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Tuesday
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PARLIAMENTARY DEBATES

(HANSARD)

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

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8 May 2018

THE

PARLIAMENTARY DEBATES

(HANSARD)

IN THE FIRST SESSION OF THE FIFTY-SEVENTH PARLIAMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
COMMENCING ON THE THIRTEENTH DAY OF JUNE IN THE
SIXTY-SIXTH YEAR OF THE REIGN OF

HER MAJESTY QUEEN ELIZABETH II

FIFTH SERIES **VOLUME DCCXCI**

NINTH VOLUME OF SESSION 2017-19

House of Lords

Tuesday 8 May 2018

2.30 pm

Prayers—read by the Lord Bishop of Ely.

Brexit: Digital Single Market

Question

2.36 pm

Asked by ***Lord Clement-Jones***

To ask Her Majesty's Government what assessment they have made of the United Kingdom's ability to take advantage of the Digital Single Market and of country of origin principles for e-commerce once the United Kingdom leaves the European Union.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, I am delighted to see that, by including the phrase,

"once the United Kingdom leaves the European Union",

in his carefully prepared Question, the noble Lord has confirmed from the Liberal Democrat Front Bench that we will be leaving the EU. The UK will not be part of the digital single market once we leave the EU. We are undertaking a comprehensive programme of analytical work looking at the implications of the UK's exit from the EU. We are seeking input from a wide range of businesses, civil society groups and consumer bodies to inform our future trading agreement negotiations with the EU. This includes e-commerce.

Lord Clement-Jones (LD): My Lords, recent CEBR estimates put the value of our digital exports in the creative industries alone at £21 billion, yet as the Minister has confirmed and the Prime Minister stated at the Mansion House on 2 March—indeed, the noble Lord, Lord Callanan, repeated it last week—

"the UK will not be part of the EU's Digital Single Market".

The Prime Minister went on to say:

"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".

How on earth will that protect those digital exports? Or is this just another example of the Government whistling in the dark?

Lord Ashton of Hyde: My Lords, I completely agree with the noble Lord that the creative industries and digital are a very important part of our economy. We are the leaders in Europe—7.9% of our GDP is digital, with the next biggest, I think, being France, at 3.9%. We acknowledge that this has to be part of the wider negotiations on the single market. We are undertaking a great deal of analysis to make sure that we understand the implications of those negotiations.

Lord Griffiths of Burry Port (Lab): My Lords, analysis, study, the eventual bringing to our attention of possible ways forward—is the Minister able to help us in a shorter term than that, given that nearly two years have passed since all this began? I know that he will use the word "shortly" or "soon", but can he give us an idea of when we will have a fix on this? The greatest part of our trade is led by our activities in this sphere. All the talk is about trade, yet this issue has the potential to damage a significant part of our trading arrangements. Has not enough advice been given by the House of Commons DCMS Committee in its recent report? Urgency is what we seem to be lacking.

Lord Ashton of Hyde: I have to disagree with the noble Lord: urgency is not lacking, and considerable work is going on. Clearly, when we are about to undertake some of the most important negotiations

[LORD ASHTON OF HYDE]
that we have had for decades, we would not want to outline exactly what our negotiating position was before we did it. We absolutely take on board what the noble Lord and the noble Lord, Lord Clement-Jones, have said and understand the importance of the digital area. That will take place within the broader single market negotiations.

Lord Watts (Lab): My Lords, the digital industry is very important to the British economy. What options are the Government considering to deal with this problem? Can they spell them out?

Lord Ashton of Hyde: I think it would be mad to spell them out before we even start the negotiations.

Lord Addington (LD): My Lords, to go from the macro to the micro, if we leave the EU, might we not be susceptible, as individuals, to roaming charges when we go to Europe? Is not the addition of, say, up to several hundred pounds on the phone bill of everyone who visits Europe something that might lead us to put on the line some compromise of our position regarding our new independence?

Lord Ashton of Hyde: The noble Lord is right that roaming charges are one of the main areas that we have to look at as part of the negotiations that particularly affect DCMS. That is absolutely on our radar and we understand the implications both ways. We understand that it is a fairly recent innovation not to have roaming charges within the EU: we completely understand that and it will form part of the negotiations.

Baroness Neville-Rolfe (Con): My Lords, I agree about the importance of the creative industries and I am sure they will continue to be creative as we go forward beyond Brexit, but I want to ask my noble friend a question about portability. This is the ability to take your television programmes abroad digitally when, for example, you go on holiday in the Mediterranean, so that you are able to watch "Coronation Street", "EastEnders" or whatever is your particular delight. Can my noble friend give me an update on whether that will still be possible?

Lord Ashton of Hyde: I am not absolutely clear whether that will still be possible. I do not think it is the highest on our list of priorities. However, I will certainly take it back to my department and get my noble friend a clear and concise answer.

Viscount Waverley (CB): My Lords, by chance I called on a UK tech association last week and the message I received was that the industry is in the doldrums—that is my word. I think the inference was that it is depressed—that since whenever this exercise started, there has been a depression in the industry generally. Does the Minister wish to say how we can reinject a sense of optimism into the sector, to give the heads of these trade associations the view that we are, indeed, heading in the right direction?

Lord Ashton of Hyde: I can absolutely dispel the noble Viscount's gloom: the tech industry is not in the doldrums; in fact, quite the reverse. The creative industries, including tech industries, are growing at twice the rate of the economy. I hope the noble Viscount is reassured by that.

Lord Haskel (Lab): My Lords, digital is an important part of the Government's industrial strategy. So when will they initiate their industrial strategy council, whose job it is to chivvy the Government and get them to take action on this sort of thing?

Lord Ashton of Hyde: I am not quite sure which council the noble Lord is talking about, but as part of the industrial strategy, as he knows, we are launching sector deals, and I am pleased to say that the artificial intelligence sector deal was launched a week or two ago to great acclaim.

Brexit: Logistics Industry
Question

2.43 pm

*Asked by **Lord Bradshaw***

To ask Her Majesty's Government whether they have asked any organisations in the logistics industry to sign confidentiality agreements in respect of negotiations concerning the United Kingdom's withdrawal from the European Union.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, the Department for Exiting the European Union is responsible for overseeing the negotiations to leave. We continue to engage regularly with companies across the economy to inform our negotiating position and prepare for our departure from the EU. The department has not signed any non-disclosure agreements in respect of negotiations.

Lord Bradshaw (LD): I thank the Minister for that reply. Since he is close to the logistics industry, does he agree that the line favoured by the Prime Minister has the potential to solve the looming crisis in the supply chain industry, or does he agree with the Foreign Secretary, who has described the Prime Minister's proposals as "bonkers"?

Lord Callanan: If the noble Lord is referring to customs solutions, there are, of course, two models on the table. I am sure noble Lords are very familiar with the issue, but there is the streamlined model and the alternative model, a new customs partnership. Both have issues and drawbacks as well as opportunities and the Government are examining both models closely. When we have reached the most appropriate solution that is best for the UK, we will announce it.

Lord West of Spithead (Lab): My Lords, 73 years ago today was Victory in Europe Day, when Britain, Russia and America saved Europe from a new dark

age. I ask the Minister: when we leave Europe will we have the mechanisms in place to ensure the correct defence and security arrangements to look after the security and safety of this continent and this country?

Lord Callanan: The noble Lord makes a very good point. As the Prime Minister said in her Munich speech, our offers for the guarantees of security in Europe are unconditional and we look forward to a close and productive security, foreign affairs and defence partnership with our EU partners.

Viscount Waverley (CB): My Lords, 9 May is Victory Day, which will be attended by all those who were part of winning the Second World War. Will a Minister be present at this memorial?

Lord Callanan: I have no idea.

Lord Teverson (LD): My Lords, returning to supply chains and logistics, currently it is estimated that a non-EU vehicle entering one of our ports takes 45 minutes to get through customs and all the procedures, whereas for EU vehicles it is a few seconds. The FTA—Freight Transport Association—has said that an extra two minutes means 17 miles more of queue. What is the Government's estimate of the extra time that it will take a vehicle to cross the border post Brexit?

Lord Callanan: As the noble Lord is aware, we are negotiating to have as frictionless customs arrangements as possible. We do not want any delays and we want whatever delays there might be kept to a minimum. That is the purpose of the discussions we are having and of the agreement we hope to come to.

Lord Bilimoria (CB): My Lords, is the Minister aware that when freight from Dublin goes across the UK to the continent, it takes approximately 10 hours? If that same freight had to go around the UK to Europe, it would take 40 hours. What are the Government doing to prevent the Irish situation affecting the frictionless border?

Lord Callanan: The border between the UK and Ireland will be a customs border in the future. Of course, we want to make that border as frictionless as possible, as we do the other borders. That is the purpose of the discussions.

Lord Foulkes of Cumnock (Lab): My Lords, perhaps I can come to the assistance of the Liberal Democrats, who seem to be at sixes and sevens over whether or not we are going to leave the European Union. I am certain that we will not leave the European Union. Last week we had a Question on the dangers of gambling, particularly internet gambling, but I am prepared to make a wager with the Minister of at least £10—I am a generous Scotsman—that by the date designated for exiting we will not be leaving the European Union. Will the Minister take that bet?

Lord Callanan: I am not sure whether the rules of the House permit gambling exchanges across the Floor. I am probably better off not answering that question in case I get into trouble with the House authorities. It is very good of the noble Lord to come to the rescue of the Liberal Democrats on behalf of the Labour Party, whose position seems equally confused.

Baroness Randerson (LD): My Lords, the Liberal Democrats are quite clear that we do not want to leave the European Union. I ask the Minister: what mechanisms do the Government use to engage with members of the logistics industry, which has some 40 different representative organisations and groups? Have the Government now engaged with the Port of Dover, which recently said that not one Minister had been to visit it despite the fact that it is predicted to be at the eye of the storm when—or if—we leave?

Lord Callanan: I assure the noble Baroness that we have had many meetings with the Port of Dover. We continue to engage extensively, at both ministerial and official level. Of course, it is one of 275 ports and airports—albeit one of the largest—that we need to engage in discussions with to make sure that we put in place the logistical arrangements to make the border as frictionless as possible.

Lord Goldsmith (Lab): My Lords, in an earlier answer the Minister identified two potential solutions to the customs issue. Can he please tell the House when he expects the Government to solve that problem and decide which of them they will choose, if either, and how?

Lord Callanan: The "how" is that we will look in detail, using our excellent teams of officials, at all the available options. We will announce in due course what the best solution is for the United Kingdom and then, of course, we will have to discuss those matters with our European partners.

Lord Howell of Guildford (Con): My Lords, is it not worth remembering that most digital traffic does not go through ports or customs anyway so the entire customs union debate, which is quite separate, is completely irrelevant to this question of digital and knowledge product trade. What are relevant are all the regulations and licences, which govern the trade in digital services throughout the European Union, and where—even after 40 years of membership—we have not been very successful in making much progress. Is the real concern not a global one? Are not the real markets where growth is coming in the next 10 years predominantly—90%—outside the European Union, and should we not think in rather wider terms that this petty issue of digital services in Europe?

Lord Callanan: My Lords, my noble friend, with his long experience of these matters, makes an extremely good point. Digital products can of course cross the European frontier very easily and cross worldwide frontiers extremely easily. The issue of trying to unify regulations is on a worldwide basis and the EU is a shrinking market in the world.

Product Safety: Freezers and Refrigerators

Question

2.51 pm

*Asked by **Baroness Donaghy***

To ask Her Majesty's Government what plans they have to strengthen legal safety requirements for fridges and freezers sold in the United Kingdom.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, we believe that Britain's product safety requirements are among the strongest in the world. Manufacturers have a legal responsibility to place safe products on the market. The UK is leading on proposals to enhance the standard for fridges and freezers at an international level.

Baroness Donaghy (Lab): My Lords, the recent Which? report said that current safety standards are not fit for purpose and that its tests have resulted in "Don't buy" recommendations for 250 models, most of them from household names accounting for 45% of the market. In particular, Which? advised not buying plastic-backed models. While we await the appropriate report on the Grenfell Tower blaze, what actions will the Government take to reassure consumers and support the findings of the Which? report?

Lord Henley: My Lords, I am of course aware of the Which? report. It made it quite clear that most or all of the fridge freezers it referred to did meet existing standards. The Which? report was looking at enhanced standards. The Government will certainly look at that and are working with Which? and other parties. This is why I stressed in my opening Answer that seeing whether even more stringent standards can be set has to be done internationally. But those products certainly meet existing standards—which, as I said in my original Answer, are among the safest in the world.

Baroness Sherlock (Lab): My Lords, this worries me. I declare an interest in that a close friend of mine escaped with her life when she woke up in the night to find that her fridge was on fire. Although the brilliant London Fire Brigade was there within minutes, her entire flat was gutted. The firefighters who got her out and put her safely in the back of the ambulance guessed what make her fridge was and said, "Tell your friends never to buy one of those". The firefighters know this; that is why the London Fire Brigade has been campaigning for the last five years for a ban on those kinds of fridges. If they know that, do the Government not know that, and will they not protect us?

Lord Henley: My Lords, all fires are potentially disastrous and it is right that the noble Baroness should highlight that point. The number of fires that have been caused by fridge freezers is very small indeed—something like 2% of all domestic fires—and the number is declining. We are aware of the concerns, which she rightly highlights, about products with plastic rather than metal backing. That is why we are looking at strengthening standards in that area. As I made clear, I think that our standards are already very high, and all the fridges meet those standards. The Which? report, rightly highlighted by the noble Baroness and her noble friend, said that we should possibly look at strengthening those standards. That is what we are doing.

Baroness Neville-Rolfe (Con): My Lords, in view of what has been said, I am very glad that the Government have set up a new Office for Product Safety and Standards, and am grateful for my invitation to visit it. On from fridges, what is being done with the many hundreds of thousands of outstanding Whirlpool tumble driers, which also pose a fire safety risk? I believe that the Minister must be on the consumer's side in these matters.

Lord Henley: My Lords, I think I have used the expression, "The consumer is always right" on other occasions. We are on the consumer's side. My noble friend will be aware that my honourable friend Andrew Griffiths has already had discussions with Whirlpool and made his concerns clear. This question is related not just to fridge freezers but, as my noble friend is well aware from her experience as a Minister in this department, and I am grateful for the work she did, to other items as well. We want to look at all the standards and make sure that we continue to have the right standards and that they are as stringent as possible.

Lord Razzall (LD): My Lords, the Minister is of course aware that his noble friend, the noble Baroness, Lady Neville-Rolfe, has led a continuous charge on this and related issues since she ceased to be a Minister. Does he accept that there is a suspicion that the failure to take proper action over this and related issues is an indication that, as a result of Brexit, government decision-making elsewhere is paralysed?

Lord Henley: My Lords, I totally and utterly reject that accusation. We are doing a great deal on this front. However, I agree that my noble friend has done a great deal on this—and not just since she left government. She led the charge on this as far back as November 2014, when she announced the original review of the UK product safety system.

Lord Stevenson of Balmacara (Lab): My Lords, I think one should share some of the credit. The Minister's noble friend did a great deal of work, but the Opposition were also involved in trying to get the new Office for Product Safety and Standards set up. The Government are saying that we lead the world in terms of our standards, but, if these standards are linked to roughly 60 fires a week in the UK, how many deaths is it going to take to get them to change their mind on this? We have a new body, the Office for Product Safety and Standards. It has a wonderful website with a list of things it can do. When is it going to do something, and does it have the power to change the way people manufacture these dangerous machines today?

Lord Henley: My Lords, I will echo the noble Lord in saying that it is not just the work of my noble friend and pay tribute to the Opposition Front Bench, other Members of this House and another place and, for that matter, *Which?* magazine for highlighting problems here. Obviously any electrical equipment has the potential for danger. That is why we want to get the right safety regulations in place and why we are looking at tightening them. That is why we want to make sure that proportionality is considered in all these matters and that is why I highlighted the fact that only about 2% of fires are caused by fridge freezers. There are other products that need looking at. We will continue to look at our safety standards, keep them under review and make sure that they continue to be the safest in the world.

Lord Tomlinson (Lab): Will the Minister go back to the mantra that he gave to the House a few minutes ago? He said that the consumer was always right. That really is arrant nonsense if he begins to think about it. It is not right when it comes to unhealthy eating, which is why the Government seek to intervene. It is not right when people are forced to pay very high interest rates on loans. It is not right when it comes to alcohol consumption levels, and it is certainly not right when it comes to massive stakes on fixed-odds gambling machines—so can I persuade him not to issue that mantra again?

Lord Henley: No, I am afraid the noble Lord will fail in that, because I believe that the consumer should be provided with adequate information to make an informed decision on all these matters, whether they be excessive amounts of food, which might interest the noble Lord, alcohol or whatever. The consumer can then make their decision. Allied to that, there should be adequate protection in terms of goods of this sort, so that the consumer is not endangered in matters where they would not be able to make an informed decision.

NHS: Overseas Doctors

Question

3 pm

Asked by ***Baroness Hayman***

To ask Her Majesty's Government how many overseas doctors recruited to work in the National Health Service have been refused visas to enter the United Kingdom in the last 12 months.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, no application for a medical practitioner role that is on the shortage occupation list, which is based on advice from the independent Migration Advisory Committee, has been refused a tier 2 skilled work visa. The Home Office publishes regular visa statistics. However, the Home Office visa case working system does not capture the profession of the applicant. That information is captured on the tier 2 visa application form, and to provide it would require a manual check of our records.

Baroness Hayman (CB): I am grateful to the Minister for the detail there but it does not actually answer my Question. I have some figures from NHS Employers, which says it knows of at least 400 cases of qualified doctors from overseas who have been offered jobs in the NHS but not been allowed in because of the lack of being in a designated shortage occupation and the pressure on tier 2 visas. When the NHS is short of thousands of doctors, applications from EEA doctors are diminishing and the NHS is actively recruiting overseas, what possible logic can there be for the doctors whom it has recruited then to be turned back and denied visas by the Home Office? Last week the leaders of 12 medical colleges, the BMA and NHS Employers wrote to the Home Secretary asking him to take action to end this ridiculous and indefensible situation that damages patients. Will the Government act now?

Baroness Williams of Trafford: My Lords, there were quite a few points in that question. The noble Baroness's first point was that there are 400 cases of doctors overseas who have been denied visas because they are not on the shortage occupation list. Therein lies the point: the shortage occupation list is arrived at with advice from the Migration Advisory Committee regarding those occupations that cannot fill the demand within the NHS. If we expand some of the doctor numbers that are not on the shortage occupation list, we are in danger of pushing out some of those other professions that we do need and that are on the shortage occupation list. We need to think about this in the round.

Baroness Thornton (Lab): My Lords, I would like to give the Minister a direct example. In Cambridge and Peterborough NHS Foundation Trust, children and young people with mental health problems are having to wait many months to access mental health treatment because the child and adolescent psychiatry consultant, who has been chosen and appointed, has not yet been granted a visa five months after the cap for tier 2 NHS workers was reached; on Friday it will be six months, and we will probably find that the same applies. Does the Minister agree that the Government's hostile environment policy is now directly damaging patient care? Does she agree with my honourable friend Jon Ashworth, who asked the Home Secretary in a letter on 1 May:

> "The visa rules clearly aren't working in the best interests of NHS patients. I am asking that you put patient safety first by taking NHS workers out of the tier 2 visa system so that hospitals can get the right numbers of staff in place"?

Baroness Williams of Trafford: My Lords, as my right honourable friend the Home Secretary explained last week, the term "hostile environment"— coined by former Home Secretary Alan Johnson—is not one that he wishes to use because of all the negative connotations. Instead we will talk about a compliant environment—that is, complying with Immigration Rules. On the direct example that the noble Baroness gives me, I will not talk about specific examples because clearly I do not know the details of the case. I will go back to my original Answer, which says that no one on the shortage occupation list should be denied a work visa.

Baroness McIntosh of Pickering (Con): Will my noble friend give the House an assurance that all overseas doctors will be submitted to the same checks on their medical qualifications and knowledge of language as all EEA doctors are obliged to submit to before they are allowed to practise in this country?

Baroness Williams of Trafford: All overseas doctors—I think my noble friend was talking about non-EEA doctors—should obviously have the requisite qualifications to practise. At the danger of repeating myself, if those doctors are on the shortage occupation list, there should be no bar to obtaining a visa.

Baroness Hamwee (LD): My Lords, the Minister mentioned the Migration Advisory Committee. As someone once said, "Advisers advise, Ministers decide". Are the Government confident that the restrictions on visas for particular occupations are supported by employers, stakeholders and the general public?

Baroness Williams of Trafford: My Lords, I cannot speak for the general public at large. The noble Baroness is absolutely right that advisers advise, and those advisers advise on those professions for which we have a shortage. We have not talked about other professions, such as particular types of skilled engineers, which are in shortage in this country. She is absolutely right that Ministers then decide on what the criteria should be.

European Union (Withdrawal) Bill

Report (6th Day)

3.06 pm

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

Amendment 93

Moved by ***The Lord Bishop of Leeds***

93: Before Clause 14, insert the following new Clause—

"Future interaction with the law and agencies of the EU

Nothing in this Act shall prevent the United Kingdom from—

(a) replicating in domestic law any EU law made on or after exit day, or

(b) continuing to participate in, or have a formal relationship with, the agencies of the European Union after exit day."

The Lord Bishop of Leeds: My Lords, I move this amendment for two principal reasons: first, in order to assist the Government in their shaping of their case for the UK's future relationship with the European Union post Brexit; secondly, because it is consistent with Amendment 49, which was passed earlier on Report.

Speakers in these debates have repeatedly suggested that anyone who moves an amendment is a hypocritical remoaner intent on sabotaging the Bill and trying to prevent Brexit from ever happening. I regret the referendum result, but I accept that the UK is to leave—even on this 73rd anniversary of VE Day. My concern, along with that of many in your Lordships' House, is to ask the Government seriously to consider improvements to the Bill in order that the people should be clear about the how as well as the what of Brexit, and that the transition to a final arrangement is as good as we can get it. It is my understanding that this is both the role and the responsibility of this House.

I remain concerned that a deeply divided country is being offered two stark alternatives which, if you will bear with me, I will put in biblical terms—someone has to. Like the people of Israel in the desert, we too easily romanticise the past and yearn to return to Egypt; or, on the other hand, we promise on the other side of the mountain a land flowing with milk and honey, ignoring the challenges that go with it not actually being our land to do with as we will.

I mean it seriously when I suggest that we should be honest in our discourse on Brexit and acknowledge that we shall be spending some years in the wilderness as we begin to work out the consequences of the decisions we have taken and the implications of the relationships we must now begin to establish. Wilderness time is not necessarily negative time—simply a time of waiting, wishing and hoping or recriminating—but a time for stripping away the clutter, identifying and owning our values and priorities as a nation and actively bringing together a people divided by their varying apprehensions of events that have befallen them. That serious need for a concrete unifying strategy has yet to be addressed seriously in either House of this Parliament: slogans and wishful thinking are not enough.

With this in mind, then, I come to the substance of the amendment standing in my name, and to which, I am sure, the Prime Minister would give her consent as it rests on commitments already articulated by her. In her Mansion House speech of 2 March 2018, the Prime Minister confirmed for the first time that the UK will seek to maintain a formal relationship with certain EU agencies after Brexit. She further acknowledged that the terms of the future UK-EU relationship may see the UK Parliament take the step of replicating certain provisions of EU law. I hope noble Lords will forgive me for quoting in order to obtain clarity. She said:

"Our default is that UK law may not necessarily be identical to EU law, but it should achieve the same outcomes. In some cases Parliament might choose to pass an identical law—businesses who export to the EU tell us that it is strongly in their interest to have a single set of regulatory standards that mean they can sell into the UK and EU markets. If the Parliament of the day decided not to achieve the same outcomes as EU law, it would be in the knowledge that there may be consequences for our market access".

She went on:

"And there will need to be an independent mechanism to oversee these arrangements".

She also said:

"We will also 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".

She added:

"We would, of course, accept that this would mean abiding by the rules of those agencies and making an appropriate financial contribution".

The Prime Minister then went on to set out what the mutual benefits of such an approach might be. These include: first, that such membership, however

described, is the only way to ensure that products need to undergo only one series of approvals in one country; secondly, that such membership would enable the UK to contribute its technical expertise in setting and enforcing appropriate rules; and thirdly, that this might then allow UK firms to resolve certain challenges related to the agencies through UK courts rather than the ECJ.

That is enough for now to demonstrate the Prime Minister's case. She concluded with a further statement about the sovereignty of Parliament and the acknowledged costs of rejecting agency rules for membership of the relevant agency and linked market access rights. It is important to remember that these decentralised agencies were originally established following a proposal from the European Commission and agreement by both the European Parliament and the Council of the European Union, which, if I am correct, means that the establishment of over 40 bodies was achieved with the support of the UK. Surely it makes sense, then, to be consistent and retain access to them.

As the Prime Minister made clear in her speech, there will be consequences of not doing so. For example, and to take just one, there is the European Maritime Safety Agency. Our international reporting and monitoring obligations on maritime safety are currently handled via EMSA and there are shared EU rules on seafarer working conditions. That enables the UK to maintain its status as a "quality flag state" under international law. The complexities involved in replicating this would appear to be immense. Furthermore, establishing a domestic equivalent to the EMSA will inevitably put a huge strain on the Civil Service, taking many years to negotiate, and will be enormously expensive. Could that be yet another uncosted consequence of Brexit? I could equally cite the European Aviation Safety Agency, the European Chemicals Agency, Europol, the European Medicines Agency, and many others.

Is it not probable that any future UK-EU trading relationship might demand replication of certain EU measures—product safety regulations, for example? As other regulations continue to evolve in Brussels in the years to come, is it not probable, if not inevitable, that the UK might have to keep pace if reciprocal arrangements with the EU 27 are to continue—for example, those covering matrimonial and parental judgments?

This amendment does not in any way place an additional burden on the Government, nor does it ask the Government to change their stated policy stance. It formalises and reinforces those commitments made by the Prime Minister in her Mansion House speech. Furthermore, with phase 2 of the negotiations now well under way, the addition of this clause would demonstrate Parliament's wish for the UK to maintain a close relationship with the EU and, in this sense, it is consistent with the role envisaged for Parliament in Amendment 49.

3.15 pm

It is fair to say that, although amendments relating to EU agencies were rejected in the House of Commons, that was possibly because the Government had not at that point announced their policy position. Now that their policy position is clear, sending this amendment back to the Commons would simply give an opportunity for further debate on future UK-EU co-operation.

I hope that I have given a clear rationale for this amendment and its inclusion in the Bill. I hope that the Minister in responding will recognise its constructive nature and its attempt to give some idea as to what sort of milk and honey might lie over the mountain once we have negotiated the wilderness journey. It does no one any favours to pretend we are where we are not; it does everybody a favour to attend to a detail that at least has the virtue of acknowledging the uncertainties ahead and the size and potential costs of the journey on which we have now embarked and gives one element of shape to what to many looks, to quote another biblical line, somewhat "formless and void". I commend the amendment for debate and beg to move.

Amendment 93ZA (as an amendment to Amendment 93)

Moved by ***Lord Alli***

93ZA: Before Clause 14, after paragraph (b) insert—

"(c) negotiating continued membership of the European Economic Area, and its corresponding agreements."

Lord Alli (Lab): My Lords, following consultation with the right reverend Prelate the Bishop of Leeds and the noble Baroness, Lady McIntosh of Pickering, I have decided that it would be better not to debate this amendment and to decouple Amendments 110A and 112BC for a fuller debate later in the proceedings. To pick up a theme of the right reverend Prelate, I hope not to be in the wilderness for too long. I shall certainly value my waiting time, and it would be nice if that waiting time ended some time before dinner, but I shall understand if it does not. On that basis, I thank the right reverend Prelate for his courtesy and do not intend to press the amendment.

Baroness McIntosh of Pickering (Con): It is a great pleasure to support and echo the eloquent words of the right reverend Prelate the Bishop of Leeds. In doing so, I commend the generosity of the noble Lord, Lord Alli, in so graciously agreeing not to press an amendment that would find a place later in this Bill, while also recognising that we have had the opportunity to debate the matter that he wishes to discuss in that amendment at three different stages, and I do not believe that he was present at any of those stages. So we are very grateful to him.

I declare my interest in that I advise on environmental matters, as declared on the register, and am also delighted to sit on the Rural Affairs Group of the Church of England General Synod. I particularly believe that the European Environment Agency would benefit from Amendment 93. Many noble Lords will be aware of my particular interest in Denmark, since I am half-Danish. I have had the opportunity to visit some British members of the European Environment Agency while in Copenhagen last year. To follow through on the thoughts and arguments developed by the right reverend Prelate, I argue that the European

Environment Agency provides essential research on which the European Commission and other institutions depend and on which environmental protections for British citizens currently flow.

I want to put some questions to the Minister who is responding to this debate. First, I presume that the British Government wish to continue to benefit from the research undertaken by the European Environment Agency, as was indicated by the Prime Minister in the words quoted by the right reverend Prelate the Lord Bishop of Leeds. Will the Minister confirm that that is the case and what financial arrangements will be made to cover the work of the agency? Many environmental protections have been debated in this House during the passage of the Bill.

Secondly, and more importantly, there is a matter which was impressed on me in the meeting I had in Copenhagen in August with British officials working for the European Environment Agency. This is not the first time I have raised this; I had a number of conversations about it with the Minister's predecessor, my noble friend Lord Bridges. However, over a year has passed and I have had no reassurance whatever in this regard. Many of these officials are British; many are married to Danes, Swedes or people of other nationalities. Many of them are experts and not on permanent contracts. I met one who was a very clever scientist who has a big question mark hanging over her future. Her young family wish to attend school and, subsequently, university. The House will recall an amendment that deprived EU citizens living in this country of the right to vote in our original referendum.

There is an urgent need for clarity because President Juncker has committed that British officials working for European institutions—I presume this is both permanent officials and those on expert contracts—will be able to apply for Belgian nationality from 30 March next year. If that is the case, British officials working for European Union institutions in Brussels will have preferential status, compared to those working for other agencies such as the ones mentioned by the right reverend Prelate and to the ones I met who were working in the European Environment Agency. It is now a matter of urgency that we reassure those excellent British officials working for such agencies that they will have at least the same status as those working for EU institutions in Brussels.

To sum up, what will be the Government's future relationship with agencies such as the European Environment Agency? What will be the extent of our financial commitment, and when will we know what that is? What will be the status of those working for the European Environment Agency, the European Medicines Agency, and all such agencies? When will they know what their future will be?

The Lord Speaker (Lord Fowler): My Lords, when the noble Lord, Lord Alli, said that he did not wish to press his amendment I should have asked the House—and I ask it now—whether it is your Lordships' pleasure that Amendment 93ZA be withdrawn.

Amendment 93ZA withdrawn.

Lord Haskel (Lab): My Lords, I will speak briefly in favour of Amendment 93, because it strengthens the argument of some of the amendments which I moved in Committee about maintaining our standards through membership of many of these EU institutions. These institutions set the standards which give us a quality of life that we have come to accept as normal as members of the European Union—indeed, as Europeans. They not only set the standards but have mechanisms to enforce them and are independent of government. In Committee, the Minister assured us that the Bill will seek to retain in UK law all these rights and protections,

"so far as is practical".—[*Official Report*, 19/3/18; col. 19.]

The law may well be transposed, but it is toothless unless we have these institutions which monitor, measure and enforce compliance, and which have the right to exact penalties for non-compliance.

The right reverend Prelate the Bishop of Leeds said that to set up our own institutions would require a lot of time, expense and expertise, which we are short of. To accept these institutions would demonstrate that, by opening up our market, we are not entering a race to the bottom and we are not going to abandon the precautionary principle. There is a lot of uncertainty over withdrawal, but this amendment goes some way to ensuring that our quality of life as citizens will not suffer because of this uncertainty. That is why I support it.

Lord Cormack (Con): My Lords, I will be equally brief and will make just one point. When I had the honour to serve on the EU Home Affairs Sub-Committee of the European Union Committee of your Lordships' House—something that was brought to an abrupt conclusion when I voted for those two amendments on the Article 50 Bill last year—I remember vividly one particular evidence session. Those giving evidence were led by a notable citizen of the United Kingdom, Mr Rob Wainwright, who was the head of Europol. Everything he said throughout his evidence to our committee made it abundantly plain that, if our security and our relations on the police front were to be maintained, we had to have a solution that as closely as possible replicated what we already enjoy. That is why I strongly support the amendment, which was admirably moved by the right reverend Prelate and spoken to by the noble Lord, Lord Haskel, and my noble friend Lady McIntosh. They have made equally valid points, but at the end of the day what is fundamental to our country's survival is adequate and proper security and the proper interchange of information throughout the 28 nations of the European Union as it is now. We are leaving, but in doing so we must not jeopardise in any way the security of our people. That is why I strongly support this amendment.

Lord Dykes (CB): My Lords, I will briefly support what the noble Lord, Lord Cormack, said, and also thank the right reverend Prelate for his able speech, which was strongly reinforcing as regards our gradually becoming ever closer to the European Union itself. That is the reality of these matters, because although the noble Lord, Lord Cormack, wishes to say on behalf of others on his Benches as well that we are

leaving, there is now in this country a firm feeling of second thoughts on that matter, and therefore we may not be leaving.

In the meantime, the Prime Minister herself has got closer and closer to the EU in terms of various different parts of our linkages, in particular in respect to the agencies, and in terms of some of the procedures and laws. The strongest one, apart from Europol, which is a good example, is the European arrest warrant part of that security procedure, which is increasingly regarded as an incredibly indispensable instrument of suitable control between the justice systems of the member states, and so on—we had the recent example in Spain of something that was widely welcomed in this country.

With a number of agencies, if we were to relinquish membership of them—or even "almost membership", however close that might be to them—that would be damaging not only to individuals who are involved in them but to the recipients of those services and the security of the high standards maintained. As we go on with this torturous process—we will see it again with the revival of the discussions about the EEA, the customs union, and so on in later amendments—we realise now that our closeness to the EU is a reality and not just an aspiration.

3.30 pm

Lord Teverson (LD): My Lords, I was very pleased to add my name to this amendment, and I congratulate the right reverend Prelate on his introduction to it. As he says, what is not to like about it? It reflects the Prime Minister's policy and intent, and it provides an opportunity for the Government to negotiate with Brussels with the good will and strength of Parliament behind them. So why not accept it? It seems to me an excellent amendment.

Whether we are talking about the Brexit debate or about the people dealing with Europe, I am struck that the European institutions that citizens generally know about most are the European Parliament, the Council and the Commission. However, it is an absolute fact that these agencies, which are relatively new in the evolution of the European Union, are among the key instruments under which Europe works. They are among the most efficient, benefiting from huge economies of scale in expertise and costs to industry and other organisations within the Union; they are very successful; and they are highly regarded not just within the European Union but internationally. That is why it is so important that we as a country, whether we leave or not—although we are on a trajectory to leave—should stay in strong contact with these agencies. Many of them are major determinants in British industry being able to access and work with the European single market in the future.

I am the chair of your Lordships' European Union Energy and Environment Sub-Committee. When we looked at Brexit and the environment, 100% of the witnesses from UK industry who appeared before us or sent us written evidence were very clear that we should stay as close as possible to EU chemicals policy regulation and the REACH regime. They did not want to have to manufacture a third set of rules and regulations—not just for North America and the EU but our own as well. That was a fundamental aim of the industry.

One of our more recent reports concerned the internal energy market. The Prime Minister also mentioned this in her speech as something we need to stay near to, and it is an enterprise that Britain has led. I doubt that even Members of your Lordships' House have heard of the Agency for the Cooperation of Energy Regulators, but it will be an important element of, and part of the jigsaw of, our energy security and energy prices in the future.

We have already mentioned Europol and the European Medicines Agency. Just like REACH for the chemicals industry, it is very important for the pharmaceutical industry that we stay part of the EMA and avoid huge duplication in development and approval costs.

For all those reasons, we need, if we can, to stay part of and be a participant in those agencies. Many of them currently have observers from the EEA states. The European Space Agency is not a European agency as such but Canada and other members are associates of it. Maybe that is a model we could persuade the EU 27 to follow. We also need to take into account the "soft" area. This is not just about being an associate member; the knowledge and work inside the European Union institutions determine markets and how industry needs to work in the future. By retaining involvement in those institutions, we will have that information, contact and networking, which otherwise we will forsake. For that reason, I believe it is very important to support the amendment.

Lord Baker of Dorking (Con): My Lords, as someone who voted leave, I have always envisaged that what is being debate here will actually happen. I have always assumed that, when Britain is outside the European Union, it will want to co-operate extensively with Europe on a whole range of matters, such as environmental matters, which have been mentioned. I cannot conceive of any future Government of our country, whether they be Labour, Conservative or coalition, wanting to reduce the environmental quality of life. The trend is all the other way: to make it even better as it goes on. That is what will happen when we are out of the European Union, just as ever it did when we were in the European Union.

Similarly, as an ex-Home Secretary, I see the value of Interpol. I am quite sure that we will continue to work very closely with Interpol and continue the exchange of information that is so vital to arrests and to the reduction of crime, not only in our own country but in Europe.

One item not mentioned today is the Erasmus programme. I was the Education Secretary who started Erasmus and I think it has brought inevitable great benefits, both for students of our own country and students of other countries. Indeed, I discovered that one American university has decided that, during one year, all its students have to go and study in another city for three months. Erasmus allows that to happen and I am quite sure that it will continue in the future.

Having said all that, I do not think it requires a parliamentary fiat, if I may say so to the right reverend Prelate. It is clearly the Government's policy to do that

because it is a policy based upon common sense. It is essentially part of our negotiations, as has been made clear by the Prime Minister, and I hope that the negotiations are successful.

