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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Wednesday 16 May 2018

3 pm

Prayers—read by the Lord Bishop of Leeds.

Carers: Back Pay Liability
Question

3.06 pm

Asked by ***Baroness Richardson of Calow***

To ask Her Majesty's Government what plans they have made to assist financially with the historic back pay liability of providers of commissioned care for people with learning difficulties.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, the Government recognise that sleep-in liabilities are placing financial pressures on the adult social care sector and are exploring future options to minimise the impact. Any such intervention would need to be legal, proportionate, fair and necessary. To support providers now, HMRC has created the social care compliance scheme to allow participating social care providers until March 2019 to make payments to workers.

Baroness Richardson of Calow (CB): My Lords, I thank the Minister for his answer and his concern, because this is a concern that is widely felt within the social care sector. I am associated with a charity called Walsingham Support, which supports adults with learning difficulties: those with brain-acquired injury, autism and complex needs. Like many other care providers, it is finding it very difficult to comply with the current exercise, which is for back-pay liability in respect of night-working. Until fairly recently, night workers who were permitted to sleep were given a flat rate and the full wage if they were required to work during the night.

Noble Lords: Question?

Baroness Richardson of Calow: I am so sorry. I have got a question; I have three questions but I hoped that I could give a little bit of background. Will the Government clarify the funding position as a matter of urgency? Will they commit to funding the estimated £400 million of back pay directly to those recipients? Will they commit to the additional funding needed by the social care sector to pay all sleep-in shifts? Perhaps I may be permitted to give a little—

Noble Lords: No!

Baroness Richardson of Calow: Okay.

Lord O'Shaughnessy: I recognise the concern expressed by the noble Baroness, which the Government share. Even though the position on the change of the status on paying sleep-in payments changed in October 2016, we understand the size of civil liabilities for some providers who, of course, are, in many cases, providing for some of the most vulnerable people in society. That is why this HMRC scheme was set up. It gives providers extra time—up to 15 months—to get their house in order, understand their liabilities and pay them. That comes to an end in March 2019, which is why we are working on looking at other interventions and talking to the European Commission about the legality and state-aid rules in relation to that. I am afraid that I cannot give her any more detail at this stage, but I can tell her that it is a priority.

Baroness McIntosh of Pickering (Con): My Lords, this is particularly about the retrospective nature of this award. I contacted my noble friend, who was kind enough to take up the case of the Wilf Ward Family Trust, which provides for the care needs of young people with learning disabilities and which will be affected. Is he able to contest the retrospective nature of this decision and ensure that no similar back pay will be awarded in the future? County councils are completely incapable of making up this shortfall.

Lord O'Shaughnessy: I thank my noble friend for raising the issue, which we are looking into. The point here is that the change in policy has come about because of decisions made by employment tribunals and a clarification of the law, and the job of government is therefore to help providers to comply with the law. That is how the scheme has come about, and why extra support is being looked into. We are working closely with providers to try to understand the scale of the liability and how it affects organisations differently—we think that up to two-thirds are affected. We will also make sure that any intervention that might follow—I stress "might"—is proportionate, fair and legal.

Baroness Wheeler (Lab): My Lords, Jeremy Hunt told MPs last week that a lot of work was going on in government on this issue to,

"understand the fragility of the current market situation".—[*Official Report*, Commons, 8/5/18; col. 520.]

However, we already know that the viability of nearly 70% of the disability care sector is threatened by the sleep-in pay crisis, as last week's survey by disability charities shows. Homes will have to be sold or more local authority contracts handed back. Is this not enough evidence of the desperate state the care sector is in and why the extra funding is needed from the Government to ensure that already low-paid staff are treated fairly and receive the money they are owed?

Lord O'Shaughnessy: The noble Baroness makes an important point about the attention my right honourable friend the Secretary of State is giving this. We are taking this issue seriously, and she is quite right about the number of organisations that are affected. As I said, a scheme already exists which allows providers to defer any payments, and we are investigating whether any further interventions are necessary during that period when they can defer them.

Lord Wigley (PC): My Lords, I draw attention to my entry in the register of interests as a vice-president of Mencap. Is there not a taste of retrospective legislation or at least retrospective interpretation of legislation in this, something we always try to avoid? When one hears figures, as we have, of some £400 million of

[LORD WIGLEY]
liability for organisations undertaking such excellent work, does this not justify the Government intervening to ensure that no such organisations suffer unduly as a result of these changes?

Lord O'Shaughnessy: I agree with the noble Lord that there is a retrospective element to this, but it is around the clarification of the law. The Government have put a support scheme in place through HMRC to provide that support to resist, for example, enforcement notices on workers who ought to be paid in arrears. That is up and running and it has been open since September 2017. But clearly, as that continues we are also looking at whether other interventions might be necessary.

Baroness Brinton (LD): My Lords, it is quite clear that the £2 billion extra for adult social care in the 2017 spring Budget had absolutely no relevance to this £400 million deficit and liability for providers, and it would be unwise for the Government to assume that it should be used for back pay. While it is wonderful that HMRC has slightly deferred payment, until the Government are able to help providers