the new arrangements that will be required to adjust to our future partnership.

It will take time to implement a new immigration framework, and the Government have been clear that there should be only one set of changes in the relationship between the UK and the EU, so it makes sense that the framework during this time-limited implementation period should be the existing structure of EU rules and regulations. During this implementation period, individuals will still be fully covered by the EU acquis. EU citizens and their family members will be able to come to the UK to live and work as they do now, but those who wish to stay here for longer than three months will be required to register. That registration will enable them to evidence their right to reside in the UK during the implementation period.

The noble Baroness, Lady Smith, specifically raised the point about Turkish citizens. I understand that DExEU is leading cross-government work to assess international agreements we have with Turkey, which may be affected by EU exit. I cannot be more specific about that at this point, but the matter is within consideration.

The proposed new clause, therefore, would do nothing to further or protect EU citizens' interests. It would interfere with our ability to implement the withdrawal agreement and do nothing to improve on the Government's policy that all EU citizens and their family members, resident in the UK before the end of the implementation period, will be protected under the terms of the citizens' rights part of the withdrawal agreement.

I hope that I have been clear in setting out how this amendment would actually do little to protect the rights of EU citizens lawfully resident here in the United Kingdom. For that reason, I ask the noble Baroness to withdraw it. I have to say that the Government do not propose to reflect further on this issue between now and Third Reading, so if she wishes to test the opinion of the House it would be appropriate to do so now.

Baroness Smith of Newnham: I am grateful to the Minister for giving us a fairly thorough answer, but I find it a little difficult to accept some of what she has just said. As a Liberal Democrat, I am supposed to be somebody with an optimistic turn of mind, so I should possibly hope that there will be an agreement—there will be a deal and it will be so wonderful that we can all live with it. There will be an implementation period, which maybe we would call a transition period, the rights of EU citizens resident here and UK citizens elsewhere in Europe will all be guaranteed, and life will be wonderful. But I am afraid that I was brought up to be a little bit cynical, and I am slightly concerned that what the Minister has said does not quite ring true. She has talked about a whole set of rights being guaranteed through the withdrawal agreement, but we have no guarantee that there will be a withdrawal agreement.

On several occasions this evening we have talked about the possibility of there not being a deal. If there were no deal, the discussion being put forward in the draft withdrawal agreement would lapse. In that event, the rights of the 3.6 million citizens would appear to vanish. On previous days at Report and, in particular, in Committee, we were told repeatedly that the Bill was to ensure legal certainty on the day we leave the European Union—not after some implementation period. I remain deeply concerned about the rights of EU citizens.

If it were not seven minutes to midnight, I would test the opinion of the House but, in the absence of any trigger from the Labour Chief Whip or, to my left, my own Chief Whip, it would be prudent not to do so. I understand that I cannot bring the amendment back at Third Reading, but we might expect an immigration Bill at some point, and many of these issues will be brought back again in that legislation. I am not satisfied that what the Government suggest really will guarantee the rights of EU citizens. With that, I beg leave to withdraw the amendment.

Amendment 65 withdrawn.

Amendments 66 and 67 not moved.

Amendment 68

Moved by ***Baroness Burt of Solihull***

68: After Clause 9, insert the following new Clause—

"Co-operation with the European Union on child maintenance claims

Within one month of the passing of this Act, and then once in every subsequent calendar year, the Secretary of State must lay before both Houses of Parliament a report containing an assessment of how, following exit day, co-operation between the United Kingdom and the EU will replicate mechanisms which exist within the EU to enforce cross-border child maintenance claims, and will enable data sharing in relation to such matters."

Baroness Burt of Solihull: My Lords, Amendment 68 is in the names of the noble Baroness, Lady Kennedy of The Shaws, the noble Lord, Lord Russell of Liverpool, and myself. The amendment proposes a new, short clause which is similar in its intention to that proposed by Amendments 67 and 69, to which we also added our names and which have already been debated.

The clause relates to ensuring co-operation within the EU on child maintenance claims. The importance of cross-border co-operation between the EU and the UK on enforcing child maintenance claims is

clear, and I will not detain the House at this hour by going into it. However, in post-Brexit times we need a mechanism to ensure that this cross-border co-operation is maintained.