Lord Whitty (Lab): My Lords, briefly, I want to support this amendment. I think I was probably responsible for the previous three occasions that the noble Baroness, Lady McIntosh, referred to, in that very early in this debate I asked the Government to set out for each of the European agencies their intention for future co-operation. I did that because, like the noble Lord, Lord Teverson, as chair of one of the sub-committees I know that every industrial and professional sector wants to know what its future relationship would be, as that is the normal way of doing business: they operate with their European counterparts through those European agencies. I then asked further questions about the environment, food safety and, vitally, transport, which would otherwise close down.

I am very grateful that the Prime Minister has picked out aviation as an area on which we must continue to co-operate, and chemicals—the European Chemicals Agency regulates 20,000-plus day-to-day chemicals. Unless we have very close relationships with all those industrial sectors, and on issues such as security and Europol, Brexit will be a serious blow to the way large parts of our industry, public sector and professions operate day to day. We need to give them certainty. I still think it would have been helpful had the Minister produced a detailed list, because we are gradually working our way round to saying that, on all these issues, co-operation will need to continue.

Lord Adonis (Lab): My noble friend has given a great deal of thought and study to this issue. Is he aware of any legal impediments that prevent us continuing to participate in agencies in any event? Is this change in the law in any way required?

Lord Whitty: In terms of the Government's intention in the negotiations, it is required. But to counter, to a degree, the otherwise helpful contribution from the noble Lord, Lord Baker, the EU have to agree it. If we do not have this as a positive point in our negotiations, and if we do not co-ordinate the role of British industry, sectors and professions with those of their European counterparts, there will be an end to that co-operation. I have had cause to remind the Minister that the EU's current guidelines in negotiations say that we will no longer participate in these agencies from March next year. If so, that is seriously disruptive. It is therefore important that this House gives an indication to the other place and to the Government that we must continue to participate. I hope the Minister does not repeat his and his colleagues' previous disdain in dismissing the need to make this clear. I hope the Prime Minister's intention is wider than the few specific agencies to which she referred in her Mansion House speech.

Lord Wallace of Saltaire (LD): My Lords, I strongly support the amendment, partly to give our support to the Prime Minister against those within her divided Government who do not believe that it is important to stay closely associated with these agencies.

Perhaps I may give a little of their history. I was on the staff of Chatham House in the early 1980s when the British Prime Minister, Margaret Thatcher, first proposed the single market and made it clear that what was in Britain's interests—as well as, she argued, in enlightened European interest—was to replace a tangle of different national regulations with single regulations in a single market. She did not assume that we would get rid of all these regulations but that we would agree on common regulations. Many of the agencies then grew up to make sure that these regulations were observed and enforced, and altered and developed as technology, pharmaceutical research and other things changed. That was why they were clearly in Britain's interests. There were always some in the Conservative Party who did not believe in that—they believed in deregulation—and thus were dubious about the single market because it was replacing national regulations with common European regulations.

One of the most interesting pieces of research carried out for Chatham House in that period was by an American trade lawyer who wrote about the extraterritorial jurisdiction of US regulations over the United Kingdom until the single market was formed. Very often business, engineering, the chemical industry and the pharmaceutical industry in Britain simply followed American regulation. The idea that we had sovereign regulation on our own did not exist. As the single market developed, so European regulations, over which we had considerable influence, replaced the British adoption of regulations designed for American purposes, which we felt we had no choice but to accept.

That is these agencies' historical origins and they clearly still serve British national interests. It is therefore important that if and when we leave the European Union we remain associated with them. Technology and research have continued to develop and these agencies therefore serve an increasingly important role. I therefore hope that the Minister in replying will reinforce what the Prime Minister said in her Mansion House speech and make it clear that a major objective of the Government is to remain as closely associated with these agencies as possible, even if Boris Johnson may then denounce it in the *Daily Mail*.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I share in full measure the hopes and concerns articulated today by so many of your Lordships. That said, if the amendment is put to the vote, I shall not feel able to support it. My approach to this amendment, as to earlier amendments to the Bill, has been essentially that it is fine to tell the Government what they must do once they have achieved what they regard as the best available deal, but it is not fine to seek to impose on the Government requirements as to precisely what that deal must be or how to achieve it. In other words, we can tell the Government what rights Parliament or, as I promoted, the public should have on a further referendum as to what we can do and should do, by way of approving or rejecting the proposed final deal—or, indeed, a decision to exit with no deal—but we should not seek to bind or inhibit the Government in reaching a deal and so risk weakening their negotiating position.

The Bill is not for that purpose but to keep our statute book intact. I urge your Lordships, rather than indulge all our hopes and wishes in this area, to think about whether we ought to put these explicit requirements into this legislation.

Lord Hannay of Chiswick (CB): My Lords, I wonder whether the noble and learned Lord is reading the same amendment as me. The one I am reading, which was so well introduced by the right reverend Prelate, states:

> "Nothing in this Act shall prevent the United Kingdom from … replicating",

or "continuing to participate". It does not say that we have to do it. It just says that nothing shall prevent our doing it. Perhaps I am reading a different amendment from the noble and learned Lord.

Lord Brown of Eaton-under-Heywood: Funnily enough, when I first read the amendment, I took the same point from it that my noble friend has taken. However, it seemed that it could not be so because it simply would not make sense to move an amendment that is not intended to have any effect on the Government as they pursue this legislation.

3.45 pm

Lord Adonis: The House may be aware by now that I am in favour of our staying in the European Union. I have great respect for the right reverend Prelate the Bishop of Leeds; it is great for bishops to spend a long time in the wilderness, but not for people doing trade and leading the economic life of the country. While the right reverend Prelate is in the wilderness, perhaps he can conduct our negotiations with whoever we are conducting them with in the wilderness on our behalf.

My reading of the amendment is that it has zero impact. I cannot see anything in the Bill that prevents our having any relationship with European agencies. Our issue with the Government is that they do not want relationships with many of them. I do not intervene, however, just to make the point that the amendment is useless. I am concerned by what is becoming a pattern in our debates on the Bill: thinking that changes with no substance whatever amount to great advances in our campaign to reverse Brexit. We should concentrate on things of real substance: the customs union, the single market and the referendum. Those are real changes.

As far as I can see, the Minister will not accept gestures of this kind because he does not accept anything from this House on principle, even from Bishops. Perhaps the Almighty can sway his mind in a way that we mere mortals cannot. He could accept the amendment but he will not. Even if we go to a vote, it is not worth wasting the time of the House on trivial matters of this kind; they may give us the impression of having some impact, but we are in fact having zero impact.

Baroness Ludford (LD): My Lords, I disagree with the noble Lord, Lord Adonis. One of the most important matters is security. In Barcelona the other day, one of Britain's most wanted fugitives—Jamie Acourt—was arrested in a joint operation between the Metropolitan Police and the Spanish police, possibly assisted by Europol. The NCA head of international operations said:

> "Our ability to share information and work at speed with our international partners ensures there is no safe haven for fugitives. We will never stop pursuing these individuals".

That is no doubt true, but Acourt will be returned under the European arrest warrant. If we do not stay part of the warrant and have to fall back on the long-winded extradition arrangements that predate it—without any participation in Europol to facilitate cross-border police operations—our security will be endangered. I hope the noble Lord, Lord Adonis, accepts that security is one of our most important interests. I hear what noble Lords said about the effect of the amendment but, politically, it is important that this House presses on the Government the importance of staying in agencies and institutions.

Baroness Hayter of Kentish Town (Lab): My Lords, I am delighted to speak in support of the key Amendment 93, to which my noble and learned friend Lord Goldsmith added his name and which was moved so biblically and effectively by the right reverend Prelate the Bishop of Leeds. Of course, at that time, I had not only a brilliant legal adviser on my right, but a theological one—my noble friend Lord Griffiths—who has now left the Chamber. I said, "I have to have a biblical quote", but I am afraid he has a sense of humour and said, "The people who were wandering aimlessly in the pre-Brexit wilderness were soon squabbling among themselves, ignoring the advice of their leader", and so on. But I will leave my noble friend's helpful comments for another time.

I say this particularly in answer to the noble and learned Lord, Lord Brown, and my noble friend Lord Adonis. This is an important and meaningful amendment because it would restrict the pretty wide powers given to Ministers in the Bill. That is why we need to pass it. We have on a number of occasions, on this Bill and the Nuclear Safeguards Bill, expressed our surprise that nowhere in the referendum process—in the immediate aftermath, nor in this legislation or any other—did the Government ever spell out that the Article 50 process automatically triggered our exit from Euratom. I will not repeat the costs and dangers of that eventuality given earlier debates on it, particularly the input at that point of the noble Lord, Lord Teverson.

However, equally unremarked on and unmentioned by the Government, or by the Brexiteers during the campaign, was the similar removal of the UK from a swathe of agencies, many of which, as we have heard, we helped to construct and all of which have served this country well. Colleagues will already know, from medical researchers who have been in touch, patient groups, health professionals and the pharmaceutical industry, of the risks of being outside the European Medicines Agency, quite apart from the loss of jobs and specialisms that are now moving to Holland. But the same could be said about the European Food Safety Agency, often referred to, but not today, by my noble friend Lord Rooker; the environment agency, emphasised by the noble Baroness, Lady McIntosh, and my noble friend Lord Whitty; the railways and aviation agencies, often referred to by my noble friend

Lord Berkeley; the European Chemicals Agency, which has been mentioned; and, of course, Eurojust, suggested by the noble Baroness, Lady Ludford, and Europol, mentioned by the noble Lord, Lord Cormack.

The commonality is that any mention of those agencies in this House and beyond has included a plea for us to remain members, associates or partners with whichever such agency is in the frame. Sometimes this means following the same rules—as the Government have now accepted for clinical trials—to assist in monitoring; for safety; for easy and rapid transport, as for medical isotopes; to facilitate trade and exchange; to enable skilled persons to undertake checks or repairs; or, as my noble friend Lord Haskel said, to guarantee safe products for users and consumers.

For some of the agencies it might mean paying money in, as the Prime Minister acknowledged. For some it might mean harmonising assurance, governance or penalties for rule-breaking. But for all it will mean a willingness to adapt and respond to requirements, usually simply to maintain our existing rules and practice. What is clear is that, given the wide powers in the Bill for Ministers, we must ensure that none of those powers is used to frustrate our continued involvement with such agencies, whether because, for example, we set different sanctions for breaches, raise fees or charges in a different way that makes it difficult to move along in their way of working, or apply variant rules or any other similar change. That is why it is critical to circumscribe the powers in the Bill so that they cannot be used to prevent us having necessary EU rules or ways of working that would frustrate our participation in any of these agencies. We do not want the powers to be used for that reason, hence the very simple amendment.

The noble Lord, Lord Hannay, had it right: the Bill should not be used to frustrate the intention, should that be the Government's wish, to stay in these agencies for the good of the whole country. It is, as the right reverend Prelate the Bishop of Leeds said in his introduction, entirely in line with what the Prime Minister said in Mansion House and it would allow this country to continue such relationships where that continuation is in the national interest.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, I understand the sentiment behind Amendment 93 tabled by the right reverend Prelate the Bishop of Leeds—I assure him that I am not one of those who regard him as a hypocritical remoaner. However, I must make it clear that the Government consider its inclusion in the Bill to be both completely unnecessary and totally inappropriate.

Once we leave the EU, this Parliament—and the devolved Administrations, where appropriate—will be free to change the law where they decide it is right to do so. As such, nothing done by this Bill, or any other Act of Parliament, can bind the actions of future Parliaments. A provision which essentially provides that future Parliaments can mirror EU law, which this Bill neither requires nor prevents, is therefore completely unnecessary. Nor does the Bill prevent Parliament approving any future relationship between the UK and the EU, including its agencies and institutions.

If the intended effect of the amendment is to preserve the sovereignty of Parliament, it is also completely unnecessary. The amendment may have been tabled with one eye on the withdrawal agreement, but my ministerial colleagues and I have been clear throughout the Bill's passage, both within this House and in the other place, that its aim is just to create a functioning statute book as we depart from the EU—a point well made by the noble and learned Lord, Lord Brown of Eaton-under-Heywood. For the avoidance of any doubt, the Bill does not seek pre-emptively to legislate for or against any final withdrawal agreement or future relationship with the EU. On this point, I am surprised to find myself in agreement with the noble Lord, Lord Adonis, probably for the first time in the Bill's passage. On this narrow point, he is right. Incidentally, we have accepted many amendments put forward in this House and by its committees. We have tabled more than 100 amendments responding to concerns raised by various Members of your Lordships' House, so it is not quite true that we always reject everything that is said.

Lord Adonis: My Lords, there will be further opportunities for the noble Lord to accept amendments in due course, particularly on membership of the single market.

Lord Callanan: We will come to that debate later.

Let me make it clear: if there is a role for any EU agency as part of the withdrawal agreement, it will be legislated for under the withdrawal agreement and implementation Bill which we are planning to introduce later in the year. The same principle applies to the future relationship which will, as necessary, be legislated for in due course.

The inclusion of this amendment would make this position less clear than it is at the moment. It may also create an odd presumption that, since the Bill does not prevent the amendment's intended effect being achieved, the specific inclusion of the new clause would mean that the UK will seek to mirror the laws of the EU after our departure or to continue its current participation in EU agencies. That may not be the right reverend Prelate's intention, but the amendment could be read as going even further and attempting to save, or partially save, the European Communities Act for the purposes of mirroring changes in EU law after exit. If that is the case, it could be seen as allowing a wide discretionary power to keep pace with EU law. This would also be a wholly inappropriate approach when we do not yet know the outcome of the negotiations.

As I have highlighted during our previous debates on the Bill, the UK has a long-standing tradition of ensuring that our rights and traditional liberties are protected domestically. The UK leads the world in many areas in setting and upholding high standards across our statute book; for example, in areas such as consumer protection, environmental standards and workers' rights—a point well made by my noble friend Lord Baker. I believe that all Members of Parliament, in this House and in the other place, are invested in the continuation of this legacy. It is in Parliament that we are better able to address and legislate for the specific needs and ideas of the UK.

In our negotiations, we are seeking a deep and special partnership with the EU, and our relationship with its agencies and bodies is being evaluated on this basis. I assure the House that where there is a demonstrable national interest in pursuing a continued relationship with an agency or other EU body, the Government will carefully examine whether we should pursue this. In response to the questions raised by my noble friend Lady McIntosh, participation in the European Environment Agency is of course a matter for the negotiations, but if we do negotiate participation we will, of course, make the appropriate financial contribution.

4 pm

Viscount Hailsham (Con): Will my noble friend help the House in one respect? I am trying to understand whether the amendment in any way obliges the Government to do anything or in any way prevents them doing anything. It seems to me entirely neutral in its effect. Can he help us?

Lord Callanan: I think I covered that in what I said earlier: we believe it to be unnecessary and pointless.

Going back to my noble friend Lady McIntosh's questions, the second question she asked me was about contracts of employment of staff employed in those agencies. Of course, these are a matter for those agencies, but the rights of those UK citizens, as UK citizens in other EU countries, are guaranteed in the agreement we reached with the EU in December. The noble Lord, Lord Whitty, asked me about the membership of agencies ending in March 2019. As set out in the agreement reached in March, during the implementation period common rules will remain in place and the UK may continue to participate in EU agencies where the presence of the UK is necessary and in the interests of the Union or where the discussion concerns acts addressed to the UK and its citizens.

In conclusion therefore, while I fully understand the intentions behind the amendment, I do not believe that anything would be gained from its acceptance in the Bill, apart from confusion.

Lord Woolf (CB): Before the Minister sits down, can he help me on one matter? I am sure there is an easy answer to it. The Bill is exceptional in its regulatory power. Whereas I see the strong force of what is being submitted by the noble and learned Lord, Lord Brown, I wonder if it has the effect of curtailing these very wide Henry VIII clauses.

Lord Callanan: I do not believe that it does curtail our powers under the SI provisions of the Bill, on which we have had separate, long discussions.

In conclusion, I do not believe that anything would be gained from its acceptance in the Bill apart from confusion and uncertainty. I therefore hope that the right reverend Prelate will feel able to withdraw his amendment.

The Lord Bishop of Leeds: My Lords, I thank the Minister for his response and all those who have spoken in the debate. I often find myself changing my mind when I hear good argument but I cannot assure the House that I have done that in this case. The Minister referred to the sentiment behind the amendment, but it is not sentiment: what I offered was a rationale, not a sentiment. The intention behind it is as I stated in my speech. I take the comment of the noble Lord, Lord Baker, about "common sense", but every time I hear the phrase I begin to worry. Usually, common sense is so common and so thinly spread that it does not always apply in the specific, and as they say, the devil lies in the detail. So I am not sure that it is enough just to be sure that things will continue, or that we can continue to hope.

The noble Lord, Lord Adonis, said that it is not good for businesses and so on to be in the wilderness. I totally agree, but my point in using that metaphor is that we are, whether we like it or not, going to find ourselves in some sort of wilderness, because it will take a long time to work this through. It will not be that suddenly on day one, whether we stay or leave, everything in the garden is rosy. I am just being realistic about that. Finally, I find the repeated charge that this House is trying to impose on the Government, or tell the Government what to do, tiresome. It seems to me—I may be simple—that the remit and responsibility of this House is to send back to the Government and to the other House arguments that may make them think again. Otherwise, we have no purpose. So, while I take the comments seriously, I wish to test the opinion of the House.

4.05 pm

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Henley, L.
Hill of Oareford, L.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Home, E.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Janvrin, L.
Jenkin of Kennington, B.
Jopling, L.
Kakkar, L.
Kalms, L.
Keen of Elie, L.
King of Bridgwater, L.
Kinnoull, E.
Kirkham, L.
Laming, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lawson of Blaby, L.
Leigh of Hurley, L.
Lexden, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Lucas, L.
Lupton, L.
Lytton, E.
MacGregor of Pulham Market, L.
Mackay of Clashfern, L.
Magan of Castletown, L.
Mancroft, L.
Manzoor, B.
Marland, L.
Marlesford, L.
McColl of Dulwich, L.
McInnes of Kilwinning, L.
Mone, B.
Morris of Bolton, B.
Morrow, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
O'Cathain, B.
Oppenheim-Barnes, B.
O'Shaughnessy, L.
Palmer, L.
Palumbo, L.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Price, L.
Prior of Brampton, L.
Ramsbotham, L.
Rawlings, B.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ribeiro, L.
Ridley, V.
Risby, L.
Robathan, L.
Rock, B.
Rogan, L.
Rotherwick, L.
Ryder of Wensum, L.
Saatchi, L.
Scott of Bybrook, B.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Skelmersdale, L.
Slim, V.
Smith of Hindhead, L.
Spicer, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stevens of Ludgate, L.
Stirrup, L.
Stoddart of Swindon, L.
Stroud, B.
Sugg, B.
Suri, L.
Swinfen, L.
Taylor of Holbeach, L. [Teller]
Taylor of Warwick, L.
Thurlow, L.
Trefgarne, L.
Trenchard, V.
Trimble, L.
Ullswater, V.
Vaux of Harrowden, L.
Vere of Norbiton, B.
Wakeham, L.
Wasserman, L.
Wei, L.
Whitby, L.
Wilcox, B.
Williams of Trafford, B.
Wyld, B.
Young of Cookham, L.
Young of Graffham, L.
Younger of Leckie, V.

4.20 pm

Clause 14: Interpretation

Amendment 93A

Moved by ***Lord Callanan***

93A: Clause 14, page 9, line 42, at end insert—

"( ) an enactment contained in any Order in Council made in exercise of Her Majesty's Prerogative,"

Lord Callanan: My Lords, we have just debated an important issue, and later I shall turn to some other very substantive matters. Nevertheless, I ask for a moment of the House's time while I make the case for the five government amendments in this group, especially for the noble Lord, Lord Adonis, who apparently does not believe that we are tabling any amendments to the Bill.

These are all consequential amendments on the status provisions that we debated on day two of Report, and which I am pleased to say that the House accepted without a Division. I know the House will look again at these complex provisions at Third Reading but, as I said on day two, I hope there will be no further amendments beyond anything that relates to additional matters where the distinction between primary and subordinate legislation is important, and therefore we should insert that distinction between retained principal direct EU legislation and retained minor direct EU legislation.

Amendments 93A, 93B and 93C clarify types of legislation that are included in the definition of "enactments" in the Bill. This definition includes a non-exhaustive list of enactments. The new status clause provides that enactments are to retain the same status as they had before exit day. The intention behind the provision was to address the concerns of some noble Lords about the effect that the Bill has on domestic legislation via Clause 2 and whether it changed the status of that legislation. As part of the Government's commitment to ensuring clarity and certainty, we have tabled the amendments to make it clear that these additional types of legislation all continue to have exactly the same status that they had before our exit from the EU. The amendments clarify that Church Measures, Orders in Council made in exercise of Her Majesty's prerogative and devolved enactments made in exercise of the prerogative are within the definition of "enactments" and therefore will retain the same status that they held prior to exit day. The Government have of course consulted with the Church of England, the Palace and devolved authorities before tabling the amendments. The amendments also make it clear that in the highly unlikely case that any of these instruments

[LORD CALLANAN]
are related to the EU and contain deficiencies, the Government could correct those deficiencies if appropriate, although in these cases it is likely that others would use their own existing mechanisms to so do.

Amendments 112BA and 112BB simply insert the new definitions of "retained principal direct EU legislation" and "retained minor direct EU legislation" into the Interpretation Act so that the terms do not need to be defined in future legislation. I hope noble Lords will find nothing to object to in this group, and I beg to move.

Lord Goldsmith (Lab): My Lords, I understand and am grateful for what the Minister has said about the purpose behind the amendments. He is quite right that, for example, the first three amendments identify as enactments things, including Church Measures, that would normally be regarded as such but were not included. My question for him is simply this: he said in moving the amendment that one of the advantages of the amendments would be to enable deficiencies, if there were connections with EU law, to be corrected through secondary legislation. Could he explain how these amendments will enable that to be done? I did not quite follow that.

Lord Callanan: As I said, we think it is highly unlikely that any of these instruments that are related to the EU will contain deficiencies. If appropriate, we could use secondary legislation powers to correct those deficiencies but, as I said, in virtually every case it is likely that others—the devolved Administrations, the Church and so on—would want to use their own existing measures to do so.

Amendment 93A agreed.

Amendments 93B and 93C

Moved by ***Lord Callanan***

93B: Clause 14, page 10, line 6, after "legislation," insert—

"( ) an enactment contained in, or in an instrument made under, a Measure of the Church Assembly or of the General Synod of the Church of England,"

93C: Clause 14, page 10, line 6, after "legislation," insert—

"( ) an enactment contained in any instrument made by a member of the Scottish Government, the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Government, a Northern Ireland Minister, the First Minister in Northern Ireland, the deputy First Minister in Northern Ireland or a Northern Ireland department in exercise of prerogative or other executive functions of Her Majesty which are exercisable by such a person on behalf of Her Majesty,"

Amendments 93B and 93C agreed.

Amendment 94

Moved by ***Lord Callanan***

94: Clause 14, page 10, line 7, leave out "section 2" insert "sections 2 and (Status of retained EU law)"

Amendment 94 agreed.

Amendment 95

Moved by ***The Duke of Wellington***

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

The Duke of Wellington (Con): My Lords, this amendment, which I have proposed with the noble Lord, Lord Hannay, the noble Baroness, Lady Hayter, and the noble Lord, Lord Newby, is not the most significant of the various cross-party amendments which this House has passed in recent weeks, but it is nevertheless important. We propose that the wording of the Bill simply reverts to the original drafting. During the debate in Committee on this point, there was near unanimity that the date should be taken out of the Bill.

We have so often been told by Ministers in this House that a certain amendment was unnecessary. Well, it was certainly unnecessary for the Government to amend their Bill during its passage in the other place to fix the date. Article 50 clearly states:

"The Treaties shall cease to apply … two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period".

So we know beyond any doubt that for the purposes of this Bill, we leave the EU on 29 March 2019, but this date should not be defined and specified in the Bill, in case it becomes necessary and in the national interest to agree an extension, as provided in Article 50. Any extension sought by the Government could be limited to only a few weeks, as the European Parliament elections are now fixed for 23 May 2019 and the Parliament will be dissolved towards the end of April 2019.

I have reread the speech given in Committee by the noble Baroness, Lady Goldie. She said that the original drafting of the Bill, which did not include the date, was unacceptable to the House of Commons but, as I am sure she is aware, Members on both sides of the House of Commons were highly critical of the Government's amendment to write the date into the Bill. Indeed, the Committee for Exiting the European Union in the other place stated that the government amendments will remove flexibility and create significant difficulties if, as the Secretary of State suggested in evidence, the negotiations,

"went down to the 59th minute of the 11th hour".

Catherine Barnard, professor of European Union law at Cambridge, described the amendments as creating "an artificial straitjacket". She said:

"In other words … it creates a rod for the UK negotiators' backs, weakens any UK negotiating position and adds unnecessary pressure to those in the executive trying to deliver Brexit in a coherent, measured fashion".

In the face of this strong opposition to the government amendment, in the end a compromise was proposed in the other place by Sir Oliver Letwin to give Ministers the power to change the date. This was passed in a whipped vote.

The purpose of this amendment is simply to give another opportunity to the other place to think about whether including the date is really expedient. What is

the point of putting the date in the Bill when it may have to be changed in circumstances which we cannot foresee? If there is a case for putting the date in primary legislation—which I do not accept—it might be more appropriate to put it in the withdrawal agreement and implementation Bill, which will come to Parliament later in the year.

As I said on Second Reading, this Bill is absolutely necessary for the good government of the country. Although Ministers have said that they have no intention of seeking an extension to the two-year period, nevertheless, in legislating the process of withdrawal, we should give them a bit more flexibility to secure and obtain ratification of the best possible deal which will do the least damage to the economy and to the national interest. Ministers should recognise that, from all sides of this House, we are trying to help the Government in their negotiations and in no way to thwart the process. I beg to move.

4.30 pm

Lord Hannay of Chiswick: My Lords, I rise to support Amendment 95 and also Amendment 99, both of which stand in my name as well as those of other noble Lords. The case for these amendments has been stated clearly and cogently by the noble Duke who has spoken before me, and I shall put it quite succinctly.

First, as the noble Duke said, there was no reference to the date of our exit from the EU in the Bill as it was originally drafted and tabled by the Government about a year ago. It is a fair assumption therefore that, in the Government's view at that time, putting the date in this Bill was neither necessary nor desirable. If it had been either of those things, it would have been in the original Bill. Its inclusion at a later date was a purely political decision—alas, another of those sops to one of the all-too-frequent outbursts from the Government's Brexit-at-any cost supporters.

Secondly, the date seeks to pre-empt, or at least to make far more difficult, the use of one of the key provisions of Article 50—that which enables a two-year cut-off date to be extended by common accord of the 27 and the exiting state, the United Kingdom. Today is not the moment to discuss the eventuality under which that provision for an extension might arise, but it is surely premature today to seek to rule out at this stage that possibility, particularly since the post-negotiation withdrawal and implementation Bill, to which the noble Duke referred, could provide an opportunity to do that if by that stage it was clear beyond peradventure that the provision of an Article 50 extension was not going to be required or needed.

Lord Butler of Brockwell (CB): Can my noble friend clarify one point? I think the noble Duke said that such an extension could be for only a few weeks because it could not extend beyond the date of the European elections. Is that correct?

Lord Hannay of Chiswick: That is a political judgment about the views of the 27. It is not a political judgment on the views of the British Government, who have always said that they would never under any circumstances propose such an extension—one of those statements which I fear they may have to eat cold at some stage. The answer to my noble friend's question is that it is a political judgment about the attitude of the 27. I do not think that today we can rule it in or rule it out, and I do not think we should.

Thirdly, we have heard from the Government Benches on a lot of occasions during the passage of this Bill that this is a purely technical Bill; I think the most recent occasion was earlier this afternoon. It is a technical Bill designed simply to prepare our statute book for exit day and that it is not a proper vehicle for policy formulations, in which case, and on that analysis, I suppose the Minister will shortly rise to his feet and accept the amendment, which I would certainly encourage him to do.

Lord Newby (LD): My Lords, I have nothing of substance to add to the speeches by the noble Duke, the Duke of Wellington, and the noble Lord, Lord Hannay, who have made a compelling argument to delete the date from the Bill. Having the date in the Bill was really a very silly move by the Government. It was not in the Bill to start with for very good reasons. It gave flexibility to Ministers to determine what it should be. They put it in only under pressure from part of the Tory party; they only then amended it and made it more complicated under pressure from other bits of the Tory party. The original position of having flexibility in the Bill made eminent sense, was preferable to what we have now, and we should revert to the original position.

Lord Wigley (PC): My Lords, I wish to speak to my Amendment 96, which is associated with this debate, but also to speak to Amendment 95, moved by the noble Duke, the Duke of Wellington. The comments that have been made across the House add up to a sentiment, shared by the overwhelming majority, that it is singularly inappropriate to define 29 March at a certain time as the point of exit.

My amendment suggests that, after the word "means", we insert:

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

I am proposing that because the meaning of "exit" should surely be at the end of the implementation that leads to exit; otherwise, there is a contradiction in what we are putting into law. If the feeling in the House is to pass Amendment 95, I should be very content.

Lord Grocott (Lab): My Lords, I have to acknowledge that this is not an amendment that thrills me, not least because it seems to me to offend one of the great principles of social and economic thought, enunciated in a wondrous book, of which this year is the 60th anniversary—namely, *Parkinson's Law or the Pursuit of Progress*. Noble Lords who are old enough to remember it will know that that law as enunciated was that work expands to fill the time available. I have no doubt, as far as negotiations in relation to the EU are concerned, that, whenever the end date was pronounced to be appropriate, there would be no difficulty in filling the time available, and everything that has happened so far confirms me in that impression.

[Lord Grocott]

The other related observation about human behaviour, which sadly has governed a lot of my life—I am not proud of it—but seems to be almost an abiding characteristic of the European Union is that you never do today what you can put off till tomorrow. I think that we have seen enough of negotiations EU-style, with late-night ministerial meetings and early-morning press conferences, to know that lastminute.com is one of the abiding principles by which the European Union reaches its decisions.

What troubles me about the amendment—although I shall lose no sleep about what happens to it—is that, whatever the mover's intentions, the undoubted interpretation from the world outside will be that this amendment is designed to put further down the track the date on which we shall leave the European Union. That is an observation that I hear time and again in talking to people. After all, in March next year it will be almost three years since the British people made that historic and momentous decision.

I cannot help being vain enough to mention just two points that I made at Second Reading about this House and its treatment of this Bill. I simply said that, in all our discussions, there will be an elephant in the room—the chasm between the spread of opinion on Brexit in this House and the spread of opinion in the country at large. I think that I can be allowed to make special reference to my own region of the West Midlands, which was the strongest voting region in favour of leaving the European Union. Coincidentally, the House's own research tells us that one of the least represented regions in the United Kingdom in this House is the West Midlands. The other two, by the way, are the north-east and east Midlands. Those three regions amount to the three most strongly Brexit parts of the country. It would be nice to have a lot more people here from the West Midlands—and, should the Government want any advice on people whom they might think of putting in the House in order to address that regional imbalance, I would certainly give it to them. But this mismatch is the elephant in the room.

I repeat what I said then: for all that we may try and decipher the motives of people who voted leave, the most generally accepted one is that people felt there was a chasm. So many people in this country sensed that Westminster, and Members in both Houses, were not listening to what they were saying. At the start of the Bill, I was fearful that this House would make that anxiety even more justified, and I have neither seen nor heard anything at Second Reading, in Committee or on Report that has given me any reason whatever to doubt that judgment. We have passed 11 substantial amendments already. There is no doubt that they were all well presented and for good, rational reasons, although I did not agree with them all. However, they have the compound effect of it appearing to be the case that this House is trying to delay, to block or, in the case of my noble friend Lord Adonis, who has been honest enough to say so throughout, to reverse the decision which the people made two and a half years ago. That has undoubtedly been the impression that we have been presenting.

Of course, people say that that is our duty; it is what the House of Lords is for. I agree that it is a perfectly legitimate objective for this House to make the House of Commons think again on any Bill. However, this is not any old Bill. This Bill has the authority of a referendum, with an unprecedented vote, to back and sustain its objectives. It has been moved inexorably on its way by the votes in both Houses to implement Article 50. This House did it; so did the House of Commons. The Bill is an inevitable and necessary consequence of the referendum and of the votes in these two Houses.

Lord Cormack: It is also a Bill which is capable of improvement, as is proved by the fact that the Government have put down many amendments themselves.

Lord Grocott: I agree that that is our job. The Government, and the House of Commons, can be asked to think again. However, I hope that the noble Lord, Lord Cormack, and other noble Lords who have made this point on a number of occasions, will agree with the proposition I am about to make. If the Commons does think again on some of these amendments, and sends them back here, our job is then completed. I think that is the consequence of the point made by the noble Lord, Lord Cormack, and is, surely, the way we should proceed.

Lord Bilimoria (CB): At heart, the noble Lord seems to be saying that it is our duty to implement, regardless, the will of the people nearly two years ago. Does he forget that the Government tried to bypass Parliament and implement Article 50, the date of which we are discussing now? They wanted to do it without consulting Parliament, bypassing it and the people. I do not call that democracy or respect for Parliament at all.

Lord Grocott: We have had this argument on many occasions. Parliament can do what it wants to do. I repeat that to the noble Lord, but I am sure he understands it. If Parliament thinks that the proposal which is coming before it is so obnoxious, it can throw it out—it can throw the Government out. It has done that during my parliamentary career and that of many other noble Lords. The idea that Parliament is a pathetic institution that needs protecting from the Government of the day is a fundamental misunderstanding of what is meant by parliamentary democracy.

The House can, of course, pass this amendment if that is the wish of the majority, which I suspect it will be. That will make 12 things for the House of Commons to think again about. However, we have to remember that the Bill has to get on the statute book, and in good time. I do not think there is a lawyer here who denies that for a moment. We keep hearing about cliff edges, so far as the economy is concerned. I do not agree with that, but the words "cliff edge" have gained currency. There is no doubt whatever that, if this Bill does not hit the statute book in good time, there will be an undoubted cliff edge for the legal structure and operation of this country, for the meaning of legislation and where European legislation fits into it.

I therefore hope that we will acknowledge that we have certainly done our duty of making the Commons think again—I ask your Lordships not to represent me

as saying that we must not make amendments to the Bill; at no stage have I said that and of course I have not, as I have been here for far too long to make that kind of suggestion. However, this is an important Bill which needs to be passed—

4.45 pm

Lord Judd (Lab): My Lords, I have listened to my noble friend with the respect with which I always listen to him. Would he not agree that on the day of the referendum a substantial proportion of the British population was unconvinced? If we are to make a success of change in the constitution, consensus and maximum good will are essential. That is why it is so important for the House of Lords to take as long as necessary to make sure that the anxieties of the large section of the population that did not go along with this decision is reassured.

Lord Grocott: As far as that is possible; the choice was and is still a binary one. I do not think that there can be a compromise between my noble friend Lord Adonis's position and mine, because he wants to remain in the European Union and I want to leave it. There may be a halfway position there, but I have not quite discerned it yet. Larger brains than mine need to find a consensus on that, if there is one. However, I am utterly clear that once this House of Lords, as well as the House of Commons, has said to the British people, "We want you to make a decision. We'll tell you what the wording on the referendum ballot paper will be. We've decided that, we will decide the date, and we will abide by that decision", those statements are unchallengeable. It is our duty to deal with the legislation which is the inevitable consequence of that decision, of which the Bill is one part.

Baroness Hayter of Kentish Town: My Lords, I will restrain myself from entering into a longer debate on this issue. I agree with my noble friend Lord Grocott that this is an important Bill, but it will also affect the negotiations, and part of that will be affected by the timetable.

It is interesting that at various times when we have discussed the promised vote on the final deal—it is not just a matter of leaving but of our future relationship with the EU after we have left—the Minister has said that he hoped that the vote, in both Houses, would take place before the European Parliament has had its say, but that he could not definitely promise that it would, because our parliamentary timetable might not be flexible enough to fit in with that of the European Parliament. I cannot say that I accept that argument, because after all, we control our business and when we have votes—not necessarily how late at night they happen, but effectively we control our timetable. However, if the Minister was correct in the assumption that the European Parliament's vote might not be at a predictable time—it may be delayed because talks are still going on—it may suddenly be brought forward.

Here, I will answer the point raised by the noble Lord, Lord Butler. It seems essential that the deal has to be agreed before April, when the European Parliament will go into recess, because under Article 50 the deal has to be agreed and have the consent of the European Parliament. If the European Parliament is to recess, adjourn or prorogue before its elections, the deal has to get consent before then. Therefore, there is a timetable, and it has to go before the European Parliament. I have had various legal advice about what happens if the European Parliament does not give its consent—it seems quite complicated—but certainly Article 50 says that it has to give consent. Therefore, the negotiations could go on a bit later than everyone wants, and the European Parliament will have to prorogue for its own elections and will have no authority thereafter. The date on which we leave could be fixed by the words in an Act of Parliament which will be passed in August or whenever, some months after those events, and that seems a very unhelpful position for our negotiators to be in.

I am sure that there will be late-night sessions and lots of consultations, with people ringing back for instructions as the negotiations go on—there are people who have been through all this. I hope that we have trained the Minister well in coping with late nights here, because he may well have more of those, but there could be very long nights as the negotiations go on. If one side—our negotiators—were curtailed by a strict date in the Act, that would put us at a disadvantage. The other side is not so constrained. The European Parliament can meet at very short notice when a decision has been taken.

However, I interpret Article 50 slightly differently. It says:

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

So, without having to go to the Council for a unanimous decision, the withdrawal agreement could contain a leaving date of a week or two weeks after the two-year period, which would allow the last-minute arrangements to be made. If that is what the withdrawal agreement specifies, if that suits all the parties and if our Government would like to sign up to it, it would seem silly not to be able to do that.

It is important that we enable the negotiators to get the best possible deal, setting out exactly how we leave and exactly what our future terms of trade will be. If the amendment is passed, it will remove the straitjacket that the Government inserted at the behest not of the negotiators but of certain ardent Brexiteers. Let us remove that straitjacket, make the task easier for the negotiators and reflect what our own EU Committee said:

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

I am sure that the Government want to put the national interest first and I certainly believe that this House will want to do so. Therefore, we strongly support the amendment moved by the noble Duke, the Duke of Wellington, and we urge everyone to go into the Lobby behind him.

Lord Callanan: My Lords, I thank all noble Lords for their contributions to this debate. Exit day has been discussed at length throughout the passage of

[LORD CALLANAN]
this Bill. Set dates such as this are often crucial to the functioning of any legislation, but I would like to take this opportunity to remind noble Lords of the particular importance of exit day in this Bill.

Exit day is the moment in time when the European Communities Act is repealed. It is the point at which EU laws are converted into UK law, when the deficiencies in retained EU law emerge and when a range of other effects are triggered under the Bill. However, I reiterate that exit day within the Bill does not affect our departure from the EU, which is a matter of international law under the Article 50 process, as my noble friend the Duke of Wellington and the noble Baroness, Lady Hayter, made clear. What it does affect, however, is whether we leave the EU in a smooth and orderly fashion.

The definition of exit day, and how it is to be set out, has been amended significantly since the Bill was introduced to the other place by my right honourable friend the Secretary of State for Exiting the European Union on 13 July last year. My noble friend Lady Goldie has previously described the sequence of events which led us to the current drafting and I will not test the patience of your Lordships by repeating the arguments she made in Committee. What I will say, however, is that, crucially, the Bill left the other place reflecting the reality of international law under the Treaty on European Union. I see no reason, therefore, to change the Bill any further. The final drafting also reflected the concerns of Members of the other place who had been on both sides of the referendum campaign. That fact sits at the core of my opposition to Amendments 74, 95 and 99 in the name of the noble Duke, the Duke of Wellington.

As has been stated on many occasions during Report, this House reviews the legislation sent to it by the other place and highlights—often very well—areas where it does not think due consideration has been given. This point was well made by the noble Lord, Lord Grocott, as a leaver from the West Midlands. As a leaver from the north-east, also an area underrepresented in this House, I have considerable sympathy with his arguments. I therefore cannot why these amendments are seeking to restore something like the original drafting of the Bill when that drafting was considered at great length, on many occasions, and was rejected by the other place.

I also do not agree with Amendment 96 in the name of the noble Lord, Lord Wigley. The Bill is designed to provide continuity and certainty in domestic law as we leave the EU. This must be true in a scenario where we have a deal with the EU, but it must also be true in the unlikely event that there is no agreement between the EU and ourselves. While this is not what anybody on either side is hoping for, it would be irresponsible and out of keeping with the remainder of the Bill not to prepare for that unlikely event. In that circumstance, it would be vital that the Bill did not make reference to concepts which are contingent upon a successful negotiated outcome, such as an implementation period. That would prevent the Bill achieving its objective as agreed at Second Reading, because in that scenario further primary legislation would be required to alter exit day and provide for an operable statute book. Even in the Government's preferred scenario of a successfully negotiated withdrawal agreement, including of course an implementation period, the noble Lord's amendment presumes that no substantive provisions of this Bill will be required until the end of that implementation period.

While I do not want to be drawn into a discussion about the legal construction of the implementation period, which will be a matter for the withdrawal agreement and implementation Bill—I have no doubt we will have great fun in our opportunity to consider that—I do not think that the noble Lord can be certain in his assumption. This is the real issue with the noble Lord's amendment: it attempts to use this Bill to legislate for the implementation period. But the Government have been quite clear that the implementation period will be a matter for the withdrawal agreement and implementation Bill once we have agreement. This Bill is deliberately and carefully agnostic about whatever deal we strike with the EU, prejudging neither success nor failure in negotiations.

Of course, we hope and expect to be successful in these negotiations, and our continuing progress demonstrates good movement towards that goal. I hope that noble Lords will reflect the compromise reached by the elected House, and therefore I respectfully ask the noble Duke to withdraw his amendment.

The Duke of Wellington: My Lords, I will respond first to the pertinent question from the noble Lord, Lord Butler. I did not mean to imply that, under the Article 50 process, there could not be a longer extension. I just feel that, as a practical matter, it is unlikely to be practical to extend for more than a few weeks, because the European Parliament will indeed be dissolved in late April prior to the European elections in May 2019.

Lord Butler of Brockwell: Are we not talking about two types of extension? As the noble Baroness, Lady Hayter, said, the European Parliament will have to approve or disapprove the agreement before it adjourns. But it could agree a deferment of the date on which the UK leaves the EU by a much longer period, could it not? It would be within its power to do that.

The Duke of Wellington: With the unanimous agreement of all members of the European Council a delay can be agreed without a term. That is unlikely. I referred to the European Parliament elections because that is a practical deadline in this process. That is the point there.

I agree strongly with the point made by the noble Lord, Lord Grocott, that this Bill must be passed. There is no doubt that we need this Bill for the good governance of the country, as I said earlier and at Second Reading. However, I do not agree that this should be construed as a device to delay Brexit by more than a short period for technical reasons.

I agree with the noble Lord, Lord Cormack. He said that we have a duty to improve this Bill and we have done so in many ways in the 10 or 11 amendments that we have so far passed.

This amendment and the related amendments give the other place an opportunity to think again about the expediency of including a date in this Bill, and it is right that we should test the opinion of the House.

5.01 pm

Division on Amendment 95

Contents 311; Not-Contents 233.

Amendment 95 agreed.

Division No. 2

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5.20 pm

Amendments 96 and 97 not moved.

Amendment 98

Moved by ***Lord Callanan***

98: Clause 14, page 11, line 26, after "in" insert "section (*Status of retained EU law*) or"

Amendment 98 agreed.

Amendment 99

Moved by ***The Duke of Wellington***

99: Clause 14, page 11, line 38, leave out subsections (2) to (5) and insert—

"(2) In this Act—

(a) where a Minister of the Crown appoints a time as well as a day as exit day (see paragraph 19 of Schedule 7), references to before, after or on that day, or to beginning with that day, are to be read as references to before, after or at that time on that day or (as the case may be) to beginning with that time on that day, and

(b) where a Minister of the Crown does not appoint a time as well as a day as exit day, the reference to exit day in section 1 is to be read as a reference to the beginning of that day."

Amendment 99 agreed.

Amendment 100

Moved by ***Lord Callanan***

100: Clause 14, page 12, line 6, at end insert—

"(6A) In this Act references to anything which is retained EU law by virtue of section 4 include references to any modifications, made by or under this Act or by other domestic law from time to time, of the rights, powers, liabilities, obligations, restrictions, remedies or procedures concerned."

Amendment 100 agreed.

Clause 15: Index of defined expressions

Amendments 101 and 102

Moved by ***Lord Callanan***

101: Clause 15, page 12, line 25, at end insert—

"Anything which is retained EU law by virtue of section 4	Section 14(6A)"

102: Clause 15, page 13, line 33, at end insert—

"Retained direct minor EU legislation	Section (Status of retained EU law)(6)
Retained direct principal EU legislation	Section (Status of retained EU law)(6)"

Amendments 101 and 102 agreed.

Clause 12: Financial provision

Amendment 102ZA not moved.

Schedule 4: Powers in connection with fees and charges

Amendment 102A

Moved by ***Lord Callanan***

102A: Schedule 4, page 35, line 14, leave out from beginning to "or" in line 15

Amendment 102A agreed.

Amendments 103 and 104 not moved.

Amendments 104A to 104C

Moved by ***Lord Callanan***

104A: Schedule 4, page 37, line 12, at end insert—

"Time limit for making certain provision

4A(1) Subject to sub-paragraph (2), no regulations may be made under paragraph 1 after the end of the period of two years beginning with exit day.

(2) After the end of that period, regulations may be made under paragraph 1 for the purposes of—

(a) revoking any provision made under that paragraph,

(b) altering the amount of any of the fees or charges that are to be charged under any provision made under that paragraph,

(c) altering how any of the fees or charges that are to be charged under any provision made under that paragraph are to be determined, or

(d) otherwise altering the fees or charges that may be charged in relation to anything in respect of which fees or charges may be charged under any provision made under that paragraph.

(3) This paragraph does not affect the continuation in force of any regulations made at or before the end of the period mentioned in sub- paragraph (1) (including the exercise after the end of that period of any power conferred by regulations made under that paragraph at or before the end of that period)."

104B: Schedule 4, page 37, line 14, leave out ", 8"

104C: Schedule 4, page 38, line 19, leave out ", 8"

Amendments 104A to 104C agreed.

Amendment 105 not moved.

Clause 19: Commencement and short title

Amendment 105A

Moved by ***Lord Callanan***

105A: Clause 19, page 15, line 12, at end insert—

"( ) paragraphs 3A, 3B, 19(2)(b), 40(b), 43(2)(c) and (d) and (4) of Schedule 3 (and section 11 (4A) and (5) so far as relating to those paragraphs),"

Amendment 105A agreed.

Amendment 106 not moved.

Amendments 106ZA to 106B

Moved by ***Lord Callanan***

106ZA: Clause 19, page 15, line 15, leave out "(3)" and insert "(3A)"

106A: Clause 19, page 15, line 15, at end insert—

"( ) paragraph 29(9), 30A and 31 of Schedule 8 (and section 17 (6) so far as relating to those paragraphs),"

106B: Clause 19, page 15, line 18, at end insert—

"(1A) In section 11 —

(a) subsection (2) comes into force on the day on which this Act is passed for the purposes of making regulations under section 30A of the Scotland Act 1998,

(b) subsection (3A) comes into force on that day for the purposes of making regulations under section 109A of the Government of Wales Act 2006, and

(c) subsection (3C) comes into force on that day for the purposes of making regulations under section 6A of the Northern Ireland Act 1998.

(1B) In Schedule 3 —

(a) paragraph 1(b) comes into force on the day on which this Act is passed for the purposes of making regulations under section 57(4) of the Scotland Act 1998,

(b) paragraph 2 comes into force on that day for the purposes of making regulations under section 80(8) of the Government of Wales Act 2006,

(c) paragraph 3(b) comes into force on that day for the purposes of making regulations under section 24(3) of the Northern Ireland Act 1998,

(d) paragraph 21(2) comes into force on that day for the purposes of making regulations under section 30A of the Scotland Act 1998,

(e) paragraph 21(3) comes into force on that day for the purposes of making regulations under section 57(4) of the Scotland Act 1998,

(f) paragraph 21A comes into force on that day for the purposes of making regulations under section 30A or 57(4) of the Scotland Act 1998,

(g) paragraph 36A comes into force on that day for the purposes of making regulations under section 80(8) or 109A of the Government of Wales Act 2006, and

(h) paragraphs 48A and 48B come into force on that day for the purposes of making regulations under section 6A or 24(3) of the Northern Ireland Act 1998;

and section 11(4) and (5), so far as relating to each of those paragraphs, comes into force on that day for the purposes of making the regulations mentioned above in relation to that paragraph."

Amendments 106ZA to 106B agreed.

Amendments 107 and 108 not moved.

Amendment 108A

Moved by ***Lord Callanan***

108A: Clause 19, page 15, line 19, leave out "The remaining provisions of this Act" and insert "The provisions of this Act, so far as they are not brought into force by subsections (1) to (1B),"

Amendment 108A agreed.

Amendment 109

Moved by ***Lord Goldsmith***

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

"( ) A Minister of the Crown may not appoint a day on which section 6 is to come in force unless this day follows the expiration of transitional arrangements agreed between the United Kingdom and the European Union."

Lord Goldsmith: My Lords, this amendment deals with a point that we raised and discussed in Committee. It may be that this group will not take too long, although that will depend upon what the Minister has to say. The important point about this is that the Bill as drafted would mean that at the moment Royal Assent was given, certain things would happen, including that the jurisdiction of the CJEU would come to an end. We raised the point that, given that it appeared likely that during an implementation period the Court of Justice of the European Union would continue, by agreement, to have certain jurisdiction, it would be important not to see the CJEU's jurisdiction fall off a cliff edge, as it were. It may be that the noble and learned Lord the Minister will be able to reassure us that they will deal with this so as to ensure that if the CJEU continues to have jurisdiction in certain circumstances—which, as I say, I believe is a likely outcome of the continuation of the discussions—the Bill will not have taken away the ability to do that.

Amendment 109 would not allow Clause 6—which, among other things, brings the CJEU's jurisdiction to an end—to come into effect until,

"the expiration of transitional arrangements agreed between the United Kingdom and the European Union".

The amendment focuses on transitional arrangements that are in fact agreed, not hypothetical arrangements. It would achieve no mischief because transitional arrangements would in fact be agreed and we would be saying simply that the jurisdiction of the CJEU should not come to an end until the end of that period.

The Minister may put forward some alternative way of achieving the same effect. I will listen very carefully, as will other noble Lords, to what he has to say about that. For the time being, I beg to move.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, in light of the observations made by the noble and learned Lord in moving this amendment, I will make one observation at this stage in response to his invitation to me.

Part Four of the withdrawal agreement so far agreed between the United Kingdom and the EU sets out:

"During the transition period, the Union law applicable pursuant to paragraph 1 shall produce in respect of and in the United Kingdom the same legal effects as those which it produces within the Union and its Member States and shall be interpreted and applied in accordance with the same methods and general principles as those applicable within the Union".

That would mean that during the implementation period—assuming that that is actually agreed—the CJEU will continue to fulfil the role it currently does with regard to the UK's legal structure. This effect will be provided for under the withdrawal agreement and implementation Bill. I do not know whether that assists the noble and learned Lord but that is the position as set out.

I add only that given the terms of the noble and learned Lord's amendment—and I appreciate that it has been deliberately framed in this way:

"A Minister of the Crown may not appoint a day on which section 6 is to come in force unless this day follows the expiration of transitional arrangements agreed between the United Kingdom and the European Union",

if that amendment was passed, it would throw into doubt what would happen if there were no transitional arrangements. That is not an outcome that we seek but

it is a distinct possibility and would mean either that Section 6 did not come into force at all or that potentially we would be thrown back into the billowing mists of uncertain inference. So I have that objection but I thought it might assist noble Lords if I made clear our position with regard to the implementation period. I hope that that responds to the noble and learned Lord's observation.

Lord Goldsmith: My Lords, I cannot agree with the point raised by the Minister about the wording of the amendment. The amendment says that a day may not be appointed,

"unless this day follows the expiration of transitional arrangements agreed between the United Kingdom and the European Union".

If in fact no arrangements have been agreed between the United Kingdom and the European Union, it would seem that effect could be given to the amendment.

Be that as it may, the important point is that, as I understand it, the Minister has said two things. He has said, first, that if an implementation agreement is agreed, it will include continuing jurisdiction of some sort for the Court of Justice of the European Union and, secondly, that the Government will make sure that that jurisdiction is provided under the terms of legislation to be brought forward; I think the implementation Bill is what the Minister has in mind. If that is right and the Government are telling us that they intend that legislation will incorporate a continuing jurisdiction if that is agreed, that would deal with the mischief that this amendment was designed to deal with.

If that is the position—it would be very helpful if the noble and learned Lord could confirm whether it is—I would then be able to beg leave to withdraw the amendment. I am watching his body language but I have been fooled by that before, so I would be grateful if he clarified whether what I have said is right.

5.30 pm

Lord Keen of Elie: It is of course the position that there is no certainty that there will be an implementation agreement. In that event, I would seek to differ with the noble and learned Lord about the interpretation of his amendment but that is a matter of little moment, I agree. However, in the event of there being an implementation agreement that follows the terms of the withdrawal agreement in outline, which noble Lords have seen, then during the transition period the Union law applicable pursuant to paragraph 1 will produce the same effect in the United Kingdom as in the remainder of the EU. That would extend to the jurisdiction of the CJEU in respect of the matter of the interpretation and effect of such law. The noble and learned Lord is quite right that it would be the intention of Her Majesty's Government, in those circumstances, to ensure that such a provision was expressed in the withdrawal agreement Bill.

Lord Goldsmith: My Lords, in those circumstances I beg leave to withdraw the amendment.

Amendment 109 withdrawn.

Amendment 110

Moved by ***Lord Wigley***

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

"(2A) None of the sections of this Act to be commenced under subsection (2) may come into force unless it is an objective of Her Majesty's Government, in negotiating a withdrawal agreement, to secure continued EU citizenship for UK citizens."

Lord Wigley: My Lords, Amendment 110 stands in my name and that of the noble Lord, Lord Teverson. It would quite simply prevent any sections of the Bill, when it becomes an Act, from commencing until the UK Government have adopted the negotiating objective of securing continued EU citizenship for UK citizens. I do not wish to rerun the arguments for continued EU citizenship which I presented during Committee. I would, however, point out that there was a massive response on the electronic media to that debate, overwhelmingly favourable to the viewpoint which I presented. This told me that the subject is very close to the hearts of thousands of people in these islands and is one which the Government should ignore at their peril.

Since Committee, the Minister has kindly allowed me to meet him to discuss these and associated matters. I was grateful to him for that and I better understand from where he comes on the issue. I hope that he likewise understands from where I come, even if he does not agree with my viewpoint. Of course, some of the legal challenges are still being pursued and we await their outcome. I would, however, like to respond to two concerns raised during Committee.

The first is the issue of reciprocity and whether EU nationals should be offered British citizenship. Regardless of my personal opinion, this is not what is proposed in this amendment. My argument is that it would be illegal under international law and European law for the UK or the EU to take away our European citizenship from those of us who already hold it. For those who are not currently European citizens—for example, those who will not be born until after Brexit—I believe that we will need to negotiate a form of associate European citizenship. This is, in fact, what I understand the negotiator on behalf of the European Parliament, Mr Guy Verhofstadt, has been calling for. That would require a provision to be negotiated into the withdrawal agreement. Whether or not we offer some form of associated British citizenship to EU nationals would therefore be a matter of negotiation at that time. I very much hope that the Minister can assure the House that such an option has not been explicitly ruled out.

Secondly, may I address the issue of whether there is a solid precedent? I want to reiterate the Irish example, which I explored informally with the Minister earlier but which is still material. Following the creation of the Irish Free State—now the Republic of Ireland—and Northern Ireland, a comparable situation occurred. Irish citizens who reside in the UK, while remaining Irish citizens, are permitted to enjoy all the benefits of UK citizenship, including freedom to take up residence and employment in the UK, and to play a full part in political life, including voting in parliamentary elections and seeking membership of the national legislature—that is, becoming a Member of Parliament. Am I not

[Lord Wigley]
right in asserting that this state of affairs will not be affected by the UK leaving the EU? Can the Minister confirm whether this is a correct interpretation?

The Irish state also offers citizenship to all residents on the island of Ireland; people resident in Northern Ireland can therefore choose British, Irish or dual citizenship. This is an example of citizenship being on offer to those residing outside the granting authority's jurisdiction and, I suggest, is therefore pertinent to the case I am making.

When Plaid Cymru sent a letter to the Prime Minister setting out its position on this matter, it was supported by the leaders of other parties including the SNP, the Liberal Democrats and the Greens, by a range of legal experts and by a host of organisations which are concerned about this matter. My party secured an Opposition day debate on this issue in the House of Commons, which passed without division a Motion on this matter—in fact, the first Motion that Plaid Cymru has ever succeeded in getting the House of Commons to pass in that way. The debate was well attended and support came from the Labour and Conservative Benches and from SNP, Liberal Democrat and DUP MPs. In other words, there was a broad consensus in favour of the objectives being discussed, which are crystallised in this amendment.

The Minister may not be in a position to accept this amendment, as no doubt he will shortly tell us. But if he takes such a line I hope that he will also take the opportunity to assure UK citizens that in the negotiating process, the Government will seek to achieve the fullest possible agreement on a wide range of citizen-related issues and that this worry, felt by so many, should be overcome if a successful negotiation does transpire, leading to an agreement. I beg to move.

Viscount Hailsham: My Lords, I have often been in agreement with the noble Lord, Lord Wigley, in the course of these debates but I hope that he will forgive me on this occasion if I do not go with him. I wholly agree with the underlying sentiments that he has expressed; my concern is with the word "objective" because it is very difficult to define at any one time what an objective truly is. Some are stated and some are unstated—and even if stated, they may not represent the true state of mind of the person making the statement. The problem with an amendment of this kind is that it is capable of giving rise to litigation. I just do not see how a court could ever seriously determine whether the objective of a Government at any one time was sufficiently truly stated to give rise to the remedy which I know will be sought by the litigants. With the greatest respect to the noble Lord, although I agree strongly with his underlying sentiments, I do not think this is the way to achieve that objective.

Lord Dykes: My Lords, notwithstanding the very reasonable sentiments just expressed by the noble Viscount, Lord Hailsham, I think that I would be among others in paying tribute to the noble Lord, Lord Wigley, for the way in which he has taken the initiative on this subject. It is becoming increasingly complicated with the approach of the so-called exit day—whatever date that may be in legislation and so on—and, therefore, we need to think very carefully about this. Although this was a long time ago, I recall that the Maastricht treaty bestowed on citizens of each member state individual citizenship as EU citizens, too. It was a solemn and profound moment when that was announced many years ago in 1992, and it was made much of, mostly in the other member states but also in Britain as well. A lot of British citizens who were working abroad were delighted at the idea of being citizens of the European Union as well, which added to their obvious practical freedom of movement, although that was not essential to it.

We have now got to be very careful to make sure that the Government respond to the civilised and reasonable request for them to expand their minds a little bit into thinking about this matter, because it will be quite complicated. There is the question of the Irish Republic's offer, which has already been mentioned by the noble Lord, Lord Wigley, and the special status that may emerge in Northern Ireland, not deliberately, according to the DUP, but accidentally. It is not much to their liking that a special status would be accorded to people there and they would remain individuals citizens of the EU. Is this a matter of collective bestowal of citizenship because of the Maastricht treaty in 1992, or is it now a matter of it being an individual proclivity if the right was there, given that there are exceptions to the idea that you have to be within only one member state to be a citizen and you can apply for citizenship from outside? It therefore may be that the very act of applying for citizenship and continuing to have the protection of the ECJ as individuals because of the bestowal of European citizenship would need to be included in this wide examination. It is a very complicated matter and should not be excluded from people's mind and, mostly, the Government's mind. They may be very unwilling to consider these matters, but they need to do so and we are grateful for this amendment and this debate.

Baroness Ludford: My Lords, I thank the noble Lord, Lord Wigley, for continuing to champion this important cause, which is dear to the hearts of these Benches. There are several invidious features of this matter. First, it creates a division among United Kingdom citizens. Not only do people in Northern Ireland have the right to acquire Irish citizenship and thus EU citizenship, but many other British citizens have the right to, or are already pursuing, dual citizenship in order to get the passport of another country. I believe that I have the right to an Irish passport because my mother and my grandmother were born in Dublin. That creates two sets of British citizens: those with the additional political expression and practical advantages of EU citizenship and those who are unable to continue to enjoy them.

Another feature of this matter is hypocrisy. Do the noble Lord, Lord Wigley, and the Minister agree that the following is deeply hypocritical of the leading voices in Legatum? It is reported that the co-founder, who is of New Zealand extraction, and the chief executive have managed to acquire Maltese passports. How they have done so, I have no idea. That will give them EU citizenship, including the right of free movement. As advocates of the hardest of hard Brexits, they have had the ear, we believe, of many leading members of

the Government. They have been pushing hard for Brexit so as to deprive the rest of us of EU citizenship, but they have made sure that they are feathering their own nest by obtaining citizenship of another EU member state and thus EU citizenship and free movement.

Lord Foulkes of Cumnock (Lab): Before the noble Baroness sits down, she is absolutely right, but is she aware that one of the DUP Peers who spoke at length in the debate last week has an Irish passport?

Baroness Ludford: I take the noble Lord's word for it. I have no reason to doubt that. I have a feeling that there may be many people in similar positions who are saying one thing and doing another. I find that pretty reprehensible.

We strongly advocate that all UK citizens should continue to have the opportunity of EU citizenship. Many of us feel particularly for young people. Those of us who are getting long in the tooth have for 45 years had the advantage of the freedom to move to and work in another EU country. It is extremely sad that the young people of this country are going to be deprived of that opportunity.

5.45 pm

Lord Kerr of Kinlochard (CB): My Lords, I agree with the noble Baroness, as I think it is extremely sad. I think the noble Lord, Lord Wigley, speaks for a huge proportion of the younger people of our country who resent seeing their rights as EU citizens, particularly the right of movement, being taken away from them.

My objection to the amendment moved by the noble Lord, Lord Wigley, is even more objective than the objection of the noble Viscount, Lord Hailsham. We are asking the Government to do something impossible. It is not possible to be a citizen of the European Union if you are not a citizen of a member state of the European Union. That is how citizenship is defined in the treaty. It is left entirely to member states to decide who their citizens are, but if you are a citizen of a member state, you are a citizen of the European Union. When—I hope if—the UK leaves the European Union, every British citizen ceases to be a citizen of the European Union, and there is nothing that we can do about it. Although my heart is with the noble Lord, Lord Wigley, my head says that this amendment does not make sense. The only way that the young people of this country can retain the rights they now enjoy as EU citizens is for us to decide not to leave the European Union.

The Earl of Clancarty (CB): Before the noble Lord sits down, this is being tested in the courts in Europe, so not everyone is of the opinion that you cannot have European citizenship. I believe that in June we will hear the result of the appeal by the Netherlands.

Baroness Butler-Sloss (CB): My Lords, I am the only member of my family unfortunately unable to get an Irish passport, and I very much resent it. I admire the noble Lord, Lord Wigley, for raising this issue, but I fear that my noble friend Lord Kerr has got it absolutely right. I wonder whether, when we have left, there will be any possibility of negotiating any sort of individual relationship for UK citizens with the European Union. That is my hope, but perhaps it is a faint hope. Much though I admire what the noble Lord, Lord Wigley, said, my noble friend Lord Kerr is absolutely right and there is no point in supporting this amendment.

Lord Green of Deddington (CB): My Lords, one aspect of this will be dealt with, or should have been dealt with, by looking at the immigration system we will have with Europe. We have made proposals for the free movement of young people, and we could have proposals for movement without visas and so on and so forth. Personally, I think the Government made a serious mistake in not setting this out and getting into a negotiation with the European Union that would tackle some of the aspects that have been raised.

Baroness Hayter of Kentish Town: My Lords, the House has heard the pleas of the heart if not of the head. I think I have said before that, although I was born in Germany, I sadly do not qualify for a German passport or else I would be doing the same as many others. So many people are doing it because they fear and regret losing their EU citizenship. As the noble Lord, Lord Kerr, quite rightly said, in the treaties EU citizenship is an add-on. Only people who are citizens of a member state have EU citizenship, with all the rights, protections and consular protections that brings. They have to be a citizen of a member state. Sadly, that change will come and we will not be EU citizens.

I would like to leave a thought with the Minister. We have not treated the whole of this aspect sufficiently seriously. We have not reached out to EU nationals living here and to people who are losing their rights as EU citizens. We have still not told EU citizens living here—unless I missed it—whether they will be able to continue to vote in our local government elections. We know they will not be allowed to vote in the European Parliament elections—that is fairly obvious—but there are other changes that the Government have been very lax and slow in spelling out.

The plea behind some of the feelings that we are having is to listen to the current EU citizens. If there is one plea that I would leave with our negotiators, it is that we need a withdrawal deal that puts citizens at its heart, not as an add-on, and that we should do everything that can be done to keep the links that we already have with agencies, education and so on. That would help to make a withdrawal deal that would enable British citizens, even if they will not have that lovely treasured purple passport, still feel as if they are continentals—full associates, if you like—with the rest of the EU.

Lord Keen of Elie: My Lords, this is of course an important issue that has already been covered in depth, both in this Chamber and in the other place. I welcome the opportunity to discuss it further with the noble Lord, Lord Wigley, when we exchange views on the interpretation of the Vienna Convention on the Interpretation of Treaties, particularly Article 70 thereof. I acknowledge fully his interest in this area, the depth with which he has examined it and the importance that he underlines with regard to this matter.

[Lord Keen of Elie]

Nevertheless the position remains, as summarised eloquently by the noble Lord, Lord Kerr of Kinlochard, that there is no provision in EU law for the concept of associate EU citizenship. It is clear that EU citizenship is tied to citizenship of a member state. The European Commission itself has referred to the additional rights and responsibilities attributed to the nationals of EU member states by virtue of EU citizenship, which they automatically attain under the provisions of the EU treaties. I emphasise the EU treaties because to take such a matter forward it would be necessary to contemplate the amendment of the EU treaties in a quite radical way, in order to attempt to confer on citizens of non-EU members the status of EU citizenship or something connected to it. However, we are willing to listen. Noble Lords may recollect that the European Parliament mentioned the idea of some associate citizenship; it has never elaborated upon that but if it wishes to, we are listening, and we would listen to that. I wish to make that clear.

The position of the Republic of Ireland emerges as the consequence of bilateral treaties that predate our entry into what was then the EEC and Ireland's entry into the same, and that is not directly affected by our exit from what is now the EU. My understanding is that those arrangements continue in force.

With regard to the wider issue raised by the noble Baroness, Lady Hayter—the matter of voting rights, for example—during the course of the earlier negotiations we attempted to negotiate with regard to the exchange of voting rights, but at that stage the Commission declined to do so. That is something that we would wish to carry forward but the Commission was not prepared to engage in that discussion at that stage of the negotiation. Again, we remain open on these matters.

The citizens' rights agreement reached in December, which is now set out in the draft withdrawal agreement, provides certainty for UK nationals in the EU regarding their rights following our exit. The agreement with the EU protects the rights of EU citizens and their family members living in the UK on exit day and indeed vice versa. To that extent, it will give citizens certainty about a wide range of rights including residence rights, healthcare rights and pension and other benefit rights. That will mean that UK nationals who are legally resident in the EU by the end of the implementation period will continue to benefit from most of the rights that stem from their EU citizenship today. As I say, associate EU citizenship does not make up part of the citizens' rights agreement, and indeed by attempting to make it a negotiating objective we would be setting ourselves what is, frankly, an impossible target. The consequence would be that, should the amendment pass and the Government fail to adopt such an impossible negotiating position, our entire post-exit statute book would be put at severe risk. There would appear to be no sensible point in attempting to do that.

I stress that with regard to this matter we are in listening mode. Reference was made to the suggestion of further litigation in this area. A case is going on in Holland at present. It was referred by the Dutch Government to the Amsterdam Court of Appeal, which has heard the appeal and is due to deliver its judgment later in June. We do not believe that is going to affect the matter at all but we await the judgment of that court. At present, though, we must proceed with the ultimate goal: to deal with Brexit in the easiest manner possible so far as citizenship is concerned.

Lord Adonis: My Lords, could the Minister tell us what the case at the Amsterdam Court of Appeal is?

Lord Keen of Elie: My Lords, it was an application about the rights of certain UK citizens resident in Holland having rights post Brexit in Holland. The objective of the case was clearly to secure a reference to the CJEU for the interpretation of certain treaty matters. When that proceeded, it is my understanding that the Dutch Government then intervened in the proceedings and they were the subject of a hearing before the Court of Appeal in Amsterdam. That matter is not yet advised, so that is where it stands. I am afraid I cannot give further details of the case but I understand that it was partly funded by lawyers in the UK. I hope that assists the noble Lord.

As I say, at present we, the EU and the Commission are quite clear on what the concept of EU citizenship means, that the source is the EU treaties, and that there is no provision at present for associate citizenship. If during the course of negotiation the Commission or other bodies in the EU come forward with such proposals, we will of course listen to them. At this stage, though, I invite the noble Lord to withdraw his amendment.

Lord Wigley: My Lords, I am grateful to everyone who has taken part in this debate: the noble Viscount, Lord Hailsham, the noble Lords, Lord Kerr of Kinlochard, Lord Dykes and Lord Green, the noble Baronesses, Lady Hayter and Lady Ludford, and the noble and learned Baroness, Lady Butler-Sloss. It has been a short but worthwhile debate. Some of those participating in it have seen weaknesses in the amendment, and I accept that there is room for criticism in that direction and that it is a challenge with regard to the status quo within which we are operating.

None the less, I feel that some benefit has come out of the debate, in that the Minister has indicated that the Government would be in listening mode, both in terms of the negotiations that are going on and in terms of what may or may not come forward from the European Parliament itself on this matter, bearing in mind that Mr Verhofstadt has indicated fairly strong feelings in that direction. If it were possible for some form of associate citizenship to develop out of this—if indeed we leave the EU, which I would regret but is likely to happen—that could retain our links for the period while we are outside the EU directly, I am sure that would be of interest to a large number of people, particularly to young people, as has been mentioned in this debate, because they identify with the European dream. The European dimension is part of their identity and they would like to have some access to it in a more formal way. On the basis of the comments made by the Minister, which I welcome as far as he was able to go, I beg leave to withdraw the amendment.

Amendment 110 withdrawn.

Amendment 110A

Moved by ***Lord Alli***

110A: Clause 19, page 15, line 21, at end insert—

"(2B) But none of the remaining provisions may come into force until it is a negotiating objective of the Government to ensure that an international agreement has been made which enables the United Kingdom to continue to participate in the European Economic Area after exit day.

(2C) Regulations under this Act may not repeal or amend subsection (2B)."

Lord Alli: My Lords, I shall speak also to Amendment 112. The amendments are an attempt to ensure that we end up with a framework to deal with not just the goods we import and export but the services we trade in. The customs union amendment that we passed overwhelmingly a few weeks ago is only one half of the equation. The customs union deals only with goods. That is very important: it deals only with goods—tangible items such as cars, washing machines and televisions—where we have a £96 billion trade deficit. That is something we need to fix, but perhaps that is for another debate.

The EEA deals with services—such as retail, tourism, transport, communications, financial services and aerospace, where we have a £14 billion trade surplus. The customs union only will benefit our European neighbours in their imports, but without an EEA equivalent, it will damage our profitable export business and therefore the jobs and livelihoods of many thousands of people. It is for that reason we need to ensure that any continuation in the customs union must include continuation in the EEA or its equivalent.

6 pm

My fellow proposers of the amendment and I come to this issue from the experience of creating, building and running businesses. It is our hope that the voice of business will be heard here. It is our hope that common sense will prevail over political dogma. It is hard enough to build a business in this country—the proposers of the amendment have all done so. We create jobs, we create real wealth, and to make it harder for us by ignoring what we do is, I think, unacceptable.

The EEA is a free trade agreement between the EU, Iceland, Liechtenstein and Norway. It is similar to but not—not—the same as the EU single market. It excludes the common agricultural policy and the common fisheries policy. EEA participation does not entail any political integration or closer union. The EEA arbitration mechanism is not the European court, it is the EFTA arbitration court. There is flexibility in control over free movement of labour and people. Individual countries can take control of that area. Our access to European markets after Brexit could be radically improved if we retain our existing participation in the EEA. Having asked for a customs union for goods, it makes no sense to have one without an agreement to cover services.

What are the arguments against? The biggest is our belief that the EU negotiators will not give us access to European markets on similar or even better terms than we have today—that somehow they will punish us for leaving. We are not asking for charity, we are paying for access. Four weeks ago, the Chancellor confirmed that the Brexit bill will be between £35 billion and £40 billion. The question I have to ask the Minister is: what do we get for our £35 billion or £40 billion? Perhaps the Minister will have an answer, but in case he does not, I suggest what it should be. It should be the freedom to access the movement of our goods and services throughout those European markets. The Government have agreed a hefty Brexit bill without our getting access to European markets, a customs union or any trade agreements.

Forgive me if I have no confidence in the retort from the Government Front Bench: "We can't tell you what we're doing now because we don't want to show our hand". It is stretching credibility, in every area where we ask for clarification, to say, "We don't want to tell you what we're going to do because it shows our hand". I cannot tell your Lordships how frustrating it is for those of us who have to operate in this environment to hear Minister after Minister tell us that they cannot tell us what they are going to do because they do not want to show their hand.

My criticism is not just for the Government Front Bench. The Opposition Front Bench, the members of whom I know work incredibly hard and have tried their hardest to take the Bill through, are unable to act on this issue. I do not blame them for that. For me, it is up to the elected House to decide on the EEA, not this House. Our job is to send this amendment back to them to ask them to make a decision on the EEA.

Lord Kinnock (Lab): While sharing my noble friend's admiration for the extraordinary work that has been put in by our Front Bench both here and in the Commons, I remind him of an amendment proposed to the Bill in the House of Commons on 13 December last year, which said explicitly:

"No Minister may, under this Act, notify the withdrawal of the United Kingdom from the EEA Agreement, whether under Article 127 of that Agreement or otherwise".

When that amendment went to the vote, there were 292 votes in favour. It was therefore clearly supported by the great majority of Labour Members of Parliament. Was that amendment not a model of cogency and clarity and completely consistent with my noble friend's amendment this evening? Is it not the most practical way, as he suggests, to avoid the cliff edge of huge and costly disruption to supply chains and loss of access to vital service markets; and, with the customs union, for which this House has voted, to provide us with a real opportunity of a border-free Ireland?