The clause is very modest in its intention. It does not tell the Government how to do this; it merely requests a report showing how it is working, or not, as the case may be. This does not seem unreasonable to me, so I hope that the Minister will undertake at least to consider this modest request. Children and families who have already suffered the challenges of family break-up across the EU are depending on it. That is all I wish to say on this proposed new clause.

Baroness Sherlock: My Lords, EU family law provisions are tried and tested. There is a broad consensus that they work well, and with the advent of the Brussels II recast—as it is known in the trade—they will become more effective still. At earlier stages of the Bill, I set out in some detail the challenges for international family law post Brexit, so I will not rehearse those again. However, as the noble Baroness, Lady Burt, has said, this amendment is focused on what happens to child maintenance when we leave the EU.

Child maintenance matters because parents can separate or divorce but they do not cease being responsible for their children. Children have a right to support from both parents, even if one lives abroad. Maintenance plays a key role in lifting single-parent families out of poverty. Receipt of child support is also positively associated with single parents taking up work and with children maintaining contact with a non-resident parent.

This may be private law, but the need for it to work well and be enforceable is a matter of public policy importance. Even the UNCRC mandates, at Article 27, contracting states to take all appropriate measures to secure the recovery of child maintenance and, when a parent lives abroad, to promote accession to international agreements. So there are compelling reasons for Parliament to want to be assured that we will have a well-functioning system to enable the assessment and enforcement of child maintenance owed by a parent living in one of the EU 27. The Minister told the House that, during the implementation or transition period, the current reciprocal rules, including the key EU family law instruments and Hague conventions, will continue to apply as now. Beyond that, we do not yet know what the landscape will look like.

Ministers have signalled that they would like to continue to participate in the Lugano convention, but that is nothing like a substitute for the maintenance regulation, as that part of the EU family law provisions are known. The 2007 Hague convention would go some way towards assisting with the recognition and enforcement of maintenance obligations, but it too falls well short of the maintenance regulation. It has no general system of jurisdictional rules, and you cannot enforce spousal maintenance orders via the central authorities unless they are linked to enforcement of a child maintenance order. We are left hoping that the Government will be successful in negotiating a reciprocal deal that will serve our people well. Given the significant number of international divorces, these issues cannot be ignored.

Ministers are confident that comparable reciprocal arrangements can be achieved to replace the EU family law provisions. This amendment would simply require Ministers to tell us how. If Ministers do not smile on this amendment, perhaps they could tell the House how and when the Government will update us on progress. I look forward to the Minister's reply.

Baroness Goldie: I thank the noble Baroness, Lady Burt, for raising the important issue of child maintenance, which we recognise is of particular importance to many families across the UK. As the Government outlined in their position paper published in August last year, we are seeking a comprehensive future agreement with the EU on civil judicial co-operation that is based on the substance of the current EU regulations, including the maintenance regulation. I stress again that the precise nature of this relationship will be a matter for negotiation.

However, I assure the House that the Government are committed to working with our EU partners to agree the most effective rules in this area which reflect our close existing relationship on this important issue. This approach will provide confidence and certainty to families and individuals, ensuring they can continue to enforce cross-border maintenance orders efficiently and effectively in the future. As both noble Baronesses, Lady Burt and Lady Sherlock, rightly said, these orders are hugely important to the families involved.

Midnight

Going back to the purpose of the amendment, the report specified by the amendment requires the Government to publish details of future co-operation with the EU on child maintenance claims and how these will replicate mechanisms which exist within the EU, as well as enabling data sharing in relation to such matters, within one month of this Bill receiving Royal Assent and subsequently every year thereafter. This deadline makes no reference to the position of the negotiations between the UK and the EU at the stage of the Bill receiving Royal Assent; neither does it acknowledge the other documents the Government will be publishing on this subject.

As the Government have previously advised the House, those documents will include not only the final agreement reached in negotiations but explanatory memoranda on any amendments that Ministers make to retained EU law using powers in the Bill, including retained family law. Again, any agreement between the UK and the EU will be detailed within the withdrawal agreement and legislated for within the upcoming withdrawal agreement and implementation Bill, which Parliament will be able to scrutinise fully and vote on.