Lord Alli: I could not agree more with my noble friend. He is absolutely right. On 13 December, a similar amendment was moved in the other place, and the Labour Party put a three-line whip on it. I think we are in the right place here. Party policy is very clear on Europe, and a three-line whip on a similar vote justifies this. I agree with my noble friend. It is very clear that we on the Labour Benches are in line with our party policy and that the membership of our party is with us.

But this is bigger than party politics. It is about people's jobs. It is about the future of our economy. That cannot be left to doing what is politically convenient at the time. These amendments have been drafted to give the other place the opportunity to think again.

[Lord Alli]

That is what I believe we should do this evening. We should pass these amendments and give the democratically elected House the opportunity to think again. I beg to move.

Baroness Verma (Con): My Lords, I will also speak to Amendment 112. I have followed this debate closely in your Lordships' House and the other place. This is the first time that I have spoken in this debate, and to find myself opposing the Government is a decision that I have not taken lightly. But, as other noble Lords have said, this is an argument based not on ideology but on the pragmatic reality of what faces our business community, our employers, our wealth generators, if we do not get the right outcomes. They all need certainty, they all need to plan, they all need to look at their current business models and they all need to look at what disruption they will face. I have spoken to many businesspeople, particularly those in the supply chains—the small and medium-sized businesses that are the backbone of our country. Whether it has been privately or in the many discussion forums that I have attended, the main concern of the business community is the Government's rigid position on exiting the EU.

We all know that 52% of the voting public voted to leave the European Union. That debate has been had. What nobody voted for was for us to be poorer because we were unable to get our basic building blocks right. Indeed, my honourable friend Mr Stephen Hammond, in a Westminster Hall debate in the other place, recently articulated very eloquently that,

"we need an exit and a deal that allow us to trade freely with our former partners and to sign new free trade agreements, and that provide a level of economic certainty to businesses and economic and security certainty to our citizens".—[*Official Report*, Commons, 7/2/18; col. 545WH.]

For the sake of clarity, as a member of the EU we are members of the EEA, along with the other 27 EU partners. A strong message was sent out last week to the other place to look very carefully at the need to remain in the customs union. Our concern is that 80% of our economy is service-led, which is not covered by the customs union, so while hugely important for our goods sector, what about the 4.3 million businesses in the services sector? As 79% of our employment is in services, that is 24 million people contributing to 33% of turnover last year. Issues such as non-tariff barriers will have an enormous impact on business, particularly SMEs and supply chains. As the noble Lord, Lord Alli, said, in 2016 trade in services with the EU had a surplus of £14 billion. Why would we want to put barriers in the way of our vital and successful services sector?

The EEA is not the same as the single market. It excludes, as the noble Lord, Lord Alli, said, the common agricultural policy and the common fisheries policy. It is not under the jurisdiction of the European Court of Justice. What we are asking, through this amendment, is to continue as a member of the EEA. The referendum had one question: whether to leave the EU. Remaining a member of the EEA offers business certainty and will enable us to influence through the many committee networks that exist for non-EU members in the EEA.

Leicestershire, the region of the east Midlands that I call my home, spans industries and sectors in both goods and services, from manufacturing to transport, with our rail, air and freight links transporting goods around the world, to top universities, pharma companies and creative services, to professional and business services and retail, to name a few. The Government's own impact assessment set out the following Brexit scenarios for the east Midlands: remaining a member of the EEA would mean a 1.5% fall in GDP; a free trade agreement would mean a 5% fall in GDP; a no deal and reverting to WTO rules would result in an 8% fall in GDP.

We have to be pragmatic. In this region, the fallout from the 2008 economic crisis has been incredibly hard on people in the east Midlands. We are a fantastic region, where our confidence is emerging. Austerity has taken its toll, and while we all knew we had to really tighten our belts for the last few years, we must not now embark on a path of uncertainty on which businesses cannot make decisions. I have been in the SME sector and supply chains for 40 years, and my family since the 1950s, and I have taken UK businesses overseas to explore emerging markets on many occasions. I, like others, want the UK to remain at the top of investors' minds as a place to do business, but the recent rhetoric is not helping. The PM, for whom I have great respect, has said her sense of duty is towards her country and its people. My commitment and my duty to my country is, I believe, just as strong.

For those who believe this House does not have the right to ask the other place to revisit legislation they want Parliament to put through, that is not how I see our role in your Lordships' House. I have received lots of communications, spoken to lots of people and listened carefully to all sides of the debate. There is support for these amendments in your Lordships' House and in the other place. There is an opportunity for the democratically elected other place to discuss and debate this properly in the interests of our country.

I genuinely believe that we must send a strong message to our EU partners, and to others with whom we want to pursue FTAs, that we take all our relationships seriously and are not in the habit of turning our backs on our friends old and new, and that we are trusted partners—a nation looking outward, and stronger for our relationship within the EEA. For business, good news is great and bad news is manageable, but it is the uncertainty that persists from the Government that is forcing UK businesses to look as if they are facing a cliff edge.

6.15 pm

Lord Mandelson (Lab): My Lords, this House has already voted in favour of the customs union to stop the imposition of trade barriers that would decimate our manufacturing base. We did so, I suggest, with the tacit support of half the Cabinet, and a majority of Conservative MPs, including in her dreams, I suspect, the Prime Minister. We have to do the same for Britain's services industries as well. Unlike manufactured goods, cross-border services trade does not have effective WTO rules to fall back on in the absence of any preferential trade agreement between Britain and the European Union. It is absolutely fundamental for us to be clear in our minds that services are not the same as goods. WTO rules effectively provide for goods; they do not provide for services.

Such a free trade agreement between Britain and the EU would be extremely hard to negotiate services into; there is almost no precedent for it—goods tariffs quite possibly, but services very unlikely. Therefore we are not talking of a trade agreement between ourselves and the EU, which is Canada-plus, plus, plus. This is far from it. I have been both a British Trade Secretary and a European Trade Commissioner, so I have seen these issues from both ends of the telescope. It is not possible, given EU rules, and the red line of the British Government, for us to achieve anything like the sort of trade agreement that the Government speak of.

This, therefore, is the crux of the matter in the debate. Without effective WTO rules for trade in services, and without the likelihood of a full bilateral agreement covering all services, we have to maintain our services access by other means, and the only dependable means available to us outside the European Union is membership of the EEA. This would give us coverage by right of all the regulatory standards and rules, harmonised within Europe's single market, and would give us what amounts to free trade in services. Such single market rules apply to Britain's pre-eminent EU exports. Our exports to Europe in financial services, including other business services and broadcast services, are colossal. These sectors represent over half of our services economy, which in turn amounts to 80% of Britain's economy as a whole. This is how important they are to our future economic well-being in this country. Financial and professional services alone account for 25% of all UK services exports, using the automatic passporting arrangements that presently come with our membership of the European Union and the single market.

If we quit the single market as a result of leaving the EU, without the access that the EEA gives us, these rights and their powers of enforcement would be forfeited—no ifs and no buts: that would be consequence that we would face. The impact on cross-border delivery of services to Europe would be savage. A significant proportion of our broadcast content production, as well as cross-border banking and insurance, would be hit for six. This will have a major knock-on effect on the whole of our creative industries in this country and on employment in Britain. In financial services, Frankfurt, Paris, Dublin and Amsterdam will be the principal beneficiaries, as we are already beginning to see.

Our economy simply cannot afford this loss. We are not talking about the next few months; we are not talking about the next couple of years. We are talking about the medium-term consequences, as investment strategies shift to reflect our exclusion from the single market. I understand why the hard Brexiters will probably not lose any sleep over this at all because, for them, it is not economic—it is political. But for the rest of the country, it is their jobs, their livelihoods and the future of their businesses, as well as our country's income and, moreover, our public services and what we will be able to afford to spend on them, that will be at stake.

I know fully well the arguments about the obligations as well as the advantages of being out of the EU but in the single market via the EEA. We would indeed be presented with a dilemma over rule-making because we would no longer be full voting members of the EU. But no economy of our size and status as a former EU member has ever attempted to join the EEA before. We would be in a reasonable position to frame the negotiations over our EEA membership. It would be a first—but it would also be a welcome first for the EU 27 seeking to keep trade barriers to a minimum, and I think we would be entitled to expect and receive some flexibility.

As for free movement of labour, it is already open to Britain to operate less liberal labour market policies, and we can do so as EEA members. Let us be honest: we all know, do we not, what the Government's intention is? They know fully well that businesses and public services in our country, including the National Health Service, will continue to need EU nationals as employees, which is why they intend to allow them to keep coming, whatever they say or do not say now. To pretend otherwise is simply to perpetrate another Brexit fraud on the British public.

As I say, as a former Trade Commissioner, I know only too well what is at stake and how we would need to navigate our EEA membership application to gain the maximum national advantage—and I believe it can be done. On Brexit, the time has come for economic reality and common sense to prevail over political dogma and wishful thinking. In this House, in making up our minds on these crucial issues, we are not so easily bullied, and we know why. That is the privilege we have of being Members of this House. This amendment gives us the opportunity to do the right thing for the country and, in my view, that is what we have a duty to do and why we should support this amendment.

Lord Howarth of Newport (Lab): My Lords—

Lord Forsyth of Drumlean (Con): My Lords—

Lord Wallace of Saltaire: My Lords, before the noble Lords, Lord Howarth and Lord Forsyth, tell us that we are frustrating the will of the people, it may be appropriate to remind them of the arguments that the leave campaign made before the referendum for leaving the customs union and the single market. We had to leave the customs union because, if we stayed in, we could not negotiate those different free trade agreements that we would make independently with India, China, the United States and many others, which would give us better conditions than we had had, constrained as we were by being a member of the European Union. They said that we had to leave the single market because we had to get rid of so many of these constricting regulations that bound the British economy and which we could be free of when we left. I wish to suggest that neither of those arguments now holds.

The Government have so far spent well over half a billion pounds on the Department for International Trade, and the Treasury, as the newspapers reported this morning, has decided that that is getting to be too expensive for the value that is being produced, which, after all, is very low. Liam Fox has travelled the world several times—someone told me the other day that he has travelled half the distance between here and the moon so far—and has achieved remarkably little. A number of countries have made it quite clear that they are not prepared to offer us anything better than we

[LORD WALLACE OF SALTAIRE]
would get as a member of the European Union. Our hopes that we have a wonderful free trade partner in the United States do not appear to be assisted by President Trump's present approach to foreign economic relations. Those who still support a hard leave, such as Jacob Rees-Mogg, are reduced to attacking business as being part of Project Fear when business says that its interests are about to be damaged so badly.

On deregulation, we have heard increasingly from members and supporters of the Government, including those on the Front Bench at present, that we do not want to deregulate—that we want to maintain the high standards of regulation. I have not even heard anyone suggest recently that we should get rid of the working time directive. If that is the case, the reason why we want to leave the single market has also evaporated. The Minister earlier this afternoon suggested that, as an independent country, we could mirror EU regulations by passing, on our own, the same regulations the European Union has just passed. That is wonderful parliamentary sovereignty, isn't it—jumping in behind, taking the rules and saying, "Gosh, look, we're doing it on our own"? Geoffrey Howe, a far greater Foreign Secretary than the present incumbent, used to talk about the gains to Britain of the single market: that we would be sharing sovereignty and taking part in decisions about common regulations. Outside the single market we will be taking the rules others have given us and pretending that we are a sovereign country.

The Minister suggested earlier this afternoon that the amendments in question would introduce confusion and uncertainty. I suggest to the Minister that most of us think that that describes the Government's current position. Indeed, I took part in a radio discussion on Sunday morning with someone whom I imagine is quite a good friend of his—Nigel Farage—who agreed with me that the Government's current negotiations with the European Union are a total mess. That is the relatively widespread set of opinions from a range of different views around the world. Then, we are faced with the *Daily Mail* this morning, in which the Foreign Secretary is rubbishing the Prime Minister's views. If that had ever happened during the coalition Government —if a Liberal Democrat Cabinet member had rubbished the Prime Minister—there would have been a government crisis. But we apparently have such a weak and unstable Government that they totter along from one thing to another, unable to decide what they are doing.

My question to the Minister and to noble Lords who are about to speak is: given that the arguments the leave campaign made in that hard-fought and narrowly won referendum have now evaporated, what are the arguments for staying out of the customs union and single market?

6.30 pm

Lord Forsyth of Drumlean: My Lords, I feel sometimes in this House that one has wandered into the film "Groundhog Day"; one hears the same arguments over and over again. I thought I might actually address the Bill.

I say to the noble Lord, Lord Alli, that I thought we were debating the European Union (Withdrawal) Bill which, on my reading, simply seeks to ensure that we have in place the necessary legal framework when we leave the European Union, which the other place voted for overwhelmingly when it agreed that we would give notice under Article 50. I have no idea why an amendment about membership of the EEA has any relevance whatever to the Bill. As the noble Lord, Lord Alli, said, it is the job of this House to ask the House of Commons to think again: but to think again about the legislation we are actually debating, not policy matters which Members of this House do not agree with. That is what the noble Lord is doing.

For brass neck, the noble Lord really takes the prize when he stands up to criticise the Government for not being clear about what they want to achieve. They are pretty clear about it: they want a negotiation which will ensure the best deal for our country. That is not helped by the noble Lords, Lord Alli and Lord Mandelson, and others who are seeking to undermine their negotiating position by passing amendments of this kind.

Lord Cormack: My Lords—

Lord Forsyth of Drumlean: In a second. It is not helping at all to be giving the impression that this House has a different view from the elected House of Commons.

Lord Cormack: My Lords—

Lord Forsyth of Drumlean: In a second. My noble friend has quite a lot to say, and I am sure I will give way to him in a moment.

Noble Lords: Oh!

Lord Forsyth of Drumlean: If the noble Lord, Lord Alli, is concerned about the Government's position, I remind him that the noble Lord, Lord Kinnock, helpfully reminded the House that over 200 people voted to join the EEA. The noble Lord pointed out that that was on a three-line whip in the House of Commons. What he did not say was that it was defeated in that House, as was membership of the customs union. What on earth are we, in this unelected House, doing asking the House of Commons to think again?

A noble Lord: Our job.

Lord Forsyth of Drumlean: The noble Lord says that we are doing our job. Our job is to address this Bill, not to pursue—

Lord Kinnock: I am grateful to the noble Lord. The figure which I used, accurately, was 292, which is slightly over 200. The margin of defeat of that amendment was very small—about nine votes. I was demonstrating the very strong body of opinion, in the elected House, in favour of the principle set down in my noble friend's amendment. The noble Lord's familiarity with the Bill should have shown him that, when we are discussing the matter of the EEA, we are completely consistent with the proposals of the European Union (Withdrawal) Bill, which covers our membership of the European Economic Area. Consequently, to try to ensure that we leave the European Union in good order—similar

to the phrase that he used—it is surely utterly relevant and entirely proper for this revising House to say to the House of Commons: "Since the Bill provides for reference to the EEA, we are completely consistent with our purpose and the purpose of democracy in asking for further consideration of the arguments in favour of sustaining our goods economy, our service economy and the unity of our nation".

Lord Forsyth of Drumlean: I am most grateful to the noble Lord for his guidance on the procedures and nature of this House. He will be well aware of the importance of brief interventions at this stage in the consideration of a Bill. There were indeed 290 votes on a three-line whip, but what is the whip on the Labour Benches today? You are all being told to abstain. For the noble Lord, Lord Alli, to say that the Government's position is confused, when not many months ago, as the noble Lord, Lord Kinnock, pointed out, the Labour Party had a three-line whip on the EEA but is now urging people not to vote for this amendment—

Baroness Hayter of Kentish Town: As this has been raised, it is only fair—for my colleagues more than for the noble Lord, Lord Forsyth—to make it absolutely clear that the three-line whip was on an issue about whether that decision should be taken by Parliament or not. Heidi Alexander, who proposed the new clause 22, said that:

> "New clause 22 would not decide on the substantive question of EEA membership, but it would guarantee that at a future moment the House could have its say".—[*Official Report*, 15/11/17; col. 426.]

That is, of course, what we have done with the meaningful vote. It is appropriate that accuracy is put before this House.

Lord Forsyth of Drumlean: I note that the noble Baroness has not said that her colleagues have been asked to abstain on this matter.

Baroness Hayter of Kentish Town: They have indeed.

Lord Forsyth of Drumlean: So, from having a three-line whip, and arguing for the importance of the European Economic Area, we now have a "Don't know" position on the Front Bench. And the noble Lord, Lord Alli, has the cheek to say that the Government are confused about their position; just as the Opposition have been confused about a customs union or the customs union. The truth of the matter is that a number of noble Lords wish to reverse the decision of the British people.

The noble Lord, Lord Wallace of Saltaire, asked me to comment on the position in the referendum campaign. I campaigned in the referendum campaign and went to a number of public meetings. I heard the argument being made that, if we were to join the EEA and be out of the European Union, we would have "fax diplomacy". We would have no say in the regulations and that was the worst of all worlds. I now find that the people who were advancing that argument are now pretending that it is in the interests of the country: it certainly is not.

The noble Lord, Lord Alli, asked: "What are we getting for our money?". As my noble friend has pointed out repeatedly, nothing is agreed until everything is agreed. There will be no money paid if we do not have a negotiation which is in the interests of the United Kingdom. By suggesting that that money will be paid, and that the Government cannot get a good negotiation, he is undermining the position of his country, and of the Government, in vital negotiations which, as speeches on all sides have pointed out, are of great importance to the economy as a whole.

Lord Alli: I have been in this House for a little while—about 20 years—and I understand that this is an important issue. There has been a civility in this House which has made it a special place to have a debate. I hope that, whatever the feelings of noble Lords, the rest of this debate can be conducted, as is our tradition, with kindness, care and consideration of other people's views. I know that the noble Lord has strong views, but if we could take it down a notch it would allow us all to have the debate we want in the spirit to which this House has become accustomed.

Lord Forsyth of Drumlean: I am sure that the noble Lord was not among those jeering when I was trying to make my points earlier and that his advice to his colleagues will be well received. He said, "Take it down a notch": he is proposing that we fly in the face of the biggest democratic vote in our history and that, as unelected Peers, we ask the House of Commons to consider a matter which has been considered before and not concentrate on what we are here for, which is improving the legislation in front of us.

The noble Lord, Lord Kinnock, said that this is sort of connected to the Bill. There will be an opportunity for us to consider this matter at the end of the negotiations. The Government have promised to bring forward legislation on the agreement and have promised a vote in both Houses on this matter.

Viscount Hailsham: A meaningful vote.

Lord Forsyth of Drumlean: My noble friend says "A meaningful vote" from a sedentary position. By that he means a vote to reverse what the British people voted for in a referendum. There will be a vote on the negotiation and on the agreements which have been reached. I urge this House not to undermine the position of the Government in their negotiations or that of the Prime Minister by seeking to argue that her objectives cannot be achieved.

Lord Cormack: I am grateful, and at this point an intervention is appropriate. If anybody is undermining the Government at the moment, it is the Foreign Secretary rubbishing the Prime Minister. My noble friend, who is a brilliant debater—I am delighted to be able to debate with him—is arguing for a cause but completely missing the point. I ask him just to reflect: what sort of example are we being given by a Cabinet that is rent asunder by the Foreign Secretary, the second most important member of the Government, rubbishing the Prime Minister in the *Daily Mail*?

Lord Forsyth of Drumlean: I know that my noble friend is not very keen on the Foreign Secretary, and that he has made a number of attacks on Boris Johnson in this House, including calling on the Government to

[LORD FORSYTH OF DRUMLEAN]
sack him. I point out that Boris Johnson played an important part in the referendum campaign and that the people voted—

Lord Patten of Barnes (Con): My Lords—

Lord Forsyth of Drumlean: In a second. Can I just deal with this intervention? I did not think that we had interventions on this scale on Report.

Noble Lords: Oh!

Lord Forsyth of Drumlean: On Report—I am just referring to Standing Orders.

The Foreign Secretary set out his case, which was not to be in the customs union or in the single market, and the British people voted overwhelmingly. This House is seeking to undermine that vote, and in so doing it is damaging its own standing and reputation in the country.

Lord Patten of Barnes: My noble friend has just made, unusually, an unforced error, as they say in tennis. Did he not—perhaps he did not—agree strongly with the Foreign Secretary during the referendum campaign, when Boris Johnson made it absolutely clear that he was in favour of us staying in the single market?

Lord Forsyth of Drumlean: No, I did not, and I was not aware that he had done that. I do not think that my noble friend and I would be at loggerheads or in disagreement if I said that the Foreign Secretary does not always get everything right. However, he argues passionately for the democratic mandate which was given to this Parliament and to this Government, and which this Government are determined to carry out.

These amendments are doing no good whatever to this place or to our ability to get the best deal for the British people. If my noble friend Lady Verma said that, like the Prime Minister, she has in all conscience to get the best deal for the country, I suggest that the difference between her and the Prime Minister is that the Prime Minister is elected and the responsibility is hers, and my noble friend should give her her loyalty and support.

Lord Bilimoria: My Lords, I have put my name to these amendments, and I will start by putting this in context. When you make a change in business, you do so if there is a burning platform—if you have to make the change—or to make a change for the better, to improve things. Now we keep hearing about equivalence, and about whether we will be able to get terms as good as those we have now when we leave. To follow on from what the noble Lord, Lord Cormack, said, we have heard comments from other members of the Conservative Party, and not just Boris Johnson. Jacob Rees-Mogg has accused the Business Secretary, Greg Clark, of,

"promoting 'Project Fear' by saying that thousands of jobs were at risk if Britain did not minimise friction in trade".

That is the Business Secretary saying that, and it is called Project Fear. Boris Johnson has said that the proposals for a customs partnership after Brexit are "crazy" and that it will not work.

6.45 pm

On the Irish border situation, we had the customs vote and the Irish border vote here, which were both won overwhelmingly. That is all about a frictionless border between Northern Ireland and the Republic of Ireland. All the discussions and the Government's plans for a frictionless border are as frictionless as sandpaper is smooth. There is no plan whatever. It is not just about the customs union being the solution to the Irish border situation; the equivalence of a single market is also required to sort out the Irish border—the free movement of people, capital, goods and services.

We have already voted overwhelmingly on the customs union, and now we are talking about this Norway option: the EEA. It is not the best option; we are proposing it as an alternative. If things come to it and we have to leave the European Union, it should be considered the least worst option. It is not about thwarting the will of the people, as the Prime Minister keeps saying, or about how EEA membership would leave the UK a vassal state, as has been said. The complication, which has been addressed, is Labour's stance on this. Labour said clearly that it wants a softer Brexit and that it wants to remain in the customs union but to stay as close to the single market as possible. Let us go no further than Keir Starmer, the shadow Brexit Secretary, and his six tests. First, he asked:

"Does it deliver the 'exact same benefits' as the UK currently has as a member of the single market and customs union?"

Am I misreading something? He said "single market and customs union". The second of his six tests is:

"Does it ensure the fair management of migration 'in the interests of the economy and communities'?"

The EEA is the best option by far, apart from remaining in the European Union. It incorporates the four freedoms but also gives us freedom: we do not have to be in the customs union; we can we can take the common agricultural policy and fisheries policy out of it; it does not involve the ECJ as it is regulated differently; and there is some flexibility on movement of people.

Lord Green of Deddington: Is the noble Lord aware that this was looked at in some detail during the referendum campaign, and the Norwegian experience was that they had to show severe difficulties in their labour market, it had to be reviewed every three months, and they never used it because they feared retaliation? It is not as simple as that; there is a major issue with the EEA, which is freedom of movement, and outside this House it matters.

Lord Bilimoria: We all know the noble Lord's views on migration and immigration, so I will not even bother to go into that.

I go back to some senior Labour figures and supporters, including former shadow Business Secretary Chuka Umunna, who lashed out at his leadership, the TUC, Chris Leslie, the former shadow Chancellor, and Wes Streeting. Even John McDonnell says:

"Respect the referendum result but get the best deal you can to protect our economy and protect our jobs".

Again, he explained that that meant being in a customs union and remaining,

"close to the single market".

Why can the Labour Party not get behind this totally? I find it astonishing.

As the noble Lord, Lord Mandelson, said, 80% of our economy is services—the EEA would address the services issue. Financial services account for 12% of Britain's economy—we would have unfettered access, so all this passporting would be allowed—and 50% of our trade is with the European Union. There is all this talk of going global and agreeing free trade deals with other countries. I have said this before: try agreeing a free trade deal with the USA, or with India without talking about the movement of people. It is all about the movement of people and about tariffs and goods. The CETA with Canada took over seven years to bring about and does not include services. The European Union has said that it is not as easy to get the best free trade deal in the world as Liam Fox has claimed it is. What would Canada say about it? Moving on to equivalence, WTO rules are the worst possible option. I do not think the country would accept crashing out under WTO rules. The no deal option would not be acceptable to Parliament or to the people.

Perhaps the Minister can answer the nub of the point made by the noble Lord, Lord Green. We have no control over our borders, yet a 2004 EU regulation allows all EU countries to repatriate EU nationals after three months if they show that they do not have the means to support themselves. Other countries, such as Belgium, repatriate thousands of people a year. We have never used this regulation, yet we say that we have no control over our borders. Why have we not used it? Why has no one spoken about this in the past?

In conclusion, the best option by far would be to remain. To quote the *Financial Times*:

> "The EEA is not an ideal port for a ship seeking shelter from the worst of the upcoming Brexit storm, but … it may be the only port available … docking in this port is perhaps better for the UK than sailing straight into the storm just because it is exciting, insisting on a perfect port and nothing less, or maintaining that there is no impending storm at all".

Today is VE Day and we are celebrating peace. There has been peace in the European Union for 70 years. I thank the European Union for that. It is not just down to NATO; the European Union has been responsible for that peace. A Spanish MEP, Esteban González Pons, recently made a very powerful speech in the European Parliament. He said that Europe's past is war; its future is Brexit. He went on: "Brexit teaches us also that Europe is reversible, that one can go backwards in history … Brexit is the most selfish decision taken since Winston Churchill saved Europe with the blood, sweat and tears of the English. Brexit is the utter lack of solidarity when saying goodbye … Europe is peace after the disasters of war. Europe is forgiveness between the French and Germans … Europe is the fall of the Berlin Wall. Europe is the end of communism … Democracy is Europe. Our fundamental rights. Can we live without all of this? Can we give up all of this?" He went on: "I hope at the next Rome summit we talk less about what Europe owes us and we talk more about what we owe Europe after everything Europe has given us. The European Union is the only spring our continent has lived in its entire history".

Europe is full of faults but I think it is the best option we have, and the role of this House is to challenge and to bring this up as the least bad option. I recommend the amendment to the House.

Lord Robertson of Port Ellen (Lab): My Lords, in the dim and very distant past, responsibility was given to me by Neil Kinnock—now my noble friend Lord Kinnock—for dealing with the Maastricht treaty Bill in the House of Commons. John Major had come back from the Amsterdam summit with a flawed agreement and an opt-out on the Social Chapter of the Maastricht treaty. We somehow had to protect the treaty, which we supported, while making the case against the exclusion of the Social Chapter. For over a year and a half, I, along with my party and 26 Conservative MPs, one of whom was to go on to lead his party, ran the Government ragged and made life for my now friend, John Major, a complete misery.

Therefore, I know a little bit about the parliamentary tactics involved in dealing with European legislation. I know a bit about the European issue as well, and maybe that is why I have played such a small part in these debates up until now—I have had my fill of it in the past. But I knew about the way in which tactics play out. A lot of my friends in the House of Commons —the European supporters, some of whom are speaking in this debate tonight—kept questioning the tactics of the Front Bench. They kept asking, "Why are we doing this? We're endangering the project as a whole". I said, "Wait a bit. We've worked out the strategy and the tactics". I also had to pacify the Eurosceptics on our Back Benches, who thought that I was not opposing enough. At the end of the day, because our strategy and tactics were right, we inflicted the first defeat on the Conservative Government in 14 years, and it required a Motion of confidence by the Prime Minister to get the opt-out from the Social Chapter through.

During this debate I have listened to my noble friends—they are long-standing friends as well—and they make a powerful case. Crashing out of the European Union, as we might do, would be almost fatal to the economy of this country and to the future generations for whom we have responsibility. However, I have to say to these noble friends that our Front Bench has been incredibly successful up until now by taking a careful and calculated view of the issues involved here. We have given the House of Commons a series of issues on which it can make the final decision. We have not overegged the pudding or overstretched ourselves; we have been careful, because my noble friends Lady Hayter and Lady Smith have carefully judged the mood of this House and have anticipated the mood in the other House. If it is their calculated view tonight that we should not vote for this amendment, I shall accept that judgment.

Lord Tugendhat (Con): My Lords, it really is intolerable that my noble friend Lord Forsyth should give lectures about loyalty at a time when the Foreign Secretary is writing in the *Daily Mail* and the European Research Group is laying down ultimata. It is intolerable that he should cast doubts over the loyalty of my noble friend Lady Verma. Of course he is right to point out that we are considering the withdrawal Bill and to say that we are considering a number of matters that the House of Commons has already considered, but the role of the House of Lords is to give the House of Commons the opportunity to consider things a second time. In the end, its will will of course prevail, but we have a duty and a right to ask it to consider matters a second time.

[LORD TUGENDHAT]

Since the House of Commons last considered these matters, time has moved on and we have seen members of the Cabinet at each other's throats. We have seen Ministers openly defy the Prime Minister in a way that I have never seen in the nearly 50 years since I was first elected to Parliament in 1970. We have seen Back-Benchers laying down ultimata in a way that has not been seen before. We have seen the most senior Ministers in the Government, as well as Back-Benchers, divided over the direction in which the country should go. If they are divided over the direction in which the country should go and if they are trying to hem in the Prime Minister, reduce her range of options and drive her down the road towards the hardest possible Brexit, we have a right to widen those options and to give her and other members of the Cabinet and the House of Commons a wider choice than they might otherwise have. It is not a question of thwarting the will of the people or of delaying the Bill; it is a question of trying to improve it in a way that will help the House of Commons reach sensible conclusions about the kind of relationship that this country should have with the European Union after our departure.

7 pm

Lord Howarth of Newport: My Lords, my noble friend Lord Alli addressed the House on the basis of principle and with passion—and so did the noble Lord, Lord Forsyth. I greatly respect the commitment to the national interest of all who have spoken, including of course those who have spoken in support of the amendment. I suggest that it would be good for our proceedings if, whatever side we are on in these passionate debates, we could all work on the assumption that each other's motives are to be respected.

Of course the future of UK services industries is of immense importance—that is not in doubt at all, and it has to be a major concern of the Government as they develop their negotiations with the European Union on the terms of Brexit. My noble friend Lord Mandelson is pessimistic about their prospects, but it seems to me that it must be in the interests of the European Union as well as of the United Kingdom that the EU does not put impossible barriers in the way of our services exports.

I feel bound to point out that membership of the European Economic Area does entail certain conditions. Non-EU members of the EEA have agreed to enact a large volume of legislation similar to that of the European Union. Non-EU members are consulted on prospective legislation, but they are not represented in the governing institutions of the European Union. The Norwegians refer to the legislation that is presented to them as "fax democracy": they wait by their fax machines in Oslo to find out what the legislation is that it has been determined in Brussels should govern them.

It is also worth noting, as my noble friend Lord Alli did, that agriculture and fisheries are not part of the terms of reference of the European Economic Area and, therefore, that membership of the EEA would do nothing to assist us in resolving the problems of the Irish border.

A second condition of membership of the EEA is to accept the principle of the free movement of people. My noble friend Lord Alli suggested that somehow this could be got around. My noble friend Lord Mandelson and the noble Lord, Lord Bilimoria, drew attention to the possibility that, under existing EU provisions, it would have been possible for us to have operated a tighter regime on immigration. Those things may be so, but the fact remains that, if you are a member of the European Economic Area, you accept the principle of free movement of people. The noble Lord, Lord Green of Deddington, explained calmly and clearly what the possibilities and the difficulties are.

A third condition of membership of the European Economic Area is that those who are in membership have agreed that they will pay in considerable sums of money to finance grant schemes intended to reduce the economic and social disparities within the EEA. We should note that the size of those payments greatly increased following enlargement in 2004.

As we all know very well, those who voted leave in the referendum—a majority of our people in, as the noble Lord, Lord Forsyth, rightly reminded us, the biggest exercise in democratic participation that we have ever seen in this country—voted advisedly to take back control of our laws, our borders and our money. In respect of the three principles of membership of the European Economic Area that I have just mentioned, it is clear that, if we remained in the EEA or applied to join it—whatever the precise status would be—we would not have taken back control of our laws, our borders and our money.

We were told again this evening that it will be a cataclysm for the economy if we do not find ourselves members of the EEA. I am afraid that the citizens of this country, who were unimpressed by the forecasts of doom that were presented to them when they were so strenuously advised that it would be a terrible mistake to vote leave, will not be impressed by renewed forecasts of doom. They expect the wish that they so clearly expressed in the referendum—a referendum which they were told by the Government would be determinative and not advisory—to be met. If they perceive, as I think they would if this amendment were passed, that your Lordships' House is seeking after all to keep them effectively in the EU by another name and to thwart the very clear decision that they expressed at the referendum, they will, to use the term of my noble friend Lord Mandelson, feel that a fraud has been perpetrated on them.

We of course have the right in this House to send our advice to the other place by way of amendments. The question that we have to judge is not whether we have that right but whether it is wise in these circumstances to exercise it. It seems to me that now is a time for a politics not of confrontation but of healing.

Lord Kerr of Kinlochard (CB): My Lords, I am sceptical about the EEA option. I am not sure that the EFTA EEA partners particularly want us—some of them tend to say that they do not—and I am not sure that the consultative arrangements that they find sufficient, or reasonably satisfactory, would be found satisfactory by this country.

I have always thought that the sort of consultative arrangements that we could secure would be best devised here and put forward in the proposal for the framework of the future relationship. I have always

thought it very strange that the Government always insist on playing away—that it is for the other side to put forward the drafts. I do not know why we have not put forward our own prescription. I think we still should—but I begin to despair that we ever will.

I am very impressed by the argument of the noble Lord, Lord Mandelson. We have not yet done anything on services, and we really must do something. I am not sure that the EEA is right—but, as the noble Lord, Lord Mandelson, said, if we applied to join the EEA, it would be a different EEA that would emerge. It is not, therefore, a knock-down argument that the template that suits Liechtenstein would be imposed on the United Kingdom. I think we could do better. So, although it is not for me the ideal way to go, I would much rather that Britain put forward a British proposal optimised for the British relationship with the European Union that we will have left. If we are not going to do that, this is the next best thing. So, despite my doubts about the EEA option, I will vote for the amendment in the name of the noble Lord, Lord Alli, if he chooses to test the opinion of the House—and I hope that others will, too.

Baroness McIntosh of Pickering (Con): My Lords, I am most grateful to my noble friend, who supported my amendment both in Committee and on Report. I am very taken by what the noble Lord, Lord Robertson, said. This is not just a Labour tactic. I believe that there has been genuine cross-party consensus on choosing a few very precise issues. I will not rehearse the arguments again—they are there for your Lordships to see—but the noble Lord, Lord Alli, paid me the compliment of saying that he has used those arguments in crafting the amendment before us this evening.

We have had this discussion at Second Reading, in Committee and on Report. I believe that the time to bring this back is during the scrutiny of the trade Bill. The reason I say this is not that my arguments in favour of remaining within the EEA are any weaker, but if we send too many amendments back to the other place, where I served for 18 years, we will dilute its focus. I am putting all my confidence in the fact that there will be a majority in the elected House for our remaining in a customs arrangement or a customs union.

As I have argued previously—I have not had a definitive answer—lawyers are split on whether or not we need to formally leave the EEA and trigger an application to leave. I argue that without such a formal application to leave, the UK will remain a member of the EEA. I have worked closely over years with the food manufacturing industry and I continue to work closely with the farmers in North Yorkshire. I accept that the point on services has to be addressed. I understand that negotiations are going on to which we are not privy, and that is the difficulty in all the discussions on this amendment.

On the basis that I believe there will be a further opportunity to discuss this, and because I gave a commitment that I would wait until that time to discuss the EEA in a different context, and on my genuine understanding that we will remain members of the EEA, I urge the noble Lord not to put this amendment to the vote this evening but to keep it up our sleeve for a different occasion.

Lord Wigley: My Lords, I have three brief points. The first is a take on the theme of the noble Baroness a moment ago. The reason I believe, from my background in industrial finance, that we need to give the House of Commons the option of addressing this amendment, alongside the customs union amendment which we passed, is in order to have coherence in the debate in the House of Commons. We help it by doing this.

My second point—I follow the noble Lord, Lord Mandelson, in this—concerns the importance of the services sector. It is a growing sector in terms of soft power, our cultural industries, broadcasting and data-related industries. It has massive potential and its market is overwhelmingly in Europe.

Thirdly, I draw to the attention of colleagues, particularly on this side, the fact that, whereas the leader of the Opposition may be opposed to this down the Corridor in another place, a Labour Government in Cardiff produced a White Paper in the past year based on these very principles. They did so to safeguard vital manufacturing and services jobs that are so important to our economy. I plead with colleagues to put the interests of a Government trying to do a job first rather than just an oppositional approach.

Baroness McGregor-Smith (Con): As noble Lords may know, I come to this debate from a business services background having worked in the services industry in the UK and globally for more than 30 years. I am passionate about growing services businesses and that is why I am speaking today. I understand the sensitivities and the challenges of this amendment but I want to talk about the impact on businesses, not party politics. I completely accept leaving the EU next March and I absolutely respect the referendum result.

As my noble friend Lady Verma has outlined, services are a vital part of our economy and we must ensure that our services sector as well as our goods producers have access to our closest and biggest market. The latest CBI report, *Smooth Operations*, from 11 April 2018, points out that there are much greater costs than opportunities if the UK chooses to move away from the EU rules and regulations. This is based on conversations with thousands of businesses and many trade associations over recent months.

In saying that, I know that there are concerns when we talk about the single market. This amendment seeks to offer an alternative that could square the circle between the referendum result and safeguarding our economy, access to trade and jobs. The noble Lord, Lord Alli, touched upon the differences between membership of the EU and the EEA. These differences could address a number of concerns, including the jurisdiction of the European Court of Justice. The EEA extends the benefits of access to the European market and is based around the four freedoms, of goods, people, services and capital. It is governed differently from being a full member of the EU and can offer more flexibility. This may satisfy some of the concerns that have led us to where we are today. The EEA has its own regulatory, governance and institutional frameworks. The administration and management of the EEA structure is shared between the EU and EEA EFTA states. As such it is not the same as being an EU member.

[BARONESS MCGREGOR-SMITH]

We are coming to this debate back to front: we are considering a withdrawal Bill before there is a withdrawal agreement. The details of our future trade structures are either up in the air or they are not known. We have no idea what the withdrawal agreement will look like and there remains a possibility that there may not be one at all, which for me and everyone would be a devastating option for our businesses and the economy.

7.15 pm

On 8 March 2018, the CBI published a paper on the five steps needed to protect services post Brexit. It recommended five steps that negotiators will need to secure a strong future for services businesses after Brexit. These are: first, removing the cliff edge for trade in services; secondly, ensuring access to talent and the mobility of people; thirdly, ensuring free data flow between the UK and Europe; fourthly, negotiating ambitious mutual market access; and, finally, investing in regulatory co-operation between the UK and the EU and the UK and the rest of the world. Those five steps sound common sense to me. Creating barriers and uncertainty for business and all of our services sector is not what we need today.

That is why my noble friend Lady Verma, the noble Lords, Lord Alli and Lord Bilimoria, and I have come together with this amendment to seek to give our services sector the free trade that the customs union would give to our goods producers. It would also show that we recognise the concerns and tensions that the referendum exposed in our country. We believe that EEA and EFTA membership could be a bridge between the referendum result to leave the EU and the need to safeguard jobs, communities, businesses and the economy.

I was asked to join this House so that my many years of experience in business could help shape the laws of this land, and it hugely pains me to be on a different side of the argument from many of my noble friends. However, I firmly believe that I am present in this Chamber today for the experience that I bring from the business sector, particularly the services world, of which I am extremely proud to be a part. It is with that experience in mind that I ask noble Lords to consider the EEA as a way of respecting the will of the people and ensuring that British business can continue to thrive once we leave the European Union.

Baroness Altmann (Con): My Lords, I support this important amendment. The EEA offers a way out of the impasse our negotiations are in. I am therefore disappointed that many in this House seem opposed to the amendment. I urge my noble friends to recognise that there are many Conservative and Labour MPs who wish us to pass this amendment tonight and send it back to the other place for reconsideration. My noble friend Lord Forsyth mentioned this, and I urge him to recognise that there is a strong and growing feeling in the other place that it would like to reconsider the EEA. Seeing the problems facing the country, and seeing businesses large and small increasingly explaining how vital it is not only to have a customs union—or partnership, or whatever we wish to call it; perhaps fish and chips, as my noble friend Lord Patten suggested—MPs increasingly realise that it is not enough to protect British manufacturing and the vital services sector.

It is crucial to keep EEA membership as an option and I ask for your Lordships' indulgence to explain why the EEA is consistent with the referendum vote and how the analysis of the noble Lord, Lord Howarth, omits important elements. Being in the EEA would ensure that we are protected in a no-deal scenario, which could otherwise be catastrophic for the UK economy and would necessitate a hard border in Ireland. EEA membership has an emergency brake on free movement of workers so that we could limit the numbers coming into the UK if needed. Articles 112 and 113 state that if there is serious economic, societal or environmental difficulties immigration can be curtailed.

Being a member of the EEA means that regulations can stay aligned with the EU, so our exports of goods and services will not face new barriers. There is no more risk of ever-closer union as the EEA is strictly an economic union. EEA disputes are settled by the EFTA court using the English language, not the ECJ. EEA membership does not include the common agricultural and fisheries policies, as we have heard, but it also does not cover many other areas which the British people may be concerned about as EU members, such as VAT, justice and home affairs or commercial policy. Decisions require unanimity, not qualified majority voting, so there is not the same risk to our sovereignty. There are already negotiations and free trade agreements with 27 countries and negotiations are under way with India, Indonesia and Vietnam. The EU agencies that we already voted for earlier this evening are open to EEA members in most cases. Surely the value of protecting the Northern Ireland border and continuing close trading relationships with the EU in both goods and services far outweighs the possible benefits of imaginary trade deals with third countries. The Government's analysis shows that, even if we get a free trade agreement with the US, India, Australia and others, it would boost GDP by only 0.7%.

Unlike EU law, EEA law does not have direct effect, but has to be incorporated into national legislation in accordance with each state's constitutional requirements. EU legislation is not imposed on non-EU EEA states. The final decision on whether rules will be implemented is made by the EEA Joint Committee, which compromises of EU and non-EU EEA states, so decisions are taken on the basis of unanimity. That means that, in extremis, a non-EU EEA state could veto proposed rules, as Norway has done in the past. I urge noble Lords to vote for the amendment as a protection for the UK, its people and its democracy. Being in the EEA respects the referendum result. We would not be in the EU but we would minimise damage to our wonderful country and its citizens.

Baroness Hayter of Kentish Town: My Lords, this has been an informative, interesting and passionate debate on a key element of our future relationship with the EU. Unlike the noble Lord, Lord Forsyth, I think that it is entirely appropriate for us to discuss this here and in the context of the Bill.

It has long been the judgment of the Official Opposition that the Prime Minister made a grave mistake at the very opening of negotiations in sweeping certain options

completely off the table. Her red lines, which closed down the possible positive and constructive development of a new partnership with the EU, were irresponsible, short-sighted and aimed more at her hard Brexiteers than at the interests of every part of the UK. Whether one is thinking about Ireland, Scotland, the regions, Welsh farming, manufacturing, the City, aerospace, automobiles or any other sector of the economy, those options were off the table before we had even had the impact statements.

It is not the way that we would have opened discussions on our post-Brexit status. Nor would we have written our own red lines. Instead, Labour set out the objectives for, rather than the particular architecture of, any new relationship. One of the problems with the specifics of these amendments is that they define the structure, not what we want to achieve. Indeed, on the objective, I agree wholeheartedly with my noble friend Lord Alli. We urgently need a deal on services if the UK economy is ever to thrive—but the particular model defined may have some shortcomings, some of which the House heard about in the debate on the amendment of the noble Baroness, Lady McIntosh, and which the noble Lord, Lord Kerr, touched on. Not only might EFTA, with its 14 million people to our 66 million, not want us and not suit us, but, because EFTA is not in the customs union, it cuts across the major amendment passed with a majority of 123 in this House on 18 April that was in favour of us being in a customs union. It also does not mention agriculture, which is so important in Ireland. At the moment, we cannot have both a customs union and EFTA.

Noble Lords: Why not?

Baroness Hayter of Kentish Town: Because that is what EFTA rules say. It is true that, if the negotiations were in our hands and we were in government, I would have a great deal of faith that, if my right honourable friend Sir Keir Starmer, my noble friend Lord Mandelson or the noble Lord, Lord Robertson, were navigating through the negotiations, they could find a new course for the UK, retaining the benefits of our EEA membership —perhaps even continuing our membership—while forming a customs union with that massive market just off our shores.

We have been clear throughout that any Brexit deal must deliver a strong new relationship with the single market that ensures full tariff-free access, no new impediments to trade and no drop in rights and protections. No doubt this will require a new UK-EU treaty, which must also include a new customs union and a close relationship with the EEA. Any such new arrangement must be based on a negotiating mandate. Thanks to Amendment 51, moved by my noble friend Lord Monks and passed by this House, that mandate would have to be approved by Parliament. It is at that point, when the mandate could be amended, approved or even rejected, that Parliament should help steer the course for our future long-term trading relationship, and other relationships, with the EU. Then, Parliament could decide on whether we are in or out of a customs union, the internal market, the agencies we have just discussed or any such issues. That is what Heidi Alexander's amendment was about: not sweeping things off the table until Parliament had its vote.

As we heard and witnessed, last week, over the weekend and even this morning the Cabinet has struggled to find a coherent approach to the customs union. Unbelievably, as has been referred to, we even heard the Foreign Secretary call his Prime Minister's customs plan "crazy". Our priority now should be to nudge, encourage and persuade the sensible Members of the Government to heed pleas from Ireland, business, the professions, unions and others to close off the possibility of frontier posts, import duties, and checks and hold-ups at borders. At the moment, the Government are risking the end of our hassle-free trading, as well as risking employment and growth. Because of this House's requirement of Parliamentary approval for the negotiating mandate, this House's support for a customs union and possible practical problems associated with EFTA membership, we ask our colleagues to abstain on the amendment.

Noble Lords: Shame.

Baroness Hayter of Kentish Town: It is not a shame. What were the words? "Kindness, care and consideration". It is because we share the objectives of that best possible deal that we should make sure that our mandate and agreement serve the whole country, the economy and the regions. At this stage, we should not support one particular approach to that. I urge the House to abstain on the amendment.

Lord Callanan: My Lords, before I address the amendment I will say a brief word, if the House will permit me, about the previous group, which we did not get a chance to speak on. I did not have the opportunity earlier to announce that the Government intend to consult further on ambulatory references—about which I am sure noble Lords are concerned—particularly in relation to contracts. Subject to the outcome of that consultation, further legislation might be brought forward under the consequential powers in the Bill.

Lord Carrington of Fulham (Con): We intended to cover this under the previous group of amendments, as my noble friend said. This is a very important although highly technical area, transposing European law into English law for the sake of contract agreements. Under the way this is currently phrased in the Bill, there is a danger that the UK version of the EU law would be transposed into EU versions of EU law. The amendments are concerned with consulting on how this can be avoided, so that international contracts made under UK law can continue to be made under UK law for the benefit of the City of London, financial services and the accountancy and legal professions in London. With that, I congratulate my noble friend on this consultation and greatly welcome it.

7.30 pm

Lord Callanan: I thank my noble friend for his support. [*Laughter*.] Noble Lords laugh, but this is an important issue that actually is something to do with the contents of the Bill, unlike some of the other amendments we are considering. I thank the noble Baroness, Lady Hayter, for her somewhat grudging support of our position. Since the Foreign Secretary was mentioned so much, I think it only fair we should mention the sterling performance of the shadow

[LORD CALLANAN]
foreign secretary, Emily Thornberry, this morning on the radio, who, in rejecting the so-called EEA/Norway model, set out for us with great clarity what the Labour Party's position is. She said that they "kind of want to stay in the same kind of place", effectively.

Amendments 110A and 112BC seek to make continued participation in the EEA a negotiating objective for the Government. The UK is a party to the EEA agreement by virtue of its membership of the EU. At the March European Council we agreed with the EU that the UK is to be treated as an EU member state for the purposes of international agreements for the duration of the time-limited implementation period. This means that international agreements to which the UK is a party by virtue of our EU membership will continue to apply to the UK as they do now. This includes the EEA agreement. The agreement reached at the March European Council on the application of international agreements throughout the implementation period is a positive and significant step and will enable us to secure continuity in our relationships with Norway, Iceland and Liechtenstein for that period.

Once the implementation period ends, we will no longer be participants in the EU's international agreements, including the EEA agreement. We will instead seek to put in place new arrangements to secure our future relationship with Norway, Iceland and Liechtenstein outside the EU. Seeking to negotiate to remain in the EEA agreement would not pass the first test that the Prime Minister set out for our future economic partnership with the EU. It would not deliver control of our borders or our laws. On borders, it would mean we would have to continue to accept all four freedoms of the single market, including freedom of movement. On laws, it would mean the UK having to implement new EU legislation on which, in future, we will have little influence and, of course, no vote. This would not deliver on the British people's desire as expressed in the referendum to have more direct control over decisions that affect their daily lives.

Some noble Lords think that the EEA would be the right relationship for the UK to have with the EU. I and the Government simply do not agree. As I set out, it is not right for the UK, nor, necessarily, would it be right for Norway, Iceland and Liechtenstein, whose institutions were not designed to accommodate a member like the UK. Other noble Lords view the EEA as the right course because they believe the Government should seek any port in a storm. The Government are entering negotiations convinced of success and we will secure the right deal for the UK. I cannot support an amendment that rejects before even starting our objective of seeking the broadest and deepest possible partnership with the EU, covering more sectors and co-operating more fully than any free trade agreement anywhere in the world today. Therefore, I ask the noble Lord to withdraw his amendment.

Lord Alli: My Lords, I thank everyone who participated in the debate. We have had a full debate and it was encouraging to hear the voice of business come through, particularly as it is often stifled by rhetoric and dogma. I thank the Minister for what he said. Clearly, I disagree with him. The noble Lord, Lord Kerr, and my noble friend Lord Mandelson, best set out the kind of negotiation one would expect to have with the EEA, which would be different. In the absence of anything else, this is where we are left. I also thank my own Front Benchers for their courtesy and the way they handled this difficult situation, with many of us on this side of the House wanting to vote for this amendment. It has been a privilege to work with them. I want to say that on the record.

I will highlight a couple of other people from the debate. It will be my only opportunity, and that of many in this House, to say thank you to the noble Baroness, Lady Altmann, who has done an extraordinary job managing to herd the cats that are non-aligned on this Bill with regular updates and emails. I am sure that noble Lords who have had those will join me in thanking her for the work she has done. I highlight two speeches above anything else. It is very brave to speak against your own party when you do not normally do so. The contributions of the noble Baronesses, Lady Verma and Lady McGregor-Smith, were exemplary. To take something you believe in and to say and make those arguments against the wishes of your own party shows real bravery and independence. It has been a real privilege to be on the same amendment as them.

I am sure it will be of no surprise to the Minister that I reject his thesis entirely. I also reject the notion that if those of us in business and services wait long enough, the Government will come up with something to tell us about their trade negotiations. It simply does not wash. I ask my side to take the examples of the noble Baronesses, Lady Verma and Lady McGregor-Smith. Be brave and vote—as they say in Ireland, vote often if you can. I beg to test the opinion of the House.

7.37 pm

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Fellowes of West Stafford, L.
Fink, L.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Framlingham, L.
Fraser of Corriegarth, L.
Freeman, L.
Freud, L.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Geddes, L.
Gilbert of Panteg, L.
Glendonbrook, L.
Gold, L.
Goldie, B.
Goschen, V.
Green of Deddington, L.
Greenway, L.
Griffiths of Fforestfach, L.
Hague of Richmond, L.
Hamilton of Epsom, L.
Hanham, B.
Harding of Winscombe, B.

Hay of Ballyore, L.
Hayward, L.
Helic, B.
Henley, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hogan-Howe, L.
Holmes of Richmond, L.
Home, E.
Hooper, B.
Hope of Craighead, L.
Howard of Lympne, L.
Howard of Rising, L.
Howarth of Newport, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Judge, L.
Kakkar, L.
Kalms, L.
Keen of Elie, L.
King of Bridgwater, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lawson of Blaby, L.
Leigh of Hurley, L.
Lexden, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Lucas, L.
Lupton, L.
Lytton, E.
MacGregor of Pulham Market, L.
Mackay of Clashfern, L.
Magan of Castletown, L.
Mallalieu, B.
Mancroft, L.
Manzoor, B.
Marland, L.
Marlesford, L.
Mawson, L.
McColl of Dulwich, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
Mone, B.
Montrose, D.
Moonie, L.
Morris of Bolton, B.
Morrow, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Norton of Louth, L.
O'Cathain, B.
Oppenheim-Barnes, B.
O'Shaughnessy, L.
Palumbo, L.
Patten, L.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Price, L.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ribeiro, L.
Ridley, V.
Risby, L.
Robathan, L.
Rock, B.
Rogan, L.
Rotherwick, L.
Rowe-Beddoe, L.
Ryder of Wensum, L.
Saatchi, L.
Scott of Bybrook, B.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Skelmersdale, L.
Slim, V.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stevens of Ludgate, L.
Stowell of Beeston, B.
Stroud, B.
Sugg, B.
Suri, L.
Taylor of Holbeach, L. [Teller]
Taylor of Warwick, L.
Thurlow, L.
Trees, L.
Trefgarne, L.
Trenchard, V.
Trevethin and Oaksey, L.
Ullswater, V.
Vaux of Harrowden, L.
Vere of Norbiton, B.
Wakeham, L.
Wasserman, L.
Wei, L.
Whitby, L.
Wilcox, B.
Williams of Trafford, B.
Wilson of Tillyorn, L.
Wyld, B.
Young of Cookham, L.
Young of Graffham, L.
Younger of Leckie, V.

7.52 pm

Schedule 7: Regulations

Amendments 69A and 69B

Moved by ***Lord Callanan***

69A: Schedule 7, page 41, line 41, leave out paragraphs (a) and (b)

69B: Schedule 7, page 42, line 6, leave out "imposes, or otherwise"

Amendments 69A and 69B agreed.

Amendment 69C

Moved by ***Baroness Goldie***

69C: Schedule 7, page 42, line 35, at end insert—

"(9A) See paragraph 3A for restrictions on the choice of procedure under sub-paragraph (9)."

Baroness Goldie (Con): My Lords, I am pleased to move this group of amendments as the final piece—to use the analogy of the noble Lord, Lord Griffiths—of the devolution jigsaw puzzle in this Bill. The amendments in this group all relate, in different ways, to the scrutiny that the devolved legislatures will apply to the delegated powers for devolved Ministers in Schedules 2 and 4 to the Bill.

It is right that in conferring powers on devolved Ministers, the Bill should also provide for how they will be scrutinised. It would be irresponsible not to do that. We cannot confer powers and then make no provision for legislative scrutiny whatever. However, the Government recognise that the scrutiny of powers is ultimately a question for the legislature undertaking that scrutiny and the Administration being scrutinised. That is why the Bill consciously preserves the competence of the devolved legislatures, under the respective devolution statutes, to amend those parts of the Bill that make provision for scrutiny of devolved delegated powers. It is why we have sought the views of the legislatures and the devolved Administrations on the appropriate scrutiny arrangements, and these amendments reflect that engagement.

Amendments 69D, 72ZC, 78C and 115A allow for the "made affirmative" urgent scrutiny procedure to be used by devolved Ministers making regulations under their Schedule 2 powers. This was not included in the Bill as originally drafted because it is not a standard procedure in Edinburgh, Cardiff and Belfast. However, we have confirmed with the devolved institutions that this procedure is acceptable and that it should be available to devolved Ministers for the same reasons of urgency as it will be available to UK Ministers. These amendments will achieve that.

Amendments 69C, 70C and 77E provide for the "sifting committee" procedure to apply for negative procedure instruments laid by Welsh Ministers under their Schedule 2 powers. The National Assembly for Wales and the Welsh Government have both confirmed that this procedure should apply to the Welsh Ministers. These amendments would therefore apply the same procedure as currently applies in the Bill to UK Ministers.

Noble Lords will appreciate that there are very specific arrangements for committees in the Northern Ireland Assembly and this relates to the structures of power-sharing within the Northern Ireland devolution settlement. In that context it would not be appropriate for this procedure to apply, so we have not included it in the Bill. The Scottish Government have informed us that they and the Scottish Parliament wish to apply some form of sifting arrangement to the Schedule 2 power. However, their intention is to undertake this by

means of their own legislation. As I have said, the Bill preserves the competence of the Scottish Parliament to legislate on this matter.

Lord Wallace of Tankerness (LD): My Lords, I want to clarify what the Minister has just said. When she said that the Scottish Government and the Scottish Parliament wish to do it by their own legislation, is that their Continuity Bill, which is currently before the Supreme Court? If it is, what happens if the Supreme Court strikes it down, or maybe some other piece of legislation they bring forward?

Baroness Goldie: That is a reference to this Bill preserving the competence of the Scottish Parliament to legislate on that matter. I understand that it would have to make legislation within the competence of the Parliament. As the noble and learned Lord will be aware, the UK Government question the competence of the continuity legislation. That, therefore, as far as I am aware, is a completely separate issue and not what I was referring to.

Amendments 83KA, 83P, 83LA, 83MA and 112B require the Scottish Ministers to make the same explanatory statements when exercising the powers, under this Bill or when amending regulations made under Section 2(2) of the European Communities Act, that UK Ministers must make when exercising their powers. I will not stray into greater detail on each of these statements, as we have debated them at length already. I will, for the sake of clarity, remind noble Lords that this obligation to explain comprises seven elements. The first is a "good reasons" statement; the second is an equalities statement; the third is a statement explaining the purpose and effect on retained EU law of the instrument; the fourth is a statement of urgency when using the made affirmative procedure; the fifth is a "good reasons" statement when using any delegated powers to amend ECA Section 2(2) regulations; the sixth is, where appropriate, a statement of the "good reasons" for creating a criminal offence, and of the sentence attached; and the final one is, where appropriate, a statement to explain why sub-delegation of the power is appropriate. As is the case where a UK Minister sub-delegates the powers, there will also be a duty on the authority to which the power is delegated to then lay before the Scottish Parliament an annual report on the exercise of the sub-delegated power, if exercised that year.

Finally, Amendment 83AC makes a straightforward provision to clarify that the duties on UK Ministers to make explanatory statements when exercising powers under the Bill will apply when exercising the Schedule 2 powers jointly with a devolved Minister. A purpose of joint exercise will allow greater scrutiny by requiring instruments to be considered by this Parliament and the relevant devolved legislature. It would not, therefore, be correct for Parliament to receive less information in relation to the instrument than it would have received if the UK Minister had been acting alone, and this amendment clarifies that this will not be the case. The duty will not extend to devolved Ministers, but the statements, as with the instrument, will be the joint product of both Administrations. The statements, in being made available to Parliament, will also therefore be available to the devolved legislatures, and the relevant devolved Administration can choose whether to lay this alongside the joint instrument.

I hope that noble Lords will recognise these amendments for what they are: they are positively the product of our continued and sincere engagement with the devolved institutions. I also hope that your Lordships will welcome the steps this takes to respond to calls in this House and in other places for greater scrutiny of delegated powers. I beg to move.

Amendment 69C agreed.

Amendment 69D

Moved by ***Baroness Goldie***

69D: Schedule 7, page 43, line 1, leave out "paragraph 4" and insert "paragraphs 4 to 4C"

Amendment 69D agreed.

8 pm

Amendment 70

Moved by ***Lord Lisvane***

70: Schedule 7, page 44, line 35, leave out from beginning to end of line 20 on page 45 and insert—

"Parliamentary committees to sift regulations made under section 7, 8, 9 or 17

3_(1) This paragraph applies if a Minister of the Crown—

(a) proposes to make a statutory instrument, whether under this Act or any other Act of Parliament, to which paragraph 1(3), 6(3), 7(3), or 11 applies or which has the same purpose as an instrument to which those paragraphs apply, and

(b) is of the opinion that the instrument should be subject to annulment in pursuance of a resolution of either House of Parliament ("the negative procedure").

(2) Before making the instrument, the Minister must lay before both Houses of Parliament a draft of the instrument together with a memorandum setting out the reasons for the Minister's opinion that the instrument should be subject to the negative procedure.

(3) The negative procedure applies unless within the relevant period either House of Parliament requires the affirmative procedure to apply, in which case the affirmative procedure applies.

(4) A House of Parliament is taken to have required the affirmative procedure to apply within the relevant period if—

(a) a committee of the House charged with reporting on the instrument has recommended, within the period of 10 sitting days beginning with the first sitting day after the day on which the draft instrument was laid before the House, that the affirmative procedure should apply, and

(b) that House has not by resolution rejected the recommendation within a period of 5 sitting days beginning with the first sitting day after the day on which the recommendation is made, or

(c) irrespective of the committee reporting on the instrument, that House has resolved, within the period of 15 sitting days beginning with the first sitting day after the day on which the draft instrument was laid before the House, that the affirmative procedure should apply to the instrument.

(5) For the purposes of this paragraph—

(a) where an instrument is subject to the affirmative procedure, it may not be made unless the draft of the instrument laid under sub-paragraph (2) has been approved by a resolution of each House of Parliament,

(b) "sitting day" means, in respect of either House, a day on which that House sits.

(6) Nothing in this paragraph prevents a Minister of the Crown from deciding, at any time before a statutory instrument mentioned in subparagraph (1)(a) is made, that another procedure should apply in relation to the instrument."

Lord Lisvane (CB): My Lords, I can be brief because the arguments on a Westminster sifting mechanism were deployed in Committee.

Amendment 70 continues the theme of constraints which should be imposed by Parliament on powers delegated to Ministers. For many of the sweeping regulation-making powers, the Government would have a choice under the Bill as to whether the affirmative or negative procedure is to be used. So, as the Bill stands, the scrutinised are to choose the level of scrutiny to which they are subject. This cannot be right. The sifting provisions now in the Bill are better than nothing, but not much, because it is the very making of a recommendation by a sifting committee that brings into play the Minister's power to ignore the committee and to choose the negative procedure over the affirmative.

Two very red herrings—if I might call them that—entered into the debate in Committee. One was that because there are sifting mechanisms with teeth in the Legislative and Regulatory Reform Act 2006, the Public Bodies Act 2011 and the Localism Act 2011, and those Acts provide for the super-affirmative procedure, this would somehow introduce the super-affirmative procedure into this Bill. It would not and I agree with the Government that, given the time constraints, super-affirmative would not be appropriate. That is why this amendment does not provide for it.

The second red herring was that allowing one or other House to override the decision of a committee could undermine confidence not only in the sifting committee itself but in the whole committee structure. I have had a bit to do with Select Committees of both Houses over the past 45 years and I find this argument truly bizarre. A Select Committee is subordinate to the House that creates it. Select Committee recommendations are often ignored or rejected, usually at the instigation of the Government of the day. No plaster falls from the ceiling; committees do not go into an irreversible sulk; it is a perfectly normal feature of parliamentary life.

The Leader of the House said she hoped that occasions when the Government did not agree with a sifting committee's recommendation would be "very rare"—even rarer if both committees made the same recommendation. If that is to be the case, what damage is done by putting the onus on the Government to reverse the decision in one House or the other, rather than giving Ministers carte blanche?

I make no apology for repeating my final point—that we will see a flock of exit Bills over the next few months. There will be a strong temptation for the Government to use this Bill as a precedent for ministerial powers in the others. This is one such power that I suggest should not be replicated. I beg to move.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): I advise the House that if Amendment 70 were agreed to, I would not be able to call Amendments 70A to 70BB because of pre-emption.

Lord Sharkey (LD): My Lords, I declare an interest as chair of the Hansard Society, whose work on delegated legislation will be familiar to many of your Lordships. I will speak briefly in support of Amendment 70—the sifting amendment—to which I have added my name. I will also speak briefly to introduce Amendment 71. The noble Lord, Lord Lisvane, has set out very powerfully the case for Amendment 70—for the sifting committees' decisions to be binding on Ministers—as has the Delegated Powers Committee in its reports.

When we debated an equivalent amendment in Committee, the Government's argument against the proposal relied chiefly on their assertion that they were in any case likely to accept the sifting committees' decisions and that, as the noble Lord, Lord Lisvane, said, ignoring them would be, "hopefully, very rare". This is a very weak argument. It is not based on principle. It is based on a suggestion of compliance, except in undefined, unexampled and no doubt exceptional circumstances. What it really means, of course, is that the Government, at their absolute discretion, will be able to impose the negative procedure on SIs, denying Parliament the more robust and intensive scrutiny provided by the affirmative procedure.

There is simply no case for allowing the Executive this unfettered and unqualified discretion. If Parliament is properly to exercise its scrutiny function in the face of the tsunami of SIs coming our way, it must be able to decide conclusively which SIs deserve higher levels of scrutiny and which do not. That is the whole raison d'être of the sifting committees: they allow Parliament itself to decide which SIs merit what level of scrutiny.

Not only have the Government demonstrated no real need for this override power, they have not even hinted at any harm that might be done by making the sifting committees' decisions binding. In any case, throughout this Bill we must guard against the unnecessary transfer of power to the Executive. What the Government propose is such an unnecessary transfer of power. I hope that the noble Lord, Lord Lisvane, will press his amendment to a vote. If he does, we will support him.

I turn very briefly to Amendment 71, which is in my name and those of the noble Baroness, Lady Jay of Paddington, and the noble Lords, Lord Lisvane and Lord Norton of Louth. The Government expect this Bill to generate between 800 and 1,000 SIs. There will be many others generated by other Brexit Bills. As things stand, we have only two options for dealing with these SIs: we can accept them or we can reject them. A regret Motion has no practical effect.

In the past, this House has shown an understandable and very deep reluctance to reject affirmative SIs. We have rejected just six in the past 68 years. We have used our "nuclear option" very infrequently. This entirely understandable reluctance to reject will certainly continue for withdrawal SIs. But given the enormous volume of such SIs and the delicate and sensitive areas they will deal with, this proper reluctance to press the red button will almost certainly lead us to approve marginal cases or cases about which we retain serious misgivings.

This would be an unsatisfactory outcome for the quality of created law and potentially damaging to the balance of power between the Executive and Parliament.

Amendment 71 proposes an additional method of dealing with affirmative SIs—and it is an additional method; it does not in any way affect our current powers. We would retain unaltered our powers to approve or reject, exactly as at present. Amendment 71 would simply allow us to do what we so frequently do: to ask the Commons to think again. Where we believe that asking the Commons to think again would be desirable, we simply co-ordinate scrutiny so that the Commons can pronounce first. If it rejects the SI, that is the end of the matter. If it approves, Amendment 71 would allow us to ask the Commons, with reasons, to think again. This mechanism would not frustrate the will of the Commons. If it chose not to reconsider within 10 days, the Lords would be deemed to have approved the instrument.

Amendment 71 would give Parliament more flexibility and room for more discussion in dealing with those SIs where real concern exists but where we are properly reluctant to reject. It simply allows a conversation with the Commons, after which the Commons will decide the matter. I commend it to the House.

Baroness Neville-Rolfe (Con): My Lords, I rise to move Amendment 84 and I am grateful for the support of the noble Baroness, Lady D'Souza. During the passage of the Bill I have raised several issues, all of them designed to ensure that the SIs that will eventually be made under it when it becomes an Act will contain as few errors as possible. This may seem a modest aim, but we are in uncharted waters, and the amount of secondary legislation that will be needed, as has been mentioned, and the little time available to make many hundreds of instruments, taken together with the imperfect nature of human faculties, make error all too likely. One way to minimise this is to consult those with knowledge of and interests in the question at issue. This in turn necessitates publishing draft instruments that can be scrutinised by all. As is so often the case, openness is the best antidote for error.

We have made progress. The Minister has kindly arranged for me to meet officials concerned with agriculture, customs, intellectual property and financial services. It is clear to me that proper plans have been made. A few draft instruments have been published, but things are moving forward at a slow pace. We have made less progress on agriculture than I had hoped; I should declare an interest as chairman of Assured Food Standards Ltd, which operates the Red Tractor scheme. However, this is not the fault of Defra, which seems to be well resourced in this area. One of the serious problems for that department stems from recent rows over devolution, which affects draft SIs in the vital areas of agriculture and fisheries. Defra seems unable to publish drafts without the agreement of the devolved Administrations. This has proved to be an unfortunate state of affairs, which would have been better avoided—but in any case it would be better for everyone in the UK, including the devolved Administrations, if many more specimen drafts were published immediately.

There have been several debates on subordinate legislation and I am glad that the Government have made some very important concessions on scrutiny. Indeed, this very evening they have done so on ambulatory references and arrangements in Scotland. However, the Government have also lost on an amendment in this area, which means that they will be looking at the arrangements again in the House of Commons. That is where I believe Amendment 84 might be useful. It is modest—much more modest than my earlier amendments and those of others—and asks the Government to make public their statutory instruments on GOV.UK 10 days before they are laid. That is all I ask. It would be any 10 days, including parliamentary recesses and festivals.

I would like the Minister to write this into law, perhaps as part of the review of Amendment 31, in the name of the noble Lord, Lord Lisvane, and its consequentials. But if that cannot be, I would like her to undertake to add this provision to government guidance on the making of statutory instruments. As an ex-Minister who has had the embarrassment of having to make new orders correcting past mistakes, I can assure her that future legislators and civil servants would thank her. I beg to move.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): It may be for the convenience of the House if I remind your Lordships that we are debating Amendment 70 and the other amendments in the group. The noble Baroness, Lady Neville-Rolfe, spoke to Amendment 84, which is grouped with Amendment 70—but agreeing to Amendment 70 is the question before the House.

Viscount Hailsham: My Lords, I support Amendment 70, moved by my noble friend Lord Lisvane. May I express the hope that it serves as a precedent for use in other legislation? The parliamentary control of statutory instruments is notoriously inadequate. I speak with a considerable degree of experience, having lived through some 31 years of statutory instruments. We know that far too much legislation is passed through this House without any sensible scrutiny, discussion or amendment. I personally have always argued for the amendment of statutory instruments. I ventured to put forward proposals in Committee on this Bill. They did not make any progress, and I know full well that they will not do so in this Bill now.

However, the suggestion put forward by the noble Lord, Lord Lisvane, is a useful first step in that it would require Ministers to explain why the negative procedure has been adopted. Furthermore, it would give Parliament the opportunity to transform a negative procedure into an affirmative procedure. While the affirmative procedure is far from perfect, it is a great deal better than the negative procedure and, on that basis, it is very much a useful first step. I support the noble Lord's amendment and I say to the noble Baroness, Lady Neville-Rolfe, that I have a strong support for her proposal, too. It seems to me that transparency is a very good idea—but I will make one caution, if I may. There will be times when statutory instruments take an emergency character, and the 10-day limit could cause a serious problem. That will need to be addressed if her amendment makes further progress.

8.15 pm

Lord Bilimoria: My Lords, briefly, I support the amendment of my noble friend Lord Lisvane who, with his vast experience, has come up with a suggestion that is essential, primarily because I feel that the balance between the Executive and the legislature has been truly tested during these Brexit times. This started with the Government trying to bypass Parliament in implementing Article 50, and then trying to not give Parliament a meaningful vote. At every stage, we have to make sure that the power comes back to Parliament.

The noble Lord, Lord Sharkey, said that the Government estimate that there will be 800 statutory instruments just as a result of the EU withdrawal Bill. How many statutory instruments does the Minister think that there will be in total, as a result of Brexit? I have heard somebody say 2,000, but there may be even more than that. It is therefore all the more important that we have proper scrutiny. We cannot entrust it to the Executive; Parliament has got to have the power, and I support my noble friend Lord Lisvane's amendment.

Lord Kirkwood of Kirkhope (LD): My Lords, I am pleased to support the noble Lord, Lord Lisvane, on Amendment 70. It is a very useful first step and if he presses his amendment I will be pleased to join him in the Lobbies. I shall speak to Amendments 70BA and 70BB, both of which are in this group. I am in a pretty precarious position because I am speaking to amendments to a government amendment which has not yet been moved and is subject to the right of pre-emption. If the noble Lord, Lord Lisvane, wins then I am wasting my time. I do not want to waste the House's time although I do not mind wasting my own.

I am a member of the Secondary Legislation Scrutiny Committee. I do not speak for that committee but I have been a member of it for some time. These amendments take the last opportunity available to the House to persuade the Leader, who has been attentive to the issue of the extent of the relevant period for consideration, to increase the amount of time available to the Secondary Legislation Scrutiny Committee to 15 days. Amendments would do that in both Houses. It is not often that the House of Lords tells the House of Commons what to do, but it would be inelegant if the two Houses had different sifting periods.

I do not need to explain the role of the Secondary Legislation Scrutiny Committee. Most Members understand that it takes its duties very seriously and is largely trusted to point out matters of concern under the headings available to it to refer statutory instruments to the House. In my experience, it is a much better system than in the House of Commons. The worry of some members of the committee, which I share, is that in dealing with the flow of statutory instruments occasioned by Clauses 7 to 9 of the Bill, we will end up creating precedents which will in the long term dilute the quality of the scrutiny delivered by the Secondary Legislation Scrutiny Committee, and I know the chairman is very concerned about that.

Practical experience of the rhythm of how we deal with the flow of existing regulations shows that 10 days is not enough. It is enough for normal business. If we get the compliance we need from government departments in terms of answers to our queries and dealing with outstanding questions as SIs pass through the process and get expeditious returns, the committee is quite confident that in usual circumstances 10 days would be enough, but it is not enough for exceptional circumstances and there is no provision for exceptional circumstances in the legislation as it stands.

Noble Lords might think that this is a very small point, but if the important amendment moved by the noble Lord, Lord Lisvane, does not find favour with your Lordships' House, there will be circumstances where Members on the Secondary Legislation Scrutiny Committee will on day 9 in the consideration of some order which is causing them continuing concern be faced with the question of what to do. Do they say they need to take further and better particulars from government departments and take further evidence from witnesses and risk going over the 10-day period, at which point the House's responsibility for the issue ends as the Government will take the issue back and the SI will become by default a negative instrument, or do they say they are in some doubt about it and so will err on the side of caution? They do not really have the evidence to be sure that the instrument should be upgraded from a sift of a negative to an affirmative, but if I am unsure I will always by default argue within the committee for recommending an upgrade. If that kind of thing happens, it is going to create even more difficulty for business managers. It will not happen every week, or anything like it, but the Government's wish to get the statute book in good order by exit day is absolutely understood and members of the Secondary Legislation Scrutiny Committee are responsible and diligent and understand the difficulties in doing that, but they are going to be put in a very difficult position.