I believe that this amendment presents an unnecessary burden to the Government at this crucial stage in the EU exit process. For these reasons, I ask the noble Baroness, Lady Burt, to withdraw the amendment in the name of the noble Baroness, Lady Kennedy. I should make it clear that the Government will not reflect further on this issue between now and Third Reading, so if she wishes to test the opinion of the House, it would be appropriate to do that now.

Baroness Burt of Solihull: My Lords, I am grateful to the Minister for her comments, particularly what she said about the ongoing work with our European partners to achieve a cross-border arrangement. It is hoped that the spirit of what she is saying and the desire to form these arrangements will be satisfactory to families. Although the Government may consider this not to be a huge issue in the great context of Brexit and everything that is going on, it is a big issue to those families who are similarly affected. The Minister is nodding, and I take comfort from that. With that, and given the lateness of the hour, I beg leave to withdraw the amendment.

Amendment 68 withdrawn.

Amendment 69 not moved.

Amendment 69ZA had been withdrawn from the Marshalled List.

Clause 17: Consequential and transitional provision

Amendment 85 not moved.

Amendment 86

Moved by ***Lord Lisvane***

86: Clause 17, page 14, line 14, leave out "the Minister considers appropriate" and insert "is necessary"

Lord Lisvane: My Lords, as this amendment is consequential on Amendment 31, which was agreed by your Lordships on 25 April, I beg to move it formally.

Amendment 86 agreed.

Amendment 86A

Moved by ***Lord Callanan***

86A: Clause 17, page 14, line 19, at end insert—

"( ) No regulations may be made under subsection (1) after the end of the period of 10 years beginning with exit day."

Lord Callanan: My Lords, in Committee many noble Lords raised valuable concerns regarding the use of the consequential power, or, I should say, the misuse of this power. In response to these concerns, and being conscious of restricting the scope of the powers wherever practical, the Government have tabled an amendment to sunset the power to make consequential amendments from 10 years after exit.

I would like to point out that it is unusual for such powers to be sunset. However, given the unique nature of this Bill and the concerns about future Governments abusing the power to make consequential amendments, the Government have taken the decision that it is right in this exceptional case to apply a sunset to the power. The Government arrived at the figure of 10 years as the consequences of the Bill may only come to light long after our exit from the EU. The fact that this period is longer than that afforded to the other powers in the Bill reflects this fact. While 10 years should ensure that the majority of consequential amendments can be made, there is still a risk that some amendments that it may prove appropriate to make could not be made if they were only discovered after this time. The Government believe, however, that the value of sunsetting the power outweighs those risks.

I know that there are other concerns about Clause 17, and the Government have tabled amendments to address those, in particular arranging for negative SIs proposed under it to be sifted. I look forward to debating these on a later day.

I hope that this amendment demonstrates yet again the Government's commitment to satisfying the concerns of this House, and I hope that noble Lords will welcome this amendment. I beg to move.

Lord Beith (LD): My Lords, I recognise that the Government have moved on this issue, even though 10 years is the longest sunset that I think I have ever heard of in any Bill—it has the quality of a north Norwegian, Arctic sunset, which pleasantly never comes. However, in this case, some date by which to end these rather wide powers is welcome. Of course, the Bill also has the limitation in Clause 17(2). It was the breadth of the powers that led us to table Amendment 85, which was not moved, and it was the Government's willingness to move on this and some other amendments that made us feel that we ought not to press it. I hope the Minister recognises that any use of these consequential powers that appeared to go beyond what is genuinely consequential would raise the spectre that we had let through excessive powers. He will be well aware by now that this House has become increasingly vigilant about the breadth of powers granted to Ministers. In recognising that the Government have moved on this issue, we have not pursued other amendments.

Amendment 86A agreed.

Amendment 87

Moved by ***Lord Lisvane***

87: Clause 17, page 14, line 22, leave out "the Minister considers appropriate" and insert "is necessary"

Lord Lisvane: My Lords, this amendment is also consequential to Amendment 31. I beg to move.

Amendment 87 agreed.

Consideration on Report adjourned.

House adjourned at 12.07 am.