I do not know where the 10-day limit came from. I think it originally came from the Delegated Powers and Regulatory Reform Committee, but there was no back-up about why it chose 10 days as opposed to 15 days, 13 days or anything else. With the help of the excellent staff of the Secondary Legislation Scrutiny Committee, we have done a grid and have come to the conclusion that it is not possible for the committee to meet twice within 10 days under this new regime, and that will be essential to be sure that exceptional circumstances are dealt with. On the grid we have done, it is clear that 15 days clears us from exceptional circumstances problems. In particular, I am very concerned about consulting devolved legislatures in other parts of the United Kingdom, particularly in relation to Clauses 7 to 9, as this Bill proceeds.

We are taking a big risk. We are going to put at risk the scrutiny process that we rely on day in, day out to keep the quality of the scrutiny process that the House is so rightly concerned about if we do not either make an exception or give some powers for someone to make a case on cause shown for getting an extra couple of days, or an extra five days, on instruments that can be shown to be exceptional. Although the scrutiny committee is doubling its numbers, making provisions and getting support from the Government for doing that, if we do not increase the relevant period for the consideration of sifting, we risk prejudicing the quality of the work that the scrutiny committee can do on behalf of the House in future.

Lord Haskel: My Lords, I support the amendment tabled by the noble Lord, Lord Kirkwood, to extend the scrutiny period of the statutory instruments committee from 10 days to 15 days. Like the noble Lord, I speak from experience as a long-standing member of the committee. Yes, where an instrument is fairly routine and uncontentious, 10 days with one meeting is manageable but tight. That is not possible where the committee has doubts or queries and needs to make inquiries; to get answers from Ministers, from other parliamentary committees and, most importantly, from stakeholders and experienced people outside Whitehall in response to its concerns; and to have their views and responses considered at a second meeting. After all, they are the people who are most affected. I could give examples but the time is late. Still, there are many occasions when these inquiries have materially changed the view of the statutory instruments committee.

In my time many statutory instruments have been reported to the House as having had insufficient consultation, so I am reporting this clause to the House for not allowing sufficient consultation time. I hope the Minister will take note and change it.

Baroness Jay of Paddington (Lab): My Lords, I support Amendment 70. If I am in order, I shall speak also to Amendment 71 in the name of the noble Lord, Lord Sharkey. I declare an interest as serving as a trustee of the Hansard Society under the able chairmanship of the noble Lord.

Way back in what now seems like pre-Neolithic times at the time of the Queen's Speech, when we raised some general issues about the potential passage of the Bill, I spent some time, I think rather to the House's amazement and considerable boredom, trying to emphasise some of the points about the role that secondary legislation was likely to play in the passage of the Brexit legislation as we now see it coming before us. The estimates since we spoke about that have varied widely, but I have to say that the director of the Hansard Society, who I regard as one of the country's leading experts on this whole area, has mentioned a figure of 2,000 statutory instruments coming before this House.

The noble Lord, Lord Lisvane, has competently and eloquently described, both today and in Committee, the importance of his Amendment 70. Amendment 71 in the name of the noble Lord, Lord Sharkey, myself and two other colleagues is what I see as a belt-and-braces addition to Amendment 70; as the noble Lord, Lord Sharkey, has already said, it would be only a so-called nuclear option in particularly difficult circumstances. Given what has been described as the vastly uncharted waters in which we now embark on this, and remembering my time as the chairman of the Constitution Committee —on which the noble Lord, Lord Norton of Louth, whose name is also to this amendment, was one of my most helpful colleagues—we need at this stage to put some detailed amendments in the Bill that enable the principles that we have discussed so often during the passage of the Bill about the pre-eminence of parliamentary authority over secondary legislation to be put very firmly on the statute book. I think the amendment of the noble Lord, Lord Lisvane, is sufficient. With the addition of the one in the name of the noble Lord, Lord Sharkey, to which I have put my name, we will have, as I say, belt-and-braces protection.

Lord Goodlad (Con): My Lords, I support the amendment so ably moved by the noble Lord, Lord Lisvane. In my view, it strikes the right balance between the role of the Government and that of this House and its committees in the scrutiny of statutory instruments. Amendment 71, so ably moved by the noble Lord, Lord Sharkey, follows the recommendations made by the royal commission that was chaired by my noble friend Lord Wakeham, those of the Leaders' Group on working practices, which I chaired in 2011, and those of the committee chaired by my noble friend Lord Strathclyde, which we debated in January 2016. That amendment hits the nail pretty well on the head and, if it is reached, should be supported.

I find myself in agreement with the conclusions of the Delegated Powers and Regulatory Reform Committee, chaired by my noble friend Lord Blencathra, in its 23rd report of this Session, published in April, on the defects of the Government's amendments as then tabled. In my view, the responsibilities must rest with this House and its committees and the discretion thereto, not with the Government. So I support this group of amendments.

Lord Hodgson of Astley Abbotts (Con): My Lords, I have an interest in Amendments 70 and 71. I am interested because they address the issue that I believe is central to the Bill: the process by which the two Houses of Parliament scrutinise legislation returning from Brussels to this country as part of the Brexit process; and simultaneously to ensure that that scrutiny is effective and that opportunities for a power grab by the Executive are prevented. In my remarks, I am informed by my past membership of the Secondary Legislation Scrutiny Committee.

8.30 pm

For me, as a mild Brexiteer, far too many of our debates on the Bill seem to have been about what happens after Brexit, not the process of our withdrawal. At least some debates seem to me to have had, as a subtext, a wish to complicate and perhaps even frustrate the whole process. However, Amendments 70 and 71 are clearly about improving scrutiny. I raised the challenge of this on Second Reading and tabled amendments in Committee in the early hours, at 12.30 am, on Tuesday 30 March. I was unwise enough to suggest then that that was the graveyard shift, and this was picked up by social media. I regret to tell your Lordships that the considered response of the social media world was that the graveyard was where all Members of your Lordships' House should go, and go quickly. I recognise that my amendment then tabled was too draconian—a super-affirmative procedure which the noble Lord, Lord Lisvane, very effectively torpedoed, but I think that there is need for additional work here.

Amendments 70 and 71, and Amendment 72 which we will come to in a later group, are well worth considering. I do not propose to repeat the arguments that have been advanced for them, and recognise that the Government have made some small concessions,

[LORD HODGSON OF ASTLEY ABBOTTS]
but if my noble friend on the Front Bench—I am not quite clear who will wind up on this group—is to persuade me not to support Amendments 70 and 71, I need an explanation why the Delegated Powers and Regulatory Reform Committee, which rejected the Government's proposals as inadequate in House of Lords Paper 124, is wrong. In particular, can it be right that, as the committee puts it at paragraph 6:

"the ultimate arbiter of whether the Government are using the appropriate parliamentary procedure is the Government"?

I hope that the Government will not fall back on the rather strange argument, raised again by the noble Lord, Lord Lisvane, that such a procedure as is proposed in the amendments might lead to a loss of confidence by the House in its committee structure—an argument also advanced by my noble friend the Leader of the House in our debates on 19 and 20 March at column 154, but roundly dismissed by the Delegated Powers and Regulatory Reform Committee in the report that I just mentioned.

I would like to support the Government, but I need some reassurance before I can.

Lord Davies of Stamford (Lab): My Lords, I think I agree with every statement that has been made in the course of this debate. A real consensus seems to be emerging from both Benches' contributions. I just want to add briefly to that, because it is an important issue.

In my view, the treatment of secondary legislation in our country is one of the hidden scandals of our constitution. It is done better in this House than it is in the other place. I was in the other place for 23 years. When I was on the Front Bench, like everyone else, I was from time to time press-ganged by the Whips to sit on a secondary legislation committee. What I witnessed there was a travesty. I often commented on it by intervening in those debates to say how disgusted I was with the whole process. Nobody was given an opportunity to brief themselves on the subject—we would have actually been discouraged from doing so. Certainly, anyone who had an interest in the subject would have been disqualified from serving on the committee in the first place. Everyone brought in their constituency correspondence or read a book. Nothing was said and there was no investigation of the issues raised, which were sometimes important issues. This went on for weeks and months and years, and I am sure continues.

The great virtue of this debate is that Brexit has given us an opportunity—simply because of the vast volume of secondary legislation that will be generated—to look again at our procedures in both Houses of Parliament to deal with it. Some very interesting suggestions have been made this evening. I particularly support the proposals of the noble Lord, Lord Lisvane. Ultimately, of course, we need to solve this problem in a different context from the one we have tonight, but I was delighted to hear the noble Viscount, Lord Hailsham, say that the solution must be to rely on Parliament to amend statutory instruments—secondary legislation. Only that will ensure that we have the opportunity for proper debate on the substance of these laws coming through Parliament, which is so severely lacking at present.

Baroness Smith of Basildon (Lab): My Lords, I rise to support Amendment 70. There is not really much left to say as noble Lords have addressed so many of the points. I do not wish to delay the House, and I would like to hear what the Leader of the House has to say.

Having served in both Houses, the difference in how statutory instruments are treated is very familiar to us, as mentioned by my noble friend Lord Davies. I always said in the House of Commons that when a statutory instrument committee came along and you were asked to take part, you would ask, "Why me, and how long will it take?" In this House, we have had more speakers on this debate than we had on the previous one on the EEA. That shows the level of interest and excitement generated by statutory instruments in your Lordships' House. Someone may have said, "So many SIs and so little time".

As we progress on the road to Brexit, as the noble Lord, Lord Bilimoria, said, this House and the other place will clearly have to address a huge number of SIs. The concern is that we have to get this right. The consequences of making mistakes against the Government's intention of ensuring that EU law can be transposed into UK law are very serious. Those SIs have to be accurate and they have to be properly considered.

In Committee, the noble Baroness confirmed that the Government intend to publish draft SIs "where possible and appropriate". If you look at the website, there are a few drafts—not many, but a few. There are illustrative examples, and I am grateful for those. They are helpful, but there is no way of knowing whether those examples are representative of the statutory instruments that are to come, particularly given the drive to reduce the overall number by packaging up multiple issues in one statutory instrument. I have raised this issue with the Government over some time. I gave evidence on it to the Select Committee in the other place and I gave evidence to our Constitution Committee, and it is really important that we have those draft SIs for, if nothing else, the appearance of accuracy, so that we know we are getting it right.

As I said, the noble Baroness made helpful comments on this about publishing draft SIs. However, I have to say that I am not convinced that "where possible and appropriate" is good enough. Can she go one step further and guarantee that SIs will always be published in draft form prior to being introduced into either House, unless of course they are made under urgent procedure? That is another discussion and there would obviously have to be very good reasons why they were urgent. Having those draft SIs is absolutely essential—not for delaying but for giving them proper consideration. It is much harder to rectify mistakes at later opportunities than if we deal with them straightaway.

The noble Baroness argued previously that the Committee stage amendments of the noble Lord, Lord Lisvane, were unnecessary, and she said then that if both committees were to reach the same recommendation,

"the Government's expectation is that such recommendations are likely to be accepted".—[*Official Report,* 19/3/18; col. 154.]

I understand that that is the intention, but "expectation" and "likely to be accepted" are a bit woolly for legislation.

I do not think that is adequate. We hope that would be the case but, as the noble Baroness told us at the time, there would be a problem if the two committees disagreed or if the Government decided not to accept the proposed upgrade to the affirmative procedure. It is a limited upgrade; I would not get too excited about the affirmative procedure being too intrusive. We recognise that it is a step in the right direction. The noble Baroness told the House that she hoped the latter scenario—that the Government would not accept a proposed upgrade from one House—would be very rare. Again, it is very speculative. How rare does she think that occurrence will be? Could she outline the steps she would expect Ministers to take in the event of it becoming a reality?

All of us want to see EU law on the UK statute book as accurately and as quickly as possible, but to do that we must have confidence in the process and procedures that we have in place. We cannot do it on a wing and a prayer. If we do not get this right, there will be serious consequences, which will be far harder to rectify or amend later. I hope the Minister can give some reassurances on that issue in the course of her comments.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, I thank all noble Lords for their contributions to this debate. The Government take parliamentary scrutiny of the powers afforded them very seriously, which is why, from the outset, I have made clear our view that both Houses should be treated equally when it comes to the sifting process proposed by the Commons Procedure Committee. The Government have already accepted amendments, although they only included a committee in the other place, and the government amendments that we have just discussed would extend that process to your Lordships' House. We have listened carefully to the views of the House and numerous committees on ways in which to improve this Bill. Among other amendments, we have removed the Clause 8 power altogether and sunset the consequential power and the power to make new fees or charges. The correcting power has been prohibited from creating public authorities or amending the devolution statutes, and we have provided that regulations should be amendable only in the same way as primary legislation.

Having heard the views of the House in Committee, I am pleased to confirm that the Government have tabled amendments that we will debate shortly to extend the sifting committee's remit to instruments made under the power contained in Clause 17(1). I hope that noble Lords will see this as further evidence of the Government's willingness to listen to the case put by this House and, in particular, by the DPRRC. I believe that we have made clear our commitment to ensuring that this House can rigorously scrutinise the secondary legislation that will flow from this Bill.

The government amendments allow the changes to the SLSC's order of reference, agreed by the Procedure Committee, to be put into practice following Royal Assent. I am sure that noble Lords on all sides will want to consider the committee's report in good time. As I have said before, the agreement reached regarding the SLSC taking on the new and vital role as the sifting committee demonstrates the constructive collaboration of the House. I remain grateful to other members of the Procedure Committee and the SLSC for their support in this decision.

A number of noble Lords have made it clear that they would like further reassurance that the recommendations of the sifting committees will be taken seriously by the Government. I am happy to repeat what I said in Committee—that if both sifting committees were to make the same well considered and no doubt persuasive recommendation that an SI should move from the negative to the affirmative procedure, I assure the House that the Government's expectation is that such recommendations are likely to be accepted. Where the two committees disagree, the situation would, of course, need to be carefully considered on its merits. The noble Baroness, Lady Smith, tempted me to speculate on how often the Government would disagree with a recommendation coming from both committees. Clearly, I cannot usefully do that, but I can say that the Government are not placing shackles on their ability to make a recommendation to upgrade the procedure if they so wish. It is right that this is the case, but I repeat my view—I expect that to be a rare occurrence. I can confirm that on the very rare occurrence, one hopes, when that happened, and the Government did not agree with a recommendation to use the affirmative procedure, we would fully expect to publicly set out our reasons to the committee concerned.

Amendments 70 and 77 in the name of the noble Lords, Lord Lisvane, Lord Norton and Lord Sharkey, and the noble Baroness, Lady Smith of Basildon, propose an alternative sifting process. There are two significant differences between the process proposed in Amendment 70 and that proposed by the Commons Procedure Committee, the consequences of which would put at risk our ability to achieve this Bill's fundamental aim: a functional statute book on exit day and, indeed, for this House to exercise timely and effective scrutiny. The first would make the sifting committee's determinations binding on the Government unless the House decided to disagree with its committee. The second is that the amendment would build into the sifting committee process a mechanism for the House as a whole to make a binding determination, irrespective of the decision of the committee to which it has delegated the responsibility for making recommendations. Such determinations raise several serious problems. The first is the potential for disagreement between the Houses, and I note that Amendment 71 involves the same problem, to which I shall come in a moment.

The second risk, which is potentially more serious in practical terms, is the delays which this process could create. Given that this House and the other place do not often sit on Fridays, 10 sitting days is already likely to stretch across three weeks. The addition of an extra five-day period, during which each House could overrule its own sifting committee, potentially extends this process into a fourth week. Of course, if any of this were to occur around either House's normal recesses, the period would be longer still. Then, after that, any negative instrument would still have a praying period of 40 days during which, as now, a debate could be sought. In addition, any affirmative instrument

[Baroness Evans of Bowes Park]
would be subject to the usual scrutiny procedures and laid before Parliament until it could be accommodated in the parliamentary schedule.

8.45 pm

The additional 10-sitting-day period proposed in Amendment 71 would begin only after your Lordships' House had come to a resolution on the SI, potentially extending this process further. The problem also arises in the amendments tabled to the Government's Amendment 77B by the noble Lord, Lord Kirkwood of Kirkhope, and the noble Baroness, Lady Watkins of Tavistock, which seek to extend the Commons' Procedure Committee sifting period from 10 sitting days to 15. Extending the sifting period would also cause similar delays. Under either of these arrangements, a draft negative SI given to the sifting committee in the first sitting week in September could be held up until late October before the normal scrutiny processes can begin. The noble Lord, Lord Kirkwood, said that extending the sifting process is likely to be an unusual event but, even so, we simply do not believe that these timescales are practical. I suggest that this would be true under normal circumstances, but it is certainly so given the time available to us before exit day.

When the Commons' Procedure Committee originally proposed 10 sitting days for the sifting period, it was agreed to without division. The Government were content to accept that timeframe then and we continue to believe that it can provide sufficient time for the sifting committees to carry out their work scrutinising the choice of procedure. Indeed, in order to ensure that this is the case, part of the purpose behind the proposed changes to the SLSC's terms of reference, which I put to this House's Procedure Committee on 5 March, and which were agreed, was to maximise the sub-committee's ability to conduct its work within that period, including the power to report directly to the House. Furthermore, in cases where the Government and an SLSC sub-committee disagree on whether a negative instrument ought to be upgraded to the affirmative but noble Lords feel that tabling a motion against an instrument would be disproportionate, this House has a number of other avenues for making its views known to the Government, including take-note debates. This would allow for further detailed discussion, if your Lordships viewed that as warranted. In the meantime, the relevant Minister could also be invited to appear before the sub-committee to justify their position.

The noble Lord, Lord Lisvane, has again drawn our attention to the examples of the Legislative and Regulatory Reform Act, the Localism Act and the Public Bodies Act, under which committees of both Houses determine, rather than recommend, the procedure that will apply. I remain of the view that establishing such a mechanism is not proportionate for the sifting role which we are proposing. As I mentioned in Committee, the Acts to which he referred are examples where the committees have it open to them to recommend super-affirmative procedures. I think we agree that that procedure is not practical for this Bill, and I know that the noble Lord is not making that case here. In the case under consideration, the question for the committee is not consideration of the detail of the instruments but whether they are subject to the negative or affirmative procedure. In that case, unlike super-affirmative procedure, the sole practical difference is that the SI in question is proactively debated, not that it undergoes a procedure which might lead to its being amended.

I therefore suggest that Amendment 70 puts at risk the constructive work that has taken place so far in the House's committees and through the usual channels. If your Lordships' House agrees to Amendment 70, the Government's amendment to the sifting committee arrangements would fall, due to pre-emption. There is no guarantee that the other place will accept an amendment that changes the nature of something they themselves put into the Bill. Therefore, the role of your Lordships' House in this important process will become uncertain. That is a situation which I would very much like to avoid.

Amendment 71, in the name of the noble Lords, Lord Sharkey, Lord Lisvane and Lord Norton of Louth, and the noble Baroness, Lady Jay of Paddington, attempts to deal with a disagreement between the Houses on an SI by allowing the other place to overrule your Lordships' House, although it would not resolve the issue of the two sifting committees disagreeing. While the Bill adheres to the House's established procedures for the scrutiny of secondary legislation, that amendment would represent a significant departure. I appreciate that it is an attempt to create a solution to the problem of the two Houses disagreeing, but we do not believe that it would be appropriate, even in the limited circumstances proposed, to make such a significant change to the relationship between the Houses.

Amendment 71 would create a new reconsideration procedure for this House to ask the other place to think again after it has approved an instrument. This amendment raises wider questions about the ability of this House to make its own determinations with respect to secondary legislation. This is certainly a significant debate, and one which we had on my noble friend Lord Strathclyde's proposals, but we should not be trying to resolve it, let alone legislate on it, in the Bill, and I hope that noble Lords will be content not to press their amendments.

On Amendment 84, which was tabled by my noble friend Lady Neville-Rolfe and the noble Baroness, Lady D'Souza, while I cannot accept it, I reassure them that that there will be ample opportunities for the SIs laid under the Bill to be seen by the public before they are made, and in order, as the noble Baroness, Lady Smith, said, to get them right. All the proposed negative instruments to be made under the powers listed in the noble Baronesses' amendment will be laid as drafts for the 10-sitting-day sifting process. We intend this to be public and are working through ways to achieve this using GOV.UK, as my noble friend suggested.

It is worth noting that the 10-sitting-day sifting process is likely to be spread across two and potentially three sitting weeks, or longer if there is a recess, which means that the draft negative SIs would be publicly available for longer than the 10 days my noble friend's amendment seeks. The House would then be able to carry out its other scrutiny functions when the SIs are laid before Parliament after sifting, and the 40-day praying period

would then begin. Draft affirmative SIs will be published in the usual way—on legislation.gov.uk—at the same time as they are laid before Parliament, which is usually several weeks before they are debated. There will therefore be an opportunity for the public and parliamentarians to consider the SIs before they are made.

In addition, I assure the noble Lord, Lord Haskel, that the Government are committed to effective consultation on our exit from the EU. It is extremely important to gather views from stakeholders and those most affected. For example, the Bank of England is already consulting on an updated approach to authorising and supervising branches of international banks and insurers, and Defra is currently seeking views on future agricultural policy and funding. Again, I point noble Lords to the illustrative examples that a number of noble Lords mentioned, which the Government have already published in draft to help demonstrate how we intend to use the powers in the Bill. I realise that this is not the total commitment that those who tabled the amendment were seeking, but I hope that it is sufficient that they will feel able not to press it.

I hope that the Government's clear commitment to replicating the sifting mechanism in your Lordships' House by building on the important work of the SLSC and providing additional staff and members demonstrates that we continue to take the established and valuable scrutiny role of this House seriously and that we will continue to do so when the sifting process is under way. With that, I hope that the noble Lord, Lord Lisvane, will feel able to withdraw his amendment.

Lord Lisvane: My Lords, I am most grateful to the Minister and to noble Lords who have taken part in this debate. From the remarks of the noble Baroness, Lady Smith of Basildon, it is clearly an opportunity for your Lordships to gain insight into that world of fascination and excitement which is statutory instrument procedure.

My noble friend Lord Bilimoria was much too kind to me when he credited me with the crafting of Amendment 70. There have been a few changes to it since we debated it in Committee, but it was actually crafted by the Delegated Powers and Regulatory Reform Committee, which regarded it as an extremely important matter of principle.

It would be churlish of me not to acknowledge some of the things that the noble Baroness the Leader of the House set out, including the improvements that have been and are to be made to the Bill by subsequent government amendment. I can well understand the nervousness that there must be in the minds of government business managers in this House and in the other House, with fleets of these SIs coming forward—different but alarming numbers have been quoted this evening—very little time and, in the back of some minds, the possibility of some rogue committees automatically upgrading everything to affirmatives. Here I was extremely grateful to the noble Lord, Lord Kirkwood of Kirkhope. He emphasised the responsible attitude taken by the SLSC, and I am quite sure that that will be replicated in sifting committees in both Houses. However, these are, to use the words of the noble Baroness, Lady Jay of Paddington, uncharted waters.

I thought that the Leader of the House was rather apocalyptic about timing when she piled period of time upon period of time, all made much more difficult by praying time of 40 days added at the end. If it is a matter of sifting, it is not a matter of judging and analysing merits but of asking: does this get over the bar? That rapidly becomes quite a straightforward process—so I think that that might be slightly overstated.

I also rather shied away from what I took to be the implied threat that, if your Lordships were so sagacious as to approve Amendment 70 this evening and the Commons were to reverse it, we might end up with no sifting process. If that were the reaction, I can only say that it would be highly unedifying, and I do not believe that that is likely to happen. It is important to remind ourselves that the regulation-making powers, including sweeping Henry VIII powers, are extremely extensive, and much debate on this Bill has centred on making the scrutiny of those effective.

It was kind of the Leader of the House to give us, once again, her strong expectation of what would happen, particularly if two committees were to agree. With all respect I have to say that, however strong an assertion and however deep a belief that is, it is not legislatively bankable. There is still at the heart of this matter an issue of principle, which is that the scrutinised should not be able to decide the level of scrutiny to which they are subject. So, with those thoughts in mind, I beg leave to test the opinion of the House.

8.56 pm

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9.11 pm

The Deputy Speaker: My Lords, in the third Division earlier this evening on Amendment 110A, the number of noble Lords voting Content was 247, not 245 as announced in the Chamber.

As a result of the House accepting Amendment 70, I am unable to call Amendments 70A and 70B and the amendments to those amendments for reasons of pre-emption.

Amendment 70C

Moved by ***Lord Callanan***

70C: Schedule 7, page 45, line 23, at end insert—

"Committee of the National Assembly for Wales to sift certain regulations involving Welsh Ministers

3A_(1) Sub-paragraph (2) applies if the Welsh Ministers are to make a statutory instrument to which paragraph 1(9) applies and are of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(2) The Welsh Ministers may not make the instrument so that it is subject to that procedure unless—

(a) condition 1 is met, and

(b) either condition 2 or 3 is met.

(3) Condition 1 is that the Welsh Ministers—

(a) have made a statement in writing to the effect that in their opinion the instrument should be subject to annulment in pursuance of a resolution of the National Assembly for Wales, and

(b) have laid before the Assembly—

(i) a draft of the instrument, and

(ii) a memorandum setting out the statement and the reasons for the Welsh Ministers' opinion.

(4) Condition 2 is that a committee of the National Assembly for Wales charged with doing so has made a recommendation as to the appropriate procedure for the instrument.

(5) Condition 3 is that the period of 14 days beginning with the first day after the day on which the draft instrument was laid before the National Assembly for Wales as mentioned in sub-paragraph (3) has ended without any recommendation being made as mentioned in sub- paragraph (4).

(6) In calculating the period of 14 days, no account is to be taken of any time during which the National Assembly for Wales is—

(a) dissolved, or

(b) in recess for more than four days.

(7) Nothing in this paragraph prevents the Welsh Ministers from deciding at any time before a statutory instrument to which paragraph 1(9) applies is made that another procedure should apply to the instrument (whether under paragraph 1(9) or 4B).

(8) Section 6(1) of the Statutory Instruments Act 1946 as applied by section 11A of that Act (alternative procedure for certain instruments laid in draft before the Assembly) does not apply in relation to any statutory instrument to which this paragraph applies.

(9) The references in this paragraph to paragraph 1(9) do not include references to paragraph 1(9) as applied by paragraph 7(5)(for which see paragraph 13A)."

Amendment 70C agreed.

Amendment 71 not moved.

Amendment 72

Moved by ***Lord Sharkey***

72: Schedule 7, page 45, line 32, leave out from "contains" to end of line 34 and insert—

"(a) a declaration that the Minister of the Crown concerned is of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being so laid and approved, and

(b) a statement of the grounds for urgency."

Lord Sharkey: My Lords, Amendment 72 would impose measures on the Minister, where he or she was dealing with the urgency procedure in the Bill, for the delaying of "made affirmative" SIs. When we debated this in Committee, I made the point that there was no need, as the Bill is currently constructed, for the Minister to give any explanation for why he or she thought that the instrument should be urgent. I suggested, as Amendment 72 does, that the Minister should explain in writing why the SI should be considered urgent. However, I notice that in Amendment 83N—I am sure that the Leader of the House will explain it in a moment —the Government appear to have recognised the force of the arguments we advanced in Committee, which I have just summarised. In my view, Amendment 83N satisfies the requests we made in Committee and the requirements of Amendment 72. However, I want to ask the Leader of the House a question about where Amendment 83N specifies a failure to give reasons for urgency.

Lord Low of Dalston (CB): I wonder whether the noble Lord could clarify something. He has been referring to Amendment 83A in terms which suggest that he is under the impression that it is a government amendment. In fact, I will move it in a few minutes. Is he perhaps thinking of Amendment 83C?

9.15 pm

Lord Sharkey: In fact I was thinking of government Amendment 83N—I am sorry that I did not make that clear—which deals with Amendment 72. I was about to ask a question. Amendment 83N says that in the case of a failure of a Minister to give the reasons that he or she should give for urgency, the Minister must write explaining why he has failed to do that. The only thing missing at this point is some indication of when he might write to do that. I ask the Leader of the House to try to help the House by indicating when a Minister should write to indicate his sorrow and apology for not doing what the amendment asked him to do. With that, I beg to move.

Baroness Smith of Basildon: My Lords, the amendment is self-explanatory. If urgent regulations have to be laid, having an explanation and clarity from the Minister as to why it is urgent is always helpful. It is fairly simple and straightforward. I hope the noble Baroness will say that she is prepared to accept the amendment.

Baroness Evans of Bowes Park: I thank noble Lords for this very brief debate. As I indicated in Committee, the Government have reflected on this point further and decided to table their own amendments to achieve the same aims as the noble Lord's amendments. The Government have always said that we expect Ministers to use the Bill's urgent procedure rarely. This might be where, for example, corrections to the statute book are required very close to exit day and where the impact of not making these corrections would be significant.

The Government have always been committed to ensuring an appropriate level of scrutiny is afforded to the Bill's provisions. I remind noble Lords that the made affirmative procedure still requires debates and potentially votes in both Houses. We have always wanted to be transparent about how this unusual process will work and it is for that reason that we have clarified the time period in which a made affirmative SI must be debated. In response to the persuasive case made by noble Lords in Committee, where the Government choose to use the urgent procedure we are happy to commit in statute to supplementing any declaration of urgency with a commitment to making a statement explaining why this was considered to be appropriate. In response to the question asked by the noble Lord, Lord Sharkey, Ministers will write as soon as is practicable. This is in addition to the obligation to make a statement.

While the Government cannot accept the noble Lord's amendment for technical reasons, I hope noble Lords will be content to accept those tabled by the Government in its place and that the noble Lord, Lord Sharkey, will feel able to withdraw his amendment accordingly.

Lord Sharkey: I thank the noble Baroness the Leader of the House for Amendment 83N and for agreeing with us that it is in fact necessary. With that, I beg leave to withdraw the amendment.

Amendment 72 withdrawn.

Amendments 72ZA to 72ZD

Moved by ***Lord Callanan***

72ZA: Schedule 7, page 45, line 38, leave out "one month" and insert "28 days"

72ZB: Schedule 7, page 45, line 42, leave out "one month" and insert "28 days"

72ZC: Schedule 7, page 46, line 14, at end insert—

"Scrutiny procedure in certain urgent cases: devolved authorities

4A_(1) This paragraph applies to—

(a) regulations to which paragraph 1(6) applies, or

(b) regulations to which paragraph 1(7) applies which would not otherwise be made without being subject to the affirmative procedure.

(2) The regulations may be made without being subject to the affirmative procedure if the regulations contain a declaration that the Scottish Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without them being subject to that procedure.

(3) After regulations are made in accordance with sub-paragraph (2), they must be laid before the Scottish Parliament.

(4) Regulations made in accordance with sub-paragraph (2) cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, the regulations are approved by resolution of the Scottish Parliament.

(5) In calculating the period of 28 days, no account is to be taken of any time during which the Scottish Parliament is—

(a) dissolved, or

(b) in recess for more than four days.

(6) If regulations cease to have effect as a result of sub-paragraph (4), that does not—

(a) affect the validity of anything previously done under the regulations, or

(b) prevent the making of new regulations.

(7) The references in this paragraph to paragraph 1(6) or (7) do not include references to paragraph 1(6) or (7) as applied by paragraph 7(5) (for which see paragraph 14(6A)).

4B_(1) Sub-paragraph (2) applies to—

(a) a statutory instrument to which paragraph 1(8) applies, or

(b) a statutory instrument to which paragraph 1(9) applies which would not otherwise be made without a draft of the instrument being laid before, and approved by a resolution of, the National Assembly for Wales.

(2) The instrument may be made without a draft of the instrument being laid before, and approved by a resolution of, the National Assembly for Wales if it contains a declaration that the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being so laid and approved.

(3) After an instrument is made in accordance with sub-paragraph (2), it must be laid before the National Assembly for Wales.

(4) Regulations contained in an instrument made in accordance with sub-paragraph (2) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of the National Assembly for Wales.

(5) In calculating the period of 28 days, no account is to be taken of any time during which the National Assembly for Wales is—

(a) dissolved, or

(b) in recess for more than four days.

(6) If regulations cease to have effect as a result of sub-paragraph (4), that does not—

(a) affect the validity of anything previously done under the regulations, or

(b) prevent the making of new regulations.

(7) Sub-paragraph (8) applies to a statutory instrument to which paragraph 1(9) applies where the Welsh Ministers are of the opinion that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(8) Paragraph 3A does not apply in relation to the instrument if the instrument contains a declaration that the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without meeting the requirements of that paragraph.

(9) The references in this paragraph to paragraph 1(8) or (9) do not include references to paragraph 1(8) or (9) as applied by paragraph 7(5)(for which see paragraph 14(6A)).

4C_(1) This paragraph applies to—

(a) regulations to which paragraph 1(10) applies, or

(b) regulations to which paragraph 1(11) applies which would not otherwise be made without a draft of the regulations being laid before, and approved by a resolution of, the Northern Ireland Assembly.

(2) The regulations may be made without a draft of the regulations being laid before, and approved by a resolution of, the Northern Ireland Assembly if they contain a declaration that the Northern Ireland department concerned is of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being so laid and approved.

(3) After regulations are made in accordance with sub-paragraph (2), they must be laid before the Northern Ireland Assembly.

(4) Regulations made in accordance with sub-paragraph (2) cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, the regulations are approved by a resolution of the Northern Ireland Assembly.

(5) In calculating the period of 28 days, no account is to be taken of any time during which the Northern Ireland Assembly is—

(a) dissolved,

(b) in recess for more than four days, or

(c) adjourned for more than six days.

(6) If regulations cease to have effect as a result of sub-paragraph (4), that does not—

(a) affect the validity of anything previously done under the regulations, or

(b) prevent the making of new regulations.

(7) The references in this paragraph to paragraph 1(10) or (11) do not include references to paragraph 1(10) or (11) as applied by paragraph 7(5) (for which see paragraph 14(6A)).”

72ZD: Schedule 7, page 46, line 22, leave out paragraph 6

Amendments 72ZA to 72ZD agreed.

Amendment 72A had been withdrawn from the Marshalled List.

Amendments 72B to 72G

Moved by ***Lord Callanan***

72B: Schedule 7, page 47, line 14, leave out paragraphs (a) and (b)

72C: Schedule 7, page 47, line 22, leave out “imposes, or otherwise”

72D: Schedule 7, page 47, line 24, at end insert “or”

72E: Schedule 7, page 47, line 25, leave out from “legislate” to end of line 26

72EA: Schedule 7, page 47, line 37, at end insert—

“Power to repeal provisions relating to retained EU law restrictions

7A_ A statutory instrument containing regulations under section 11(4B) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

72F: Schedule 7, page 47, line 40, leave out “paragraph 1 of”

72G: Schedule 7, page 47, line 40, leave out “falling within sub-paragraph (2)” and insert “which does not relate to altering the amount of a fee or charge to reflect changes in the value of money”

Amendments 72B to 72G agreed.

The Deputy Speaker (Baroness Fookes) (Con): If Amendment 72H is agreed to, I cannot call Amendment 73 by reason of pre-emption.

Amendment 72H

Moved by ***Lord Callanan***

72H: Schedule 7, page 47, line 43, leave out sub-paragraph (2)

Amendment 72H agreed.

Amendment 73 not moved.

Amendment 73A

Moved by ***Lord Callanan***

73A: Schedule 7, page 48, line 14, leave out from “under” to end of line 15 and insert “Schedule 4 which does not relate to altering the amount of a fee or charge to reflect changes in the value of money.”

Amendment 73A agreed.

Amendment 74

Moved by ***The Duke of Wellington***

74: Schedule 7, page 48, line 21, leave out paragraph 10 and insert—

“Power to appoint “exit day”

10_ A statutory instrument containing regulations under section 14 which appoint a day as exit day may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

Amendment 74 agreed.

Amendment 75 not moved.

Amendments 75A and 75B

Moved by ***Lord Callanan***

75A: Schedule 7, page 48, line 26, after “is” insert “(if a draft of the instrument has not been laid before, and approved by a resolution of, each House of Parliament)”

75B: Schedule 7, page 48, line 27, at end insert—

“(2) See paragraph 13 for restrictions on the choice of procedure under sub- paragraph (1).”

Amendments 75A and 75B agreed.

Amendment 76 not moved.

Amendment 77

Moved by ***Lord Lisvane***

77: Schedule 7, page 49, line 4, leave out paragraph 13

Lord Lisvane: My Lords, this amendment is consequential on Amendment 70, agreed by your Lordships a short time ago. I beg to move.

Amendment 77 agreed.

Amendments 77ZA to 77D not moved.

Amendments 77E to 77H

Moved by ***Lord Callanan***

77E: Schedule 7, page 49, line 35, at end insert—

"Committee of the National Assembly for Wales to sift certain regulations involving Welsh Ministers

13A_ Paragraph 3A applies to regulations under Part 3 of Schedule 2 as it applies to regulations under Part 1 of that Schedule but as if—

(a) the references to paragraph 1(9) were references to paragraph 1(9) as applied by paragraph 7(5),

(b) the reference to paragraph 4B were a reference to that paragraph as applied by paragraph 14(6A), and

(c) paragraph 3A(9) were omitted."

77F: Schedule 7, page 49, line 38, leave out ", 6(1)"

77G: Schedule 7, page 49, line 40, leave out "6(3),"

77H: Schedule 7, page 49, line 40, leave out "or 8(3)" and insert ", 8(3) or 11"

Amendments 77E to 77H agreed.

Amendment 78 not moved.

Amendments 78A to 78E

Moved by ***Lord Callanan***

78A: Schedule 7, page 50, line 9, leave out "one month" and insert "28 days"

78B: Schedule 7, page 50, line 13, leave out "one month" and insert "28 days"

78C: Schedule 7, page 50, line 21, at end insert—

"(6A) Paragraphs 4A to 4C apply to regulations under Part 3 of Schedule 2 as they apply to regulations under Part 1 of that Schedule but as if—

(a) the references to paragraphs 1(6), (7), (8), (9), (10) or (11) were references to those provisions as applied by paragraph 7(5),

(b) the reference in paragraph 4B(8) to paragraph 3A were a reference to that paragraph as applied by paragraph 13A, and

(c) paragraphs 4A(7), 4B(9) and 4C(7) were omitted."

78D: Schedule 7, page 50, line 22, leave out "6(3) or"

78E: Schedule 7, page 50, line 23, after "7(3)" insert "or 11"

Amendments 78A to 78E agreed.

Amendments 79 to 81 not moved.

Amendment 82

Moved by ***Lord Callanan***

82: Schedule 7, page 51, line 42, at end insert—

"Anticipatory exercise of powers in relation to retained EU law

18A_ Any power to make regulations under this Act which modify retained direct EU legislation, anything which is retained EU law by virtue of section 4 or any other retained EU law is capable of being exercised before exit day so that the regulations come into force on or after exit day."

Amendment 82 agreed.

Amendment 83 not moved.

Amendment 83A

Moved by ***Lord Low of Dalston***

83A: Schedule 7, page 52, line 16, leave out "section 7(1), 8 or 9" and insert "this Act"

Lord Low of Dalston: My Lords, I thought we would never get there. I shall speak also to Amendment 83E. These amendments have been drafted by the Equality and Human Rights Commission, and I should declare my interest as having just been appointed to the disability advisory committee of the EHRC. I have retabled these amendments to give full effect to the Government's commitment that current protections in the Equality Acts of 2006 and 2010 will be maintained once we leave the EU. As the Minister knows, I have concerns that powers in the Bill could be used to change fundamental rights currently protected by EU law.

Noble Lords who have followed this debate will know that the Government tabled an amendment in the Commons in response to calls for the Bill to include a commitment to ensure current protections in the Equality Acts of 2006 and 2010 will be maintained after Brexit. This is now enshrined in paragraph 22 of Schedule 7. However, as I have said before, this does not properly fulfil the Government's commitment to maintain current equality protections. Amendments 83A and 83E put this right by requiring a ministerial statement that secondary legislation made under the Bill does not reduce protections under equality legislation.

I take this opportunity to thank the noble and learned Lord, Lord Keen of Elie, for taking the time to meet the noble and learned Lord, Lord Wallace of Tankerness, and me to discuss our concerns about equality rights after we leave the European Union. Paragraph 22 of Schedule 7 does not fulfil the Government's commitment because it does not require a statement that current levels of protection will be maintained. It merely requires the Minister to explain whether and how equality legislation has been changed, and that due regard has been paid to the need to eliminate conduct prohibited by the Equality Act 2010. There is nothing to stop the Minister, having had due regard to this need, deciding to reduce protections anyway. The duty to have due regard is already a requirement under the public sector equality duty, and the Minister's statement will do no more than simply confirm that they have partially complied with an existing statutory duty.

The requirement focuses on the first duty in the public sector equality duty: to have regard to the need to eliminate discrimination. However, the public sector equality duty also includes other duties: to have regard to the need to advance equality of opportunity and to foster good relations. The focus on just one aspect of the PSED, rather than the whole, risks confusion about whether Ministers are obliged to fully comply with the whole public sector equality duty, as opposed to just this single limb of it. This must be rectified to ensure clarity and compliance with existing statutory duties.

9.30 pm

The requirement applies only to certain enabling powers in the Bill under Clauses 7(1), 8 or 9, but changes could be made—for example, under Clause 17(1)—without the need for any explanatory statement under the schedule. Amendments 83A and 83E address these shortcomings by requiring a Minister, when laying secondary legislation before Parliament under any enabling provision in the Act, to make a statement that it does not remove or diminish any protection provided by equality legislation.

I will address the Government's concerns in response to these amendments when they were debated in Committee. The Government suggested that requiring a statement that a new provision does not diminish protection may not be straightforward; for example, where protection for one group may conflict with that for another, raising complex issues. However, this just serves to highlight a point of central importance; namely, that delegated powers under the Bill should not be used to address such complex policy issues, which should be a matter for primary legislation and full parliamentary debate.

Furthermore, the amendment requires a Minister only to make a statement that they are satisfied that it does not remove any protection provided by equality legislation. This subjective statement does no more than place the Government's existing political commitment in the Bill. Despite the Government's assertion in an earlier debate that,

"the language of a political commitment does not translate to the statute book",—[*Official Report*, 23/4/18; cols. 1461-62.]

I suggest that a Minister should have no difficulty in certifying that a technical provision of the kind that delegated powers are intended to be used for does not diminish protections in equality legislation. Indeed, the Government's paper *Equalities Legislation and EU Exit* confirms:

"No planned changes to the Equality Acts 2006 and 2010 or secondary legislation under those Acts, using the powers under the EU (Withdrawal) Bill will substantively affect the statutory protections provided for by that equality legislation".

A number of other amendments which would restrict the use of delegated powers to change equality and human rights legislation were debated in Committee. Some of these were criticised by the Government on the grounds that they would not permit technical changes, such as changing references from "EU law" to "retained EU law", which would need to be made to equalities legislation. However, Amendments 83A and 83E do not prevent such changes. There would be no difficulty in the Minister making the required statement that technical changes do not remove or diminish protections. Given that the Government are satisfied that this is the case, it is difficult to understand why they would object to the amendment.

The Government also suggested that the requirement to make explanatory statements should not be extended to all the powers in the Bill because:

"These other powers will not be making the sorts of changes to which these statements are applicable".—[*Official Report*, 21/3/18; col. 265.]

However, as your Lordships' Constitution Committee has said of one of the powers under Clause 17(1):

"There are minimal restrictions on its use and the wide range of purposes for which it might be used are not clearly foreseeable … We recommend that the power to make 'consequential provisions' in clause 17 is removed".

Therefore, if such a power is to be retained, it is important that it should be subject to the greatest possible scrutiny, including the requirement for an explanatory statement under paragraph 22 of Schedule 7.

I welcome the decision of the House on 18 April to pass Amendment 11, in the name of the noble Baroness, Lady Hayter of Kentish Town, which requires an enhanced scrutiny procedure if delegated powers are to be used to make changes in a number of areas of law, including equality rights and protections. Amendments 83A and 83E, to which I am speaking tonight, are complementary and further strengthen the safeguards established by Amendment 11 in relation to equalities legislation.

I also welcome Amendment 83C, which has been tabled by the Government and would requires a ministerial statement before laying a statutory instrument under Sections 7(1), 8 or 9 to explain why there are good reasons for doing so and why the provision made by the instrument is a reasonable course of action. However, Amendment 83C does not replace the need for Amendments 83A and 83E, which would give effect to the Government's commitment that current protections in the Equality Acts of 2006 and 2010 will be maintained once we leave the EU, and to the recommendation of the Women and Equalities Select Committee that the Bill should explicitly commit,

"to maintaining the current levels of equalities protection".

These amendments are needed now, more than ever, owing to the Government's rejection of Amendment 30A, introduced by the noble and learned Lord, Lord Wallace of Tankerness, which I supported. That amendment would have included a principle of non-regression in relation to equality rights in the Bill. These rather more modest amendments also seek to ensure that the withdrawal of the UK from the EU does not diminish protections in equality legislation, by strengthening the terms of the ministerial statement required when exercising the delegated powers in the Bill. I remain concerned that delegated powers could be used to dilute the equality rights currently protected by EU law and, to prevent this, I commend Amendments 83A and 83E to the House.

The Deputy Speaker (Baroness Fookes) (Con): I should point out that if this amendment were to be agreed, I could not call Amendments 83AA to 83AC by reason of pre-emption.

Lord Wallace of Tankerness: My Lords, I support the amendments moved and spoken to by the noble Lord, Lord Low. He set out the case extensively as to why these amendments should be made. I also echo his thanks to the noble and learned Lord, Lord Keen of Elie, for discussing them with us in what I found to be a useful and constructive meeting.

The first point I wish to raise is in relation to Amendment 83A, which seeks to take out the reference to,

"section 7(1), 8 or 9",

and insert "this Act". Can the Minister clarify in responding whether the Government's Amendments 83AA, 83AB and 83AC will meet the purpose of that amendment? Our main concern had been that the original Bill, as it stood, put requirements on the Government with regard to what would have been Sections 7(1), 8 or 9—although Clause 8 has now been dropped from the Bill—but we were also concerned that Clause 17 had wide powers, to which the requirements under this part of Schedule 7 did not apply. It would appear that Amendment 83AB extends to Clause 17(1), which I think would go a long way, and Amendment 83AC to other parts in Schedule 2. I seek confirmation that that would now include all parts of the Bill when it becomes an Act, as in our amendment, which might be relevant to the requirements made under paragraph 22 of Schedule 7.

I make a further point in relation to Amendment 83E, which would require the Government—or the Minister in tabling regulations—to be,

"satisfied that it does not remove or diminish any protection provided by or under equalities legislation".

As the noble Lord, Lord Low, indicated, the origin of much of this is a report from the Women and Equalities Select Committee in the other place which recommended that the Bill should explicitly commit to maintaining current levels of equality protection. In response, the Government tabled amendments in the Commons, the effect of which is that the Minister has to make a statement that,

"so far as required to do so by equalities legislation",

the Minister had,

"had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010".

That merely repeated what was already a matter of law, so it did not take us much further. This amendment would require the Minister to make a much wider statement that the proposed regulation,

"does not remove or diminish any protection provided by or under equalities legislation".

I understand that that is the Government's intention. It is their politically declared intention, and this amendment makes that a requirement.

When we discussed this with the Minister we agreed that the fact that Ministers are required to make statements under Section 19(1)(a) of the Human Rights Act focuses ministerial minds on whether a provision is compliant with the European Convention on Human Rights. We are saying here that, in terms of equalities legislation, ministerial minds should be focused when regulations are being brought forward so there is no diminution in any protection that it provides. That does not mean that there is a deliberate intent by the Government to diminish equalities legislation but means that people have to think about equality protection in bringing forward regulations, check right through and make sure that what is being done lives up to commitments that have been made. I cannot see any reason why Governments should be afraid of or concerned about this amendment. It merely seeks to give effect to the commitment that has already been made.

As the noble Lord, Lord Low, indicated, when we debated my Amendment 30, one of the objections of the noble Lord, Lord Callanan, was that the word "protection" did not have any statutory basis and therefore was not appropriate. He was possibly not aware that the Legislative and Regulatory Reform Act 2006 provides as one of the preconditions for the exercise of delegated powers under that Act that a provision,

"does not remove any necessary protection",

so there is already a statutory basis for what we are proposing in this amendment, and therefore I support the amendment moved by the noble Lord, Lord Low.

Baroness Lister of Burtersett (Lab): My Lords, I am pleased to be able to speak in support of these amendments, to which I have added my name, especially as I was unable to speak in support of similar amendments in Committee because of another commitment. I am grateful to the noble Lord, Lord Low of Dalston, for his perseverance on this important issue. When I read the report of the Committee's proceedings, I was pleased to note the warm words from the Minister, including his acknowledgment that the amendment looks very much like stated government policy, although he qualified that by arguing that the language of political commitment does not necessarily lend itself to the equalities statute book.

I am sure that no one would quarrel with that as a general proposition, but the body charged by Parliament with advising the Government on the equality and human rights implications of proposed legislation has drafted this amendment carefully to guard against such a weakness. I repeat the point made by the noble and learned Lord, Lord Wallace of Tankerness—that in particular the Minister objected to the use of the term "protection", yet the EHRC points out that the term can be found in the Legislative and Regulatory Reform Act 2006 with regard to the use of delegated powers under that Act. It requires that a Minister must be satisfied that a provision,

"does not remove any necessary protection".

Does that sound familiar? I imagine that is why the EHRC drafted this amendment in those terms.

The Minister also promised to take away for further consideration the point about the scope of the public sector equality duty, raised by the noble Lord, Lord Low, and also mentioned earlier today. The Minister described it as a constructive suggestion in order to bring further clarity to these parts of the Bill. It was thus very disappointing not to find the government amendment that would have brought this clarity, and I trust the Minister will explain why. I hope he will respond in particular to the EHRC's injunction that:

"This must be rectified to ensure clarity and compliance with existing statutory duties",

as the noble Lord, Lord Low, quoted earlier.

9.45 pm

The Government also suggested, as we have heard, that the "due regard" duty transposed from Section 149(1)(a) of the Equality Act 2010 into what is now paragraph 22 of Schedule 7 to the Bill is sufficient to prevent changes that would reduce equality protection. As the EHRC has pointed out, though, this duty did not stop the coalition Government making changes that reduced equality protection as part of the so-called red tape challenge, including scrapping powers that would enable an employment tribunal, where an employer had lost a discrimination case, to make recommendations affecting that employer's wider workforce. Moreover, according to the Fawcett Society, if it had not been for an earlier EU Court of Justice ruling that damages for sex discrimination could not be limited, the red tape challenge's proposal to cap discrimination damages awards could have become law. The recent pledge by the International Trade Secretary to cut bureaucracy and red tape in order to promote free trade post Brexit can but increase our fears.

In Committee the noble Lord, Lord Duncan of Springbank, stated:

"It is important that we recognise that the rights we have cannot be undone. That must be the fundamental guidance".

Does that not reinforce the point that we need legislative certainty that they cannot be undone? Otherwise, such assurances, welcome as they are, are nothing more than words: they guarantee nothing for the future. If the Government are really so committed to the future protection of such rights, why not reassure all those groups who are very anxious at present by writing the commitment into the legislation?

The noble Lord also deployed a seagoing metaphor —prose, not poetry, unlike last week—in response to my amendment on keeping pace with EU developments in the area of family-friendly employment rights, gender equality and work/life balance for parents and carers. He recognised the unease that the Government would,

"take the first opportunity to cast these rights aside, to scrape the barnacles off the boat to allow the ship to move faster. I assure the Committee that they are integral parts of the engine of the ship and we shall not be discarding them".—[*Official Report*, 5/3/18; cols. 952-53.]

But what if at some future date the ship sails into exceedingly choppy waters and those who see such rights as red-tape barnacles—perhaps the International Trade Secretary—rather than as integral parts of the engine gain ascendancy and/or there is a change of captain? Surely those currently in charge of the ship should seek to protect the engine from such marauding by accepting these amendments, so that the ship is genuinely inequality-proof.

Lord Cashman (Lab): My Lords, I rise to speak very briefly, and I hope that in that respect I will be a safe harbour for your Lordships this evening. I have added my name to the amendments and I share the concerns expressed by noble Lords today in relation to equalities and human rights. Amendments 83A and 83E would protect against the use of delegated powers in the Bill —I have often expressed concern in that regard— to diminish protections in the Equality Acts 2006 and 2010. Equally, they would address shortcomings in an amendment introduced by the Government in another place.

The amendments relate only to the exercise of delegated powers. They would not set existing rights in stone or prevent Parliament legislating in future to amend laws by primary legislation—indeed, the preferred route when looking at issues such as equalities and rights. Rather, they would guard against the effective transfer of power from Parliament to the Executive by requiring substantive changes to fundamental rights such as equality rights to be made by primary legislation.

In the previous discussion on similar amendments, I urged my friend the Minister to clutch them to his chest but he disregarded my plea. Tonight, I commend these amendments to the House. As my noble friend Lady Lister of Burtersett, said, I had hoped that the Government would accept them but they have not. There are reassurances that NGOs and organisations such as the Equality and Human Rights Commission are still looking for. It is not too late to give those assurances and perhaps, if this is not the Government's preferred way, find another way to address these deep and real concerns.

Lord Adonis: My Lords, I strongly support the amendments, but I wish to ask about what I thought was a remarkable statement made by the Deputy Speaker after the previous Division. She announced that the result for the Contents in the Division on the single market amendment was out by two. The vote in the Contents in that Division was 247 rather than 245. I ask the Minister, in the interval before he replies to the debate, to explain to the House what happened. This is now the fourth Division on the EU withdrawal Bill where figures have been misreported to the House.

Lord Taylor of Holbeach (Con): Perhaps I may explain. There was an error in transmission between the votes presented by the tellers and the clerk's note handed to the noble Lord, Lord McAvoy, consequently. That was the reason. I am sure that the clerk would wish me to explain what had happened. I accept that there is always a slight problem because the votes we declare when we come forward are the votes that we have telled, but some votes are taken at the Table, and they appear separately on the total in front of the clerk and, in this case, unfortunately, they were missed. It made no difference to the result and the matter has now been corrected.

Lord Adonis: My Lords, perhaps I may comment a bit further, because I think there is a serious problem in the conduct of Divisions in the House when large numbers of Peers are voting. We have had only 14 or 15 Divisions on the EU withdrawal Bill, but this is the fourth amendment where the result of a Division has been misreported in the House. On three previous occasions, there was a difference in the tallies between the tellers and the clerks, which I think is a serious business. The majorities have been quite large, but if they had been small, we would not know what was the view of the House by the way that the Divisions have been conducted.

We have now had a serious misreporting of a vote. It takes an inordinate time for Divisions to be conducted because the procedures of the House were not conceived for the number of Members that we have but—more importantly, I think—because the new electronic system

[Lord Adonis]
of recording votes is very inefficient. I simply note this for the attention of the Clerk of the Parliaments, with whom I have now raised this twice. I should note that he has not replied to my last letter to him on the subject. I think this issue needs to be looked at by whichever is the appropriate body in the House responsible for the conduct of business.

Lord Elton (Con): My Lords, I may be under a misapprehension, but I thought that the Question before the House was whether or not to agree Amendment 83A.

Lord Dykes (CB): I follow the remarks of the noble Lord, Lord Cashman, and intervene briefly to thank the noble Lord, Lord Low, for Amendment 83A and the noble and learned Lord, Lord Wallace, for Amendment 83E, and both of them together for what they have said. I agree entirely with their remarks and thank the noble Lord, Lord Low, for his characteristically forensic analytical ability to go through all the points, with which I strongly agree, and the noble and learned Lord, Lord Wallace of Tankerness, for his remarks. This is an important matter, and, as the only speaker who is not a signatory to the amendments, I think it would be right if the Government gave a comprehensive answer. People are worried about the future of equalities legislation in this country. On the reference of the noble Lord, Lord Cashman, to the possibilities, there may be a case for primary legislation in future—a new, comprehensive Act—but that subject is separate from this amendment and debate.

Lord Goldsmith: My Lords, the amendments have been moved so powerfully and comprehensively by the noble Lord, Lord Low of Dalston, supported by the noble and learned Lord, Lord Wallace of Tankerness, and my noble friends Lady Lister of Burtersett and Lord Cashman that I do not want to spend much of the House's time commenting on them. I just want to make a few points. First, I congratulate the noble Lord, Lord Low of Dalston, on the new advisory role that he mentioned—or, perhaps even more, the Equality and Human Rights Commission for taking him in that advisory role. That will be very valuable for the commission.

Secondly, I very much support what the noble and learned Lord, Lord Wallace of Tankerness, said about the benefit of statements that Ministers have to make; that focuses their minds on what they are doing. I know from my own experience that that is a valuable example from the Human Rights Act, and I have no doubt that it will be very useful here.

Thirdly, on the point made by my noble friend Lord Cashman, we are talking not about preventing amendments being made to the level of protection, but preventing them being made through delegated legislation without considerably more care and scrutiny. That takes me to my final point. Amendment 11, which has already been referred to, moved by my noble friend Lady Hayter of Kentish Town, will be doing exactly that. It is a very important amendment that was accepted in your Lordships' House. It will be one of the ways in which the very important continuing protection for equality may be maintained.

I support the amendment and look forward to hearing what the Minister says in opposition.

Lord Callanan: My Lords, I am grateful to the noble Lord, Lord Low, for his time and consideration on the important issue of how we maintain our equality protections as and after we leave the EU. I appreciate the discussions on this topic that he has had with the Bill officials and my ministerial colleagues. Before addressing the noble Lord's Amendments 83A and 83E, the Government have reflected on our conversations with him, and today tabled amendments that will extend the statements regarding the Equality Act under Schedule 7 to SIs made under the consequential power in Clause 17(1).

This and other amendments we debated in Committee have sought to reflect in statute the political commitment that the Government have already made in this area—we will maintain the existing protections in and under the Equality Acts 2006 and 2010 after our exit from the EU. Following requests for assurances on this point in the debate in the other place, we tabled an amendment that will secure transparency in this area by requiring ministerial Statements about the amendment made to the Equality Acts by every piece of secondary legislation made under key delegated powers in this Bill.

The statements will, in effect, flag up any amendments made to the Equality Acts, and secondary legislation made under those Acts, while ensuring that Ministers confirm in developing their draft legislation that they have had due regard for the need to eliminate discrimination and other conduct prohibited under the 2010 Act.

As previously stated, the language of a political commitment does not translate to the statute book. So while our commitment to existing equality protections works perfectly well politically, and indeed in the wider world outside this place, these terms do not and could not have a sufficiently clear and precise meaning for the purposes of statute. These statements as tabled in the other place—

Lord Wallace of Tankerness: The Minister is repeating what he said in response to my Amendment 30. It was pointed out by me and the noble Baroness, Lady Lister, that the word "protection" has a statutory basis in the 2006 legislation.

Lord Callanan: I heard the point that the noble and learned Lord makes, but we are talking about the statements generally.

These statements, as tabled in the other place, applied only to Clauses 7(1), 8 and 9. The Government did not include other powers in this Bill because they are much more tightly constrained than those powers, and their exercise should not give rise to any amendments to the Equality Acts or any harassment, discrimination or other conduct prohibited under the Equality Act 2010. However, we have, as I said, reflected on this, and held discussions with the noble Lord, and we are happy to extend these statements to the consequential power in Clause 17(1). I hope that this will satisfy the noble Lord and that it will enable him to withdraw his amendment. However, this is not a matter on which we will be reflecting further before Third Reading. If he wishes to test the opinion of the House, he should do so now.

Lord Low of Dalston: My Lords, I am grateful to the Minister for his reply and to all those who have spoken—my co-signatories to the amendment and also the noble Lord, Lord Dykes, and the noble and learned Lord, Lord Goldsmith, to whom I am very grateful for his remarks. I should say that the advisory committee was making six appointments, so perhaps it was not as difficult as it sometimes is to be appointed. I should also say that it is a very strong line-up of other people who have been appointed, so it will be a privilege to serve among them. I particularly want to draw attention to the outstanding qualities of the others who have been appointed; it is not just me.

10 pm

I am grateful for the support for the amendments that I tabled, which has come not just from the signatories but from the noble Lord, Lord Dykes, and from the Opposition. I am grateful for the government amendment, which has extended the sections covered not just to Sections 7(1) and 9, Section 8 having gone, but to Section 17(1). I express appreciation for that, but I am a bit disappointed that the Minister has not really taken on board what is perhaps the main thrust of our amendments—to strengthen ministerial statements so as to more fully and effectively implement the Government's commitment to maintain equality protections in the legislation.

Our amendments were not seeking to do anything more or less than effectively enshrine the Government's commitment in the Bill; there is no difference in substance between us and the Government. Our difference is simply over whether the Government have effectively enshrined their commitment to maintain equality protections in the Bill—and I think that I and other speakers have shown that the Government have not done this as effectively as they might. They keep parroting the mantra that a political commitment does not translate into legislation—but that is rubbish. Of course it does not translate into legislation if you do not translate it properly and do not frame legislation so as to incorporate the political commitment—but there is no problem about translating a political commitment. Most legislation is a political commitment, after all; there is no problem about translating it into legislation if you only do it properly, and it is our contention that the Government have not gone about it as effectively as they might. There is no difference between us as to the commitment; the difference is simply that they have not gone about translating the commitment into legislation as effectively as they might. They have gone some of the way, following the call from the Women and Equalities Select Committee, but we have shown them by these amendments how they could do it better, and I am rather disappointed that they have not taken that point on board.

However, we have made the point as fully and effectively as we can and, at this stage, I do not wish to try the patience of the House by calling a Division, so I beg leave to withdraw the amendment.

Amendment 83A withdrawn.

Amendments 83AA to 83B

Moved by ***Lord Callanan***

83AA: Schedule 7, page 52, line 16, leave out ", 8"

83AB: Schedule 7, page 52, line 16, leave out "or 9" and insert ", 9 or 17(1)"

83AC: Schedule 7, page 52, line 16, after "9" insert "or paragraph 1(2) or 21(2) of Schedule 2"

83B: Schedule 7, page 52, line 17, leave out "or before the House of Commons only"

Amendments 83AA to 83B agreed.

Amendment 83C

Moved by ***Baroness Goldie***

83C: Schedule 7, page 52, line 20, at end insert—

"(2A) Before the instrument or draft is laid, the relevant Minister must make a statement as to why, in the Minister's opinion—

(a) there are good reasons for the instrument or draft, and

(b) the provision made by the instrument or draft is a reasonable course of action."

Baroness Goldie: My Lords, the statutory instruments to come under this Bill are the means to a unique end—correcting our statute book and properly incorporating an entire new body of law into our domestic legal order. I hope that the group of amendments I now have the pleasure of introducing is a demonstration of the Government's commitment to transparency before Parliament. This transparency will enable Parliament to subject the Executive to the scrutiny that is only right and proper when we bring before your Lordships proposals for delegated legislation. A key part of this transparency offer is the array of statements which we are committing in statute will accompany each of the SIs and be published alongside them in their explanatory memoranda.

Before addressing each of the amendments in this group in turn, I wish to put on record the answer to some questions which noble Lords have raised regarding the provision at sub-paragraph (6) of paragraph 22 of Schedule 7. This provision does not circumvent the obligation to make any of the statements in paragraph 22. Rather it is an additional requirement, meant to create a further obligation to Parliament that if, for example, there has been some administrative error in publishing a statement, Ministers must provide an explanation to Parliament for their failure, in addition to providing the original statement.

Amendment 83D in the name of the noble Baroness, Lady Taylor, and the noble and learned Lord, Lord Judge, in common with Amendment 11, accepted two weeks ago by the House, introduces a distinction into the Bill which the Government cannot accept. This is a Bill to make, in common parlance, largely technical changes; substantial policy will be brought forward elsewhere. However, the distinction between technical changes and policy decisions is not one that could ever be defined in statute. Even the most technical of changes could constitute a policy decision, including

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as to whether to make the change at all. Nor, even if the noble Lords were to accept that point, can any clear line be drawn between technical policy, minor policy or substantial policy changes.

This amendment would require each Minister making an SI to make a declaration which depends entirely on where one is sitting—the prism through which one would see the amendment. For example, to the fishing community in Lerwick, the rules on the make and size of nets are certainly a matter of policy in which it takes an interest, while packaged retail investment product customer information requirements are most certainly a technical matter. I hazard that the asset manager in Kensington might feel a little differently. This amendment risks saying that either everything is technical, or nothing is technical. I hope all sides of the House will agree that neither of these positions is true. This is a Bill to make largely technical changes: that is our policy choice. As I am afraid that the two cannot be cleft asunder, I must ask the noble Baroness and noble and learned Lord not to press their amendment.

Government Amendment 83C and its consequentials 83H and 83J ensure that, where a Minister makes regulations under Clauses 7(1), 9 or 17(1), a statement must be made as to why there are good reasons for the instrument, and the provision made is a reasonable course of action. This is in line with the Constitution Committee's recommendation in its ninth report and is, I trust, further evidence of the Government's willingness to give due consideration to all amendments which do not undermine the fundamental operation of the Bill. I hope noble Lords will indulge me as I once again quote the Constitution Committee in support of the proposal. Such an amendment, it said, would:

"require explanations to be given for the use of the power which can be scrutinised by Parliament. It will also provide a meaningful benchmark against which use of the power may be tested judicially".

The committee continued:

"In this way, the Government can secure the flexible delegated powers it requires, while Parliament will have a proper explanation and justification of their use that it can scrutinise".

Of course, I cannot put forward these amendments without making reference to the "appropriate versus necessary" debate, which these government amendments were clearly a response to. This House came to a decision on that question which the Government are disappointed with. Nevertheless, I would still commend these amendments to the House in an effort to increase transparency by some considerable measure.

Government Amendment 83F is in a similar vein, and would require Ministers to make a statement as to the purpose of an SI before it is laid. The Government have reflected carefully on the concerns raised within this House that the intention behind a modification to retained EU law might not always be clear. Such concerns were particularly focused on how modified retained EU law may be interpreted in light of Clause 5(3), and whether a modification to retained EU law is to be subject to the principle of supremacy of EU law. These concerns have also been raised in relation to Clause 6(6) and whether an item of retained EU law which is modified after exit day is still to be interpreted in accordance with retained case law.

As was discussed in Committee, we expect in many, if not most, cases that it will be evident from the modification and the context whether the modification is intended, for example, to continue to benefit from the principle of supremacy, and whether modified retained EU law is intended to be interpreted by reference to retained case law. There is no getting away from the point that, ultimately, where such issues arise, they would need to be resolved by the courts on a case-by-case basis.

However, to ensure that there is the maximum clarity and transparency as the SIs are scrutinised and made, we have tabled Amendment 83F, which requires a Minister to make an explanatory statement about the purpose of the instrument, alongside the other explanations required in the same paragraph, including about the relevant pre-exit law and the effect of the instrument, if any, on retained EU law. The Government believe that this approach strikes the right balance by requiring Ministers to provide transparency on this point to Parliament and the courts without risking adversely fettering the discretion of our courts in terms of how SIs and modifications to retained EU law are interpreted. I hope, therefore, that this amendment can be supported across this House.

Noble Lords will all no doubt be aware of Amendment 83G, tabled by the Government, which would require a Minister to make a statement when exercising the powers to create a criminal offence. The statement will need to explain why, in the relevant Minister's opinion, there are good reasons for creating the offence and for the penalty provided in respect of it. The statement will be made in writing by a Minister before the instrument is laid and will then be published, usually in the Explanatory Memorandum, to inform the deliberations of the committees and the House.

We previously touched on this amendment during debate on Clause 7, when we said that we would discuss what form this statement would take. This is still ongoing, although we will update the House as and when any decision is made on the matter. This amendment comes following the recognition of growing concerns in the House regarding the use of the powers to create a criminal offence. The Government's plans for creating an offence will now be even more transparent to Parliament, and our reasoning will have to be clear and justified. This will ensure that the committees will have all the relevant information necessary at their disposal to make sound decisions when considering these important instruments. I hope, and am sure, that the House will welcome this.

I thank your Lordships for bearing with me. These are important issues and we thought it important that the House should understand the reasoning behind the Government's approach to these matters. The Government's amendments here provide for a material increase in the transparency of the exercise of the powers in the Bill. No one should underestimate how seriously these obligations are being taken by Ministers and officials. They have been designed specifically to address the concerns expressed in Parliament, and the Government intend to meet our end of the bargain in enabling effective scrutiny of the legislation we propose. I beg to move.

Lord Beith (LD): My Lords, I welcome Amendment 83C but will refer to Amendment 83D, to which the Minister devoted considerable attention. Amendment 83C goes some way to meet the concerns of the Constitution Committee, indicated by the tabling of Amendment 83D, even though the committee's amendment is expressed in different terms. I will refer to that difference initially. The noble Baroness spoke at length about it, and it is a sore point with the Government. They do not want there to be any possibility of being accused of making big policy choices by delegated legislation, and indeed they ought not to do so. The Constitution Committee's purpose in drafting its amendment was to ensure that delegated legislation is used to make technical changes which are necessary to ensure that retained EU law functions after exit day, and not to make policy choices.

I recognise that there are some cases where a technical change does in fact represent a policy choice—for example, the question of which body should handle this matter in the UK might be seen as a policy choice—but it would be no bad thing for Ministers' attention to be focused on the need to police that boundary, so far as there is a boundary, between what provisions of EU law it is necessary to put on to our statute book in functioning form and what represents a policy change. That is what the House is anxious about.

10.15 pm

If Ministers do not address that issue in their statements under Amendment 83C, it will be taken up by the House, because there will be concern in all parts of the House if wider policy changes are made. Therefore, I am not unduly worried and am not anxious to press the amendment which found favour with the committee; rather, I am concerned to ensure that Ministers are reminded that this distinction is important, even if it does not come formally into the statute.

Also in this group, however, as the noble Baroness reminded us, is Amendment 83G, which relates to the creation of criminal offences. My colleagues on the Constitution Committee are deeply hostile to the use of delegated legislation to create criminal offences. It is quite hard to envisage circumstances in which that can be justified, and the government amendment is an attempt to address the concerns of the House on this point by providing that that too will be the subject of specific explanation. If I were to try to imagine a circumstance, it might be one in which what was a criminal offence in EU law would not be a criminal offence unless we created a new law to do it. I would still rather see that done by primary legislation but I note that the Government are trying to ensure that there are at least explanations for it. If the Government are leaving that open and are still discussing what form of words will best meet that point, presumably that matter must be referred to at Third Reading. Certainly I do not intend, and do not think that my colleagues on the Constitution Committee intend, to press Amendment 83D.

Lord Goldsmith: My Lords, it is a pleasure to follow the noble Lord, Lord Beith. The Government have moved on this, and that is to be recognised and appreciated, but they could have moved further, as the noble Lord, Lord Beith, has made very clear. It is slightly paradoxical that, as he says, the Government's concern not to appear to be making policy changes prevents them adopting an amendment which makes it clear that what the instrument is to do is not to make a policy change. Be that as it may, although I find it hard to believe that the Government and their advisers could not have come up with a form of words that indicated the technical nature of the change being made while not falling into the trap of appearing to make policy changes, we would not prevent that amendment being agreed.

I want to underline three points which I invite the Minister to comment on. First, the way that these Ministers' statements are described makes it clear that it is the statement of the Minister that is required. She spoke on at least one occasion about the Government's view that something should be done, and no doubt the Minister would not do something if it were not the Government's view. However, it is an important and critical part of the statement obligations that the Minister in question should apply his or her mind to the issue. That is the point that the noble and learned Lord, Lord Wallace of Tankerness, rightly made in the earlier debate. Therefore, I would be grateful for her confirmation that it will be understood that, where Ministers are to make such a statement, they have a personal responsibility to be satisfied. That is the whole point of including those words—so that the House or another place has the confidence and assurance that the Minister has focused on the issue and determined that the conditions are satisfied.

The second point I want to underline is that acceptance of these amendments does not in any way undermine the importance of the amendments that the House has already agreed in relation to the "appropriate" and "necessary" distinction. That requirement will remain, and the fact that the Minister's statement may be expressed in different terms does not undermine it in any way. It will still be necessary—to use that word—for the necessity condition to be satisfied. I would be grateful for the noble Baroness's confirmation of that.

My third point is that I, like the noble Lord, Lord Beith, am intrigued by the reference to the Government still considering the wording to be used for the creation of criminal offences. We look forward to seeing what they say. It sounds like it will be coming back at Third Reading, and on that I would welcome the Minister's confirmation. In any event, in doing that, and as the Government consider their words, the House might expect the Minister's statement to explain not just that there are good reasons for creating the offence but why there are good reasons for creating it in this way. Of course, as the noble Lord, Lord Beith, has said, there is no reason not to create criminal offences by primary legislation; our concern has been creating them by delegated legislation. The House will need to be satisfied that that is an appropriate thing to do in a given case. I look forward to hearing the response to those points.

Baroness Goldie: I now look forward to giving that response. I thank the noble and learned Lord for his comments. On his first point, which is fairly legitimate, he will be acutely aware that Ministers have not just a personal but a political responsibility. They are, in the

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office of being a Minister, responsible for having made the statement. That, I think, imputes to the Minister both a political and a personal responsibility. Governments of all colours act in good faith and the Ministers involved act in good faith. I think this House will be satisfied that Ministers of whatever political hue acting under these powers will genuinely have a personal focus on what is being discussed—I think "focus" was the word used by the noble and learned Lord.

The statement must both make the original statement and give an explanation of the delay in having brought the statement forward. I have tried to make that clear in my remarks: this is not an alternative responsibility but a complementary responsibility; the two things will apply. A Minister cannot shoal off one of them and offer the other. Both responsibilities will apply.

The final point was that, when creating an offence, the noble and learned Lord thought it was appropriate to justify not just why the offence was being created but why it was being created in this way. Again, that is ex facie. Part of the impact of the responsibilities of the Minister under the Bill, if so amended, is that they can expect to be questioned closely. Indeed, given the now very robust scrutiny procedures that are in place, Ministers will expect to be questioned closely not only as to why they are creating the offence, but why they are doing so in this way. That is implicit in the structure within which Ministers are now being asked to operate. I hope that to some extent answers the noble and learned Lord's points.

Lord Beith: Before the noble Baroness sits down, I assume that she is going to answer the questions I put to her, not least about Third Reading but also about the importance of Ministers recognising that the inclusion of policy choices is something we would prefer not to see in delegated legislation.

Baroness Goldie: I am sorry. I did not have a detailed note about the point raised by the noble Lord, so may I undertake to write to him?

Lord Beith: I am sorry to press the noble Baroness, who is normally so helpful, but she has not clarified what she said about the Government reconsidering the wording in relation to criminal offences. It seems to me that, if the Government are reconsidering the wording, then we have to come back to that at Third Reading.

Baroness Goldie: We are not reconsidering. We are simply considering the appropriate text. The general point has been made clear by the Government: that they will not want to retract what is already their policy position. They will simply undertake to inform the House when a form of words has been adjusted.

Lord Newby: Is the Minister saying that the Government have no intention to come back on this issue at Third Reading?

Baroness Goldie: Indeed. That is the case.

Amendment 83C agreed.

Amendments 83D and 83E not moved.

Amendments 83F to 83KA

Moved by ***Lord Callanan***

83F: Schedule 7, page 52, line 35, leave out "the reasons for it" and insert "its purpose"

83G: Schedule 7, page 52, line 37, at end insert—

"( ) Where an instrument or draft creates a criminal offence, the statement required by sub-paragraph (2A) must (among other things) include an explanation of why, in the relevant Minister's opinion, there are good reasons for creating the offence and for the penalty provided in respect of it."

83H: Schedule 7, page 52, line 39, after "(2)," insert "(2A),"

83J: Schedule 7, page 53, line 1, after "(2)," insert "(2A),"

83K: Schedule 7, page 53, line 10, leave out "or before the House of Commons only"

83KA: Schedule 7, page 53, line 16, at end insert—

"22ZA(1) This paragraph applies where—

(a) a Scottish statutory instrument containing regulations under Part 1 or 3 of Schedule 2 , or

(b) a draft of such an instrument,

is to be laid before the Scottish Parliament.

(2) Before the instrument or draft is laid, the Scottish Ministers must make a statement to the effect that in the Scottish Ministers' opinion the instrument or draft does no more than is appropriate.

(3) Before the instrument or draft is laid, the Scottish Ministers must make a statement as to why, in the Scottish Ministers' opinion—

(a) there are good reasons for the instrument or draft, and

(b) the provision made by the instrument or draft is a reasonable course of action.

(4) Before the instrument or draft is laid, the Scottish Ministers must make a statement—

(a) as to whether the instrument or draft amends, repeals or revokes any provision of equalities legislation, and

(b) if it does, explaining the effect of each such amendment, repeal or revocation.

(5) Before the instrument or draft is laid, the Scottish Ministers must make a statement to the effect that, in relation to the instrument or draft, the Scottish Ministers have, so far as required to do so by equalities legislation, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.

(6) Before the instrument or draft is laid, the Scottish Ministers must make a statement otherwise explaining—

(a) the instrument or draft,

(b) its purpose,

(c) the law before exit day which is relevant to it, and

(d) its effect (if any) on retained EU law.

(7) Where an instrument or draft creates a criminal offence, the statement required by sub-paragraph (3) must (among other things) include an explanation of why, in the Scottish Ministers' opinion, there are good reasons for creating the offence and for the penalty provided in respect of it.

(8) If the Scottish Ministers fail to make a statement required by sub-paragraph (2), (3), (4), (5) or (6) before the instrument or draft is laid, the Scottish Ministers must make a statement explaining why they have failed to do so.

(9) A statement under sub-paragraph (2), (3), (4), (5), (6) or (8) must be made in writing and be published in such manner as the Scottish Ministers consider appropriate.

(10) In this paragraph "equalities legislation" means the Equality Act 2006, the Equality Act 2010 or any subordinate legislation made under either of those Acts."

Amendments 83F to 83KA agreed.

Amendment 83L

*Moved by **Lord Callanan***

83L: Schedule 7, page 53, line 16, at end insert—

"Further explanatory statements in certain sub-delegation cases

22A(1) This paragraph applies where—

(a) a statutory instrument containing regulations under section 7(1) or 9 or paragraph 1 of Schedule 4 which create a relevant sub-delegated power, or

(b) a draft of such an instrument,

is to be laid before each House of Parliament.

(2) Before the instrument or draft is laid, the relevant Minister must make a statement explaining why it is appropriate to create a relevant sub-delegated power.

(3) If the relevant Minister fails to make a statement required by sub-paragraph (2) before the instrument or draft is laid, a Minister of the Crown must make a statement explaining why the relevant Minister has failed to do so.

(4) A statement under sub-paragraph (2) or (3) must be made in writing and be published in such manner as the Minister making it considers appropriate.

(5) Sub-paragraphs (8) and (9) of paragraph 22 apply for the purposes of this paragraph as they apply for the purposes of that paragraph.

(6) For the purposes of this paragraph references to creating a relevant sub-delegated power include (among other things) references to—

(a) amending a power to legislate which is exercisable by statutory instrument by a relevant UK authority so that it becomes a relevant sub-delegated power, or

(b) providing for any function of an EU entity or public authority in a member State of making an instrument of a legislative character to be exercisable instead as a relevant sub-delegated power by a public authority in the United Kingdom.

(7) In this paragraph—

"the relevant Minister" means the Minister of the Crown who makes, or is to make, the instrument;

"relevant sub-delegated power" means a power to legislate which—

(a) is not exercisable by any of the following—

(i) statutory instrument,

(ii) Scottish statutory instrument, or

(iii) statutory rule, or

(b) is so exercisable by a public authority other than a relevant UK authority;

"relevant UK authority" means a Minister of the Crown, a member of the Scottish Government, the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Government or a Northern Ireland devolved authority."

Lord Callanan: My Lords, throughout debates on this Bill we have been discussing the role of this Parliament in approving legislation. This arose in relation to the scrutiny of the powers in this Bill, and the Government have moved significantly to ensure greater transparency and scrutiny of the powers in the Bill—even if our efforts are not always appreciated by the noble Lord, Lord Adonis.

It also arose in relation to any sub-delegated legislative or quasi-legislative powers that might be exercised by Ministers, or devolved Ministers not directly accountable to this Parliament or the devolved legislatures. The Government are therefore tabling these amendments, which provide that Ministers must make written statements explaining the appropriateness of any relevant sub-delegation. These statements will be published alongside any SI creating a legislative power that is not to be exercised by Ministers by statutory instrument or devolved equivalent. I hope that noble Lords will agree that this will ensure that the House is provided with all the information required to forensically scrutinise any SIs providing for such sub-delegation.

To ensure that, once delegated, the exercise of such powers remains transparent, we have also required that a report on the exercise of each power should be laid before Parliament each year. I expect that relevant departmental Select Committees and committees of this House will take a close interest in these reports and use them as a basis to scrutinise and challenge both the bodies exercising these powers and sponsoring Ministers if Members of the other place or noble Lords are displeased by the way these powers are being used in practice.

I have stressed before why the Government think such sub-delegation can be appropriate. I shall try not to repeat myself too much, but Parliament has already granted legislative or quasi-legislative powers to a number of public authorities where this has previously been thought to be appropriate. In line with the Bill's aim to provide continuity, Parliament should have the option of approving authorities such as the financial regulators or the Office of Gas and Electricity Markets to make binding rules and codes in their respective areas. I mention these examples because I hope they demonstrate the very technical areas where this has been done previously.

I also draw noble Lords' attention to the draft SI published by DExEU and Her Majesty's Treasury, which demonstrates how the Treasury might sub-delegate legislative functions to the financial regulators. My ministerial colleagues have discussed this with a number of noble Lords and, I hope, demonstrated that the Government's approach here is an appropriate allocation of responsibilities that respects the existing framework set by Parliament, ensures democratic accountability for framework legislation that sets the direction of policy, and fits with the existing responsibilities of the regulators. In this case we will also be placing on top of this the provisions of these amendments.

The Government feel that this proposal balances the informed scrutiny by Parliament and Parliament's ongoing monitoring of the exercise of legislative powers against the appropriate sub-delegation of some responsibilities. I beg to move.

Lord Goldsmith: My Lords, the Government have come forward with, in effect, some concessions in this area so as to give added safeguards to Members of this House that these powers will be used responsibly.

I know that the Minister recognises how concerned Members of the House are about the way that legislative power may be exercised other than through the full parliamentary process, or sub-delegated to others. That is why it is very important that the statements that it is proposed will have to be made are carefully considered. I will not repeat what I said in previous debates about the importance of ministerial responsibility for them, but the Minister has said that the House and another place will want to scrutinise very carefully both the statements that are made and the reports that are proposed to see how this is going. I therefore appreciate the changes being made by the Government and will be happy to see them go through.

Amendment 83L agreed.

10.30 pm

Amendments 83LA to 83Q
Moved by ***Lord Callanan***

83LA: Schedule 7, page 53, line 16, at end insert—

"22AA(1) This paragraph applies where—

(a) a Scottish statutory instrument containing regulations under Part 1 or 3 of Schedule 2 or paragraph 1 of Schedule 4 which create a relevant sub-delegated power, or

(b) a draft of such an instrument,

is to be laid before the Scottish Parliament.

(2) Before the instrument or draft is laid, the Scottish Ministers must make a statement explaining why it is appropriate to create a relevant sub-delegated power.

(3) If the Scottish Ministers fail to make a statement required by sub-paragraph (2) before the instrument or draft is laid, the Scottish Ministers must make a statement explaining why they have failed to do so.

(4) A statement under sub-paragraph (2) or (3) must be made in writing and be published in such manner as the Scottish Ministers consider appropriate.

(5) For the purposes of this paragraph references to creating a relevant sub- delegated power include (among other things) references to—

(a) amending a power to legislate which is exercisable by Scottish statutory instrument by a member of the Scottish Government so that it becomes a relevant sub-delegated power, or

(b) providing for any function of an EU entity or public authority in a member State of making an instrument of a legislative character to be exercisable instead as a relevant sub-delegated power by a public authority in the United Kingdom.

(6) In this paragraph "relevant sub-delegated power" means a power to legislate which—

(a) is not exercisable by Scottish statutory instrument, or

(b) is so exercisable by a public authority other than a member of the Scottish Government."

83M: Schedule 7, page 53, line 16, at end insert—

"Annual reports in certain sub-delegation cases

22B(1) Each person by whom a relevant sub-delegated power is exercisable by virtue of regulations made by a Minister of the Crown under section 7(1) or 9 or paragraph 1 of Schedule 4 must—

(a) if the power has been exercised during a relevant year, and

(b) as soon as practicable after the end of the year,

prepare a report on how the power has been exercised during the year.

(2) The person must—

(a) lay the report before each House of Parliament, and

(b) once laid—

(i) provide a copy of it to a Minister of the Crown, and

(ii) publish it in such manner as the person considers appropriate.

(3) In this paragraph—

"relevant sub-delegated power" has the same meaning as in paragraph 22A;

"relevant year" means—

(a) in the case of a person who prepares an annual report, the year by reference to which the report is prepared, and

(b) in any other case, the calendar year."

83MA: Schedule 7, page 53, line 16, at end insert—

"22BA(1) Each person by whom a relevant sub-delegated power is exercisable by virtue of regulations made by the Scottish Ministers by Scottish statutory instrument under Part 1 or 3 of Schedule 2 or paragraph 1 of Schedule 4 must—

(a) if the power has been exercised during a relevant year, and

(b) as soon as practicable after the end of the year,

prepare a report on how the power has been exercised during the year.

(2) The person must—

(a) lay the report before the Scottish Parliament, and

(b) once laid—

(i) send a copy of it to the Scottish Ministers, and

(ii) publish it in such manner as the person considers appropriate.

(3) In this paragraph—

"relevant sub-delegated power" has the same meaning as in paragraph 22AA;

"relevant year" means—

(a) in the case of a person who prepares an annual report, the year by reference to which the report is prepared, and

(b) in any other case, the calendar year."

83N: Schedule 7, page 53, line 16, at end insert—

"Further explanatory statements in urgency cases

22C(1) This paragraph applies where a statutory instrument containing regulations under this Act is to be made by virtue of paragraph 4(2) or 14(2).

(2) The Minister of the Crown who is to make the instrument must make a statement in writing explaining the reasons for the Minister's opinion that, by reason of urgency, it is necessary to make the regulations without a draft of the instrument containing them being laid before, and approved by a resolution of, each House of Parliament.

(3) A statement under sub-paragraph (2) must be published before, or at the same time as, the instrument as made is laid before each House of Parliament.

(4) If the Minister—

(a) fails to make the statement required by sub-paragraph (2) before the instrument is made, or

(b) fails to publish it as required by sub-paragraph (3),

a Minister of the Crown must make a statement explaining the failure.

(5) A statement under sub-paragraph (4) must be made in writing and be published in such manner as the Minister making it considers appropriate.

(6) For the purposes of this paragraph, where an instrument is laid before each House of Parliament on different days, the earlier day is to be taken as the day on which it is laid before both Houses."

83P: Schedule 7, page 53, line 16, at end insert—

"22D(1) This paragraph applies where regulations are to be made by the Scottish Ministers under this Act by virtue of paragraph 4A(2) (whether or not as applied by paragraph 14(6A)).

(2) The Scottish Ministers must make a statement in writing explaining the reasons for the Scottish Ministers' opinion that, by reason of urgency, it is necessary to make the regulations without them being subject to the affirmative procedure.

(3) A statement under sub-paragraph (2) must be published before, or at the same time as, the regulations as made are laid before the Scottish Parliament.

(4) If the Scottish Ministers—

(a) fail to make the statement required by sub-paragraph (2) before the regulations are made, or

(b) fail to publish it as required by sub-paragraph (3),

they must make a statement explaining the failure.

(5) A statement under sub-paragraph (4) must be made in writing and be published in such manner as the Scottish Ministers consider appropriate."

83Q: Schedule 7, page 53, line 23, leave out paragraph 24 and insert—

"24(1) A power to make regulations which, under this Schedule, is capable of being exercised subject to different procedures may (in spite of section 14 of the Interpretation Act 1978) be exercised, when revoking, amending or re-enacting an instrument made under the power, subject to a different procedure from the procedure to which the instrument was subject.

(2) For the purposes of sub-paragraph (1) in its application to regulations under section 17(5) no procedure is also a procedure."

Amendments 83LA to 83Q agreed.

Amendment 84 not moved.

Schedule 8: Consequential, transitional, transitory and saving provision

Amendments 111 to 112BB

Moved by ***Lord Callanan***

111: Schedule 8, page 55, line 33, leave out paragraph 3 and insert—

"3A(1) Any power to make, confirm or approve subordinate legislation which—

(a) was conferred before the day on which this Act is passed, and

(b) is capable of being exercised to amend or repeal (or, as the case may be, result in the amendment or repeal of) an enactment contained in primary legislation,

is to be read, so far as the context permits or requires, as being capable of being exercised to modify (or, as the case may be, result in the modification of) any retained direct EU legislation or anything which is retained EU law by virtue of section 4.

(2) But sub-paragraph (1) does not apply if the power to make, confirm or approve subordinate legislation is only capable of being exercised to amend or repeal (or, as the case may be, result in the amendment or repeal of) an enactment contained in Northern Ireland legislation which is an Order in Council.

3B_(1) Any subordinate legislation which—

(a) is, or is to be, made, confirmed or approved by virtue of paragraph 3A, and

(b) amends or revokes any retained direct principal EU legislation,

is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to that legislation if it were amending or repealing an enactment contained in primary legislation.

(2) Any subordinate legislation which—

(a) is, or is to be, made, confirmed or approved by virtue of paragraph 3A, and

(b) either—

(i) modifies (otherwise than as a connected modification and otherwise than by way of amending or revoking it) any retained direct principal EU legislation, or

(ii) modifies (otherwise than as a connected modification) anything which is retained EU law by virtue of section 4 ,

is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to that legislation if it were amending or repealing an enactment contained in primary legislation.

(3) Any subordinate legislation which—

(a) is, or is to be, made, confirmed or approved by virtue of paragraph 3A, and

(b) amends or revokes any retained direct minor EU legislation,

is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to that legislation if it were amending or revoking an enactment contained in subordinate legislation made under a different power.

(4) Any subordinate legislation which—

(a) is, or is to be, made, confirmed or approved by virtue of paragraph 3A, and

(b) modifies (otherwise than as a connected modification and otherwise than by way of amending or revoking it) any retained direct minor EU legislation,

is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to that legislation if it were amending or revoking an enactment contained in subordinate legislation made under a different power.

(5) Any subordinate legislation which—

(a) is, or is to be, made, confirmed or approved by virtue of paragraph 3A, and

(b) modifies as a connected modification any retained direct EU legislation or anything which is retained EU law by virtue of section 4,

is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to the modification to which it is connected.

(6) Any provision which may be made, confirmed or approved by virtue of paragraph 3A may be included in the same instrument as any other provision which may be so made, confirmed or approved.

(7) Where more than one procedure of a kind falling within sub-paragraph (8) would otherwise apply in the same legislature for an instrument falling within sub-paragraph (6), the higher procedure is to apply in the legislature concerned.

(8) The order of procedures is as follows (the highest first)—

(a) a procedure which requires a statement of urgency before the instrument is made and the approval of the instrument after it is made to enable it to remain in force,

(b) a procedure which requires the approval of the instrument in draft before it is made,

(c) a procedure not falling within paragraph (a) which requires the approval of the instrument after it is made to enable it to come into, or remain in, force,

(d) a procedure which provides for the annulment of the instrument after it is made,

(e) a procedure not falling within any of the above paragraphs which provides for the laying of the instrument after it is made,

(f) no procedure.

(9) The references in this paragraph to amending or repealing an enactment contained in primary legislation or amending or revoking an enactment contained in subordinate legislation do not include references to amending or repealing or (as the case may be) amending or revoking an enactment contained in any Northern Ireland legislation which is an Order in Council.

(10) In this paragraph "connected modification" means a modification which is supplementary, incidental, consequential, transitional or transitory, or a saving, in connection with—

(a) another modification under the power of retained direct EU legislation or anything which is retained EU law by virtue of section 4, or

(b) anything else done under the power.

3C_(1) This paragraph applies to any power to make, confirm or approve subordinate legislation—

(a) which was conferred before the day on which this Act is passed, and

(b) is not capable of being exercised as mentioned in paragraph 3A(1)(b) or is only capable of being so exercised in relation to Northern Ireland legislation which is an Order in Council.

(2) Any power to which this paragraph applies (other than a power to which sub-paragraph (4) applies) is to be read—

(a) so far as is consistent with any retained direct principal EU legislation or anything which is retained EU law by virtue of section 4, and

(b) so far as the context permits or requires,

as being capable of being exercised to modify (or, as the case may be, result in the modification of) any retained direct minor EU legislation.

(3) Any power to which this paragraph applies (other than a power to which sub-paragraph (4) applies) is to be read, so far as the context permits or requires, as being capable of being exercised to modify (or, as the case may be, result in the modification of)—

(a) any retained direct principal EU legislation, or

(b) anything which is retained EU law by virtue of section 4,

so far as the modification is supplementary, incidental or consequential in connection with any modification of any retained direct minor EU legislation by virtue of sub-paragraph (2).

(4) Any power to which this paragraph applies so far as it is a power to make, confirm or approve transitional, transitory or saving provision is to be read, so far as the context permits or requires, as being capable of being exercised to modify (or, as the case may be, result in the modification of)—

(a) any retained direct EU legislation, or

(b) anything which is retained EU law by virtue of section 4.

3D_ Any subordinate legislation which is, or is to be, made, confirmed or approved by virtue of paragraph 3C(2), (3) or (4) is to be subject to the same procedure (if any) before Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly as would apply to that legislation if it were doing anything else under the power.

3E_ Any power to make, confirm or approve subordinate legislation which, immediately before exit day, is subject to an implied restriction that it is exercisable only compatibly with EU law is to be read on or after exit day without that restriction or any corresponding restriction in relation to compatibility with retained EU law.

3F_(1) Paragraphs 3A to 3E and this paragraph—

(a) do not prevent the conferral of wider powers,

(b) do not apply so far as section 57(4) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 or section 24(3) of the Northern Ireland Act 1998 applies (or would apply when in force on and after exit day), and

(c) are subject to any other provision made by or under this Act or any other enactment.

(2) For the purposes of paragraphs 3A and 3C—

(a) a power is conferred whether or not it is in force, and

(b) a power in retained direct EU legislation is not conferred before the day on which this Act is passed.

(3) A power which, by virtue of paragraph 3A or 3C or any Act of Parliament passed before, and in the same Session as, this Act, is capable of being exercised to modify any retained EU law is capable of being so exercised before exit day so as to come into force on or after exit day."

112: Schedule 8, page 56, line 26, leave out paragraph 5 and insert—

"5A(1) This paragraph applies to any power to make, confirm or approve subordinate legislation which is conferred on or after the day on which this Act is passed.

(2) Any power to which this paragraph applies (other than a power to which sub-paragraph (4) applies) may—

(a) so far as is consistent with any retained direct principal EU legislation or anything which is retained EU law by virtue of section 4, and

(b) so far as applicable and unless the contrary intention appears,

be exercised to modify (or, as the case may be, result in the modification of) any retained direct minor EU legislation.

(3) Any power to which this paragraph applies (other than a power to which sub-paragraph (4) applies) may, so far as applicable and unless the contrary intention appears, be exercised to modify (or, as the case may be, result in the modification of)—

(a) any retained direct principal EU legislation, or

(b) anything which is retained EU law by virtue of section 4,

so far as the modification is supplementary, incidental or consequential in connection with any modification of any retained direct minor EU legislation by virtue of sub-paragraph (2).

(4) Any power to which this paragraph applies so far as it is a power to make, confirm or approve transitional, transitory or saving provision may, so far as applicable and unless the contrary intention appears, be exercised to modify (or, as the case may be, result in the modification of)—

(a) any retained direct EU legislation, or

(b) anything which is retained EU law by virtue of section 4.

5B(1) Sub-paragraph (2) applies to any power to make, confirm or approve subordinate legislation which—

(a) is conferred on or after the day on which this Act is passed, and

(b) is capable of being exercised to amend or revoke (or, as the case may be, result in the amendment or revocation of) any retained direct principal EU legislation.

(2) The power may, so far as applicable and unless the contrary intention appears, be exercised—

(a) to modify otherwise than by way of amendment or revocation (or, as the case may be, result in such modification of) any retained direct principal EU legislation, or

(b) to modify (or, as the case may be, result in the modification of) anything which is retained EU law by virtue of section 4.

5C(1) Paragraphs 5A and 5B and this paragraph—

(a) do not prevent the conferral of wider powers,

(b) do not apply so far as section 57(4) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 or section 24(3) of the Northern Ireland Act 1998 applies (or would apply when in force on and after exit day), and

(c) are subject to any other provision made by or under this Act or any other enactment.

(2) For the purposes of paragraphs 5A and 5B—

(a) a power is conferred whether or not it is in force,

(b) a power in retained direct EU legislation is conferred on or after the day on which this Act is passed, and

(c) the references to powers conferred include powers conferred by regulations under this Act (but not powers conferred by this Act).

(3) A power which, by virtue of paragraph 5A or 5B or any Act of Parliament passed after, and in the same Session as, this Act, is capable of being exercised to modify any retained EU law is capable of being so exercised before exit day so as to come into force on or after exit day."

112A: Schedule 8, page 56, line 32, at end insert—

"Explanatory statements for instruments amending or revoking regulations etc. under section 2(2) of the ECA

5D(1) This paragraph applies where, on or after exit day—

(a) a statutory instrument which amends or revokes any subordinate legislation made under section 2(2) of the European Communities Act 1972, or

(b) a draft of such an instrument,

is to be laid before each House of Parliament or before the House of Commons only.

(2) Before the instrument or draft is laid, the relevant authority must make a statement as to why, in the opinion of the relevant authority, there are good reasons for the amendment or revocation.

(3) Before the instrument or draft is laid, the relevant authority must make a statement otherwise explaining—

(a) the law which is relevant to the amendment or revocation, and

(b) the effect of the amendment or revocation on retained EU law.

(4) If the relevant authority fails to make a statement required by sub-paragraph (2) or (3) before the instrument or draft is laid—

(a) a Minister of the Crown, or

(b) where the relevant authority is not a Minister of the Crown, the relevant authority,

must make a statement explaining why the relevant authority has failed to make the statement as so required.

(5) A statement under sub-paragraph (2), (3) or (4) must be made in writing and be published in such manner as the person making it considers appropriate.

(6) For the purposes of this paragraph, where an instrument or draft is laid before each House of Parliament on different days, the earlier day is to be taken as the day on which it is laid before both Houses.

(7) This paragraph applies in relation to instruments whether the power to make them is conferred before, on or after exit day including where the power is conferred by regulations under this Act (but not where it is conferred by this Act).

(8) This paragraph does not apply in relation to any laying before each House of Parliament, or before the House of Commons only, of an instrument or draft instrument where an equivalent draft instrument (ignoring any differences relating to procedure) has previously been laid before both Houses or before the House of Commons only.

(9) In this paragraph "the relevant authority" means—

(a) in the case of an Order in Council or Order of Council, the Minister of the Crown who has responsibility in relation to the instrument,

(b) in the case of any other statutory instrument which is not made by a Minister of the Crown, the person who makes, or is to make, the instrument, and

(c) in any other case, the Minister of the Crown who makes, or is to make, the instrument."

112B: Schedule 8, page 56, line 32, at end insert—

"5E(1) This paragraph applies where, on or after exit day—

(a) a Scottish statutory instrument which amends or revokes any subordinate legislation made under section 2(2) of the European Communities Act 1972, or

(b) a draft of such an instrument,

is to be laid before the Scottish Parliament.

(2) Before the instrument or draft is laid, the relevant authority must make a statement as to why, in the opinion of the relevant authority, there are good reasons for the amendment or revocation.

(3) Before the instrument or draft is laid, the relevant authority must make a statement otherwise explaining—

(a) the law which is relevant to the amendment or revocation, and

(b) the effect of the amendment or revocation on retained EU law.

(4) If the relevant authority fails to make a statement required by sub-paragraph (2) or (3) before the instrument or draft is laid, the relevant authority must make a statement explaining why the relevant authority has failed to make the statement as so required.

(5) A statement under sub-paragraph (2), (3) or (4) must be made in writing and be published in such manner as the relevant authority considers appropriate.

(6) This paragraph applies in relation to instruments whether the power to make them is conferred before, on or after exit day including where the power is conferred by regulations under this Act (but not where it is conferred by this Act).

(7) In this paragraph "the relevant authority" means—

(a) in the case of a Scottish statutory instrument which is not made by the Scottish Ministers, other than an Order in Council, the person who makes, or is to make, the instrument, and

(b) in any other case, the Scottish Ministers."

112BA: Schedule 8, page 59, line 31, after "law"" insert ", "retained direct minor EU legislation", "retained direct principal EU legislation""

112BB: Schedule 8, page 59, line 33, after "6(7)" insert ", (Status of retained EU law)(6)"

Amendments 111 to 112BB agreed.

Amendment 112BC not moved.

Amendments 112C to 115A

Moved by ***Lord Callanan***

112C: Schedule 8, page 60, line 38, leave out "29(4A)" and insert "30A(1)"

113: Schedule 8, page 61, line 2, at beginning insert "This paragraph has effect"

114: Schedule 8, page 61, line 2, leave out from "1998" to end of line 4 and insert—

"( ) Any retained direct principal EU legislation is to be treated as primary legislation.

( ) Any retained direct minor EU legislation is to be treated as primary legislation so far as it amends any primary legislation but otherwise is to be treated as subordinate legislation."

115: Schedule 8, page 61, line 5, leave out "sub-paragraph (1)" and insert "this paragraph "amend","

115A: Schedule 8, page 61, line 33, at end insert—

"21A_ In section 30 (other instruments laid before the Scottish Parliament), after subsection (6) insert—

"(7) This section does not apply in relation to any regulations made in accordance with paragraph 4A of Schedule 7 to the European Union (Withdrawal) Act 2018 (including that paragraph as applied by paragraph 14(6A) of that Schedule).""

Amendments 112C to 115A agreed.

Amendment 116 not moved.

Amendment 117

Moved by ***Lord Keen of Elie***

117: Schedule 8, page 64, line 29, at end insert—

"(7) Paragraph 4 of Schedule 1 does not apply in relation to any proceedings begun within the period of two years beginning with exit day so far as the proceedings relate to anything which occurred before exit day."

Lord Keen of Elie: My Lords, I rise to move the Government's Amendment 117. The Bill's approach to certain EU rights of challenge and associated remedies has already been scrutinised closely. We have debated at length the substantive provisions in the Bill covering this area and this House has made clear its views. I do not intend to go over old ground again in this speech. The amendment deals with the approach to transitional cases in one important area, where Francovich damages are being sought. I will say a little about the particular substantive provisions that this relates to.

Francovich damages are a specific form of remedy that exists in EU law. They are available in certain strictly limited circumstances where member states have breached EU law, for example where a member state has failed to properly transpose a directive. The Government remain firmly of the view that, after we leave the EU, Francovich damages will no longer be relevant when we cease to be bound to follow obligations that apply to member states. This is for the simple reason that the majority of Francovich cases in the UK have been brought on the grounds of non-implementation or insufficient implementation of a directive. The UK will no longer be under an obligation to implement directives after exit and the directives will not form part of our domestic law as retained EU law, so the ability to claim Francovich damages would not be possible for a post-exit cause of action. Paragraph 4 of Schedule 1 therefore removes the right to Francovich damages after exit day. The Government consider this outcome to be a natural consequence of the decision to leave the EU, while ensuring Parliament is sovereign.

The impact of these provisions on transitional cases is one area that the House urged us to think again on when we debated the matter in Committee. I concede that the noble Lords, Lord Davies of Stamford and Lord Carlile, made powerful arguments, in particular on the need to look again at cases where an individual's course of action accrued before we left the EU. The amendment responds directly to that concern.

We remain of the view that it would not be reasonable for there to be a long tail of cases based on outdated elements of EU law continuing to process through our courts, potentially for many years after we leave the EU. That would not be conducive to the legal certainty this Bill aims for. The Bill will therefore set what the Government believe to be a clear and sensible cut-off point. The amendment we have brought forward will therefore delay the prohibition in the Bill on seeking Francovich damages in domestic law for two years after exit day. This will provide individuals with a fair and sensible opportunity to seek damages for pre-exit breaches of EU law. It also ensures that we continue to have a clear and certain cut-off point after which such challenges would end. I hope that the House supports the proposals that we have put forward, which I think provide important reassurance to individuals and businesses. I therefore beg to move.

Lord Beith: My Lords, I wonder whether the noble and learned Lord could help the House, or those of us who were not following quickly enough, as to how Amendment 117 relates to Amendment 116, which, as I understand it, the Government did not move, and

what the effect would be of having Amendment 117 without Amendment 116. Would that affect the Francovich damages time limitation?

Lord Keen of Elie: My Lords, the intention with respect to Amendment 117 is that there should be a two-year period after exit, during which it will be possible for a claim to be made in respect of a right of action that accrued up to the point of Brexit. I hope that that clarifies the point.

Lord Beith: What was not clear to me was why the Government did not move the preceding amendment.

Lord Keen of Elie: That is probably attributable to a note that I have here saying, "Don't move Amendment 116".

Lord Goldsmith: I will try to help the noble and learned Lord. It might be because it is pre-empted by Amendment 19 on general principles of EU law, which the House passed at an earlier stage.

Lord Keen of Elie: It was moved by the noble Lord, Lord Pannick. Because it was passed, Amendment 116 does not arise.

Amendment 117 agreed.

Amendments 117A to 117C

Moved by ***Lord Callanan***

117A: Schedule 8, page 64, line 31, leave out ", 8"

117B: Schedule 8, page 64, line 31, leave out "or 9" and insert ", 9 or 17(1)"

117BA: Schedule 8, page 64, line 40, leave out "and in force"

117BB: Schedule 8, page 64, line 40, leave out from "day," to end of line 42 and insert—

"(b) any subordinate legislation which is subject to confirmation or approval and is made and confirmed or approved before exit day, or

(c) any other subordinate legislation made before exit day."

117BC: Schedule 8, page 64, line 43, leave out "(5) and"

117BD: Schedule 8, page 64, line 44, leave out "or (b)" and insert ", (b) or (c)"

117BE: Schedule 8, page 65, line 6, at end insert "and"

117BF: Schedule 8, page 65, line 7, leave out from "there" to "when" in line 10 and insert "are no regulations under section 30A of the Scotland Act 1998 by virtue of which the provision would be in breach of the restriction in subsection (1) of that section"

117BG: Schedule 8, page 65, line 12, leave out from "provision" to "in" and insert "were made and the regulations were"

117BH: Schedule 8, page 65, line 19, at end insert "and"

117BJ: Schedule 8, page 65, line 20, leave out from "there" to "when" in line 23 and insert "are no regulations under section 109A of the Government of Wales Act 2006 by virtue of which the provision would be in breach of the restriction in subsection (1) of that section"

117BK: Schedule 8, page 65, line 25, leave out from "provision" to "in" and insert "were made and the regulations were"

117BL: Schedule 8, page 65, line 32, at end insert "and"

117BM: Schedule 8, page 65, line 33, leave out from "there" to "when" in line 36 and insert "are no regulations under section 6A of the Northern Ireland Act 1998 by virtue of which the provision would be in breach of the restriction in subsection (1) of that section"

117BN: Schedule 8, page 65, line 38, leave out from "provision" to "in" and insert "were made and the regulations were"

117BP: Schedule 8, page 65, line 43, at end insert "and"

117BQ: Schedule 8, page 65, line 44, leave out from "there" to "when" in line 47 and insert "are no regulations under subsection (4) of section 57 of the Scotland Act 1998 by virtue of which the making, confirming or approving would be in breach of the restriction in that subsection"

117BR: Schedule 8, page 66, line 3, leave out "Order was made and" and insert "regulations were"

117BS: Schedule 8, page 66, line 7, at end insert "and"

117BT: Schedule 8, page 66, line 8, leave out from "there" to ", so" in line 11 and insert "are no regulations under subsection (8) of section 80 of the Government of Wales Act 2006 by virtue of which the making, confirming or approving would be in breach of the restriction in that subsection"

117BU: Schedule 8, page 66, line 18, leave out "Order was made and" and insert "regulations were"

117BV: Schedule 8, page 66, line 22, at end insert "and"

117BW: Schedule 8, page 66, line 23, leave out from "there" to "when" in line 26 and insert "are no regulations under subsection (3) of section 24 of the Northern Ireland Act 1998 by virtue of which the making, confirming or approving would be in breach of the restriction in that subsection"

117BX: Schedule 8, page 66, line 32, leave out "Order was made and" and insert "regulations were"

117BY: Schedule 8, page 66, line 32, at end insert—

"( ) For the purposes of sub-paragraphs (3) to (8) assume that the restrictions relating to retained EU law in—

(a) sections 30A(1) and 57(4) of the Scotland Act 1998,

(b) sections 80(8) and 109A(1) of the Government of Wales Act 2006, and

(c) sections 6A(1) and 24(3) of the Northern Ireland Act 1998,

come into force on exit day."

117C: Schedule 8, page 66, line 43, at end insert—

"30A_ A consent decision of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly made before the day on which this Act is passed, or the commencement of the 40-day period before the day on which this Act is passed, is as effective for the purposes of—

(a) section 30A(3) or 57(6) of the Scotland Act 1998,

(b) section 80(8C) or 109A(4) of the Government of Wales Act 2006, or

(c) section 6A(3) or 24(5) of the Northern Ireland Act 1998,

as a consent decision made, or (as the case may be) the commencement of that period, on or after that day."

Amendments 117A to 117C agreed.

Schedule 9: Additional repeals

Amendment 118

Moved by ***Lord Adonis***

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

Lord Adonis: My Lords, it seems to fall to me to move the last amendment of Report, as in Committee. However, I am not going to detain the House for long because, having re-read the Committee proceedings earlier, I found myself fully persuaded by the compelling and eloquent arguments made by the noble Lord, Lord Callanan. As his arguments rolled off the page about the intent of the European Union Act 2011 and how it was not intended to address a situation other than a significant accretion of powers to the European Union, I thought it would not be sensible to press this. I am entirely persuaded by the fact that if we are to have a referendum on the treaty that the Prime Minister is negotiating with the European Union, as I believe we will ultimately have, it needs to be on an explicit vote by Parliament and cannot take place as a consequence of the 2011 Act. So, at 10.38 pm, I can bring Report proceedings to a conclusion.

Lord Goldsmith: My noble friend was very anxious to bring proceedings to a close at 10.38 pm. Would he be clear as to whether litigation taking place relating to the argument about the 2011 Act has completed? He seems very knowledgeable about that.

Lord Adonis: I believe it is still ongoing. Presumably it is perfectly reasonable for it to be ongoing until the 2011 Act is repealed, which it has not been yet. That is a matter for the litigants, not for me.

Lord Goldsmith: I am grateful for that. Does it not therefore change my noble friend's view as to how he wants to deal with this amendment?

Lord Adonis: No.

Lord Goldsmith: My Lords, there is nothing more I want to say about that, but it would be inappropriate to finish immediately without from these Benches thanking everybody for the part that they have played in this Report stage as we move towards the conclusion of this Bill at Third Reading—and towards 10.40, which I notice it now is.

Lord Callanan: The House will be pleased to know that I shall not repeat all the arguments against the amendment, but, following on from the questions that the noble Lord asked me in Committee, it would perhaps be helpful for him to know that the Government intend to commence this provision of the Bill shortly after Royal Assent. That was a question that the noble Lord asked me in Committee and I wanted to be up front with the House about it.

Viscount Ridley (Con): I had prepared an enormous speech on this amendment which your Lordships will be glad to hear I will not give, but after all that we have gone through so far on this Bill it is appropriate that some of us put on record our admiration for the endurance, patience, diligence and good manners of my noble friend Lord Callanan.

Lord Callanan: It is very kind of my noble friend to say so; I am very grateful for his comments. I look at the vast expanses of empty Benches on the other side; perhaps they do not share that sentiment, but it is nevertheless nice that we have finally reached the end of Report. I am sure that we will return to some of the issues in the future.

Lord Adonis: My Lords, I beg leave to withdraw the amendment.

Amendment 118 withdrawn.

House adjourned at 10.42 pm.

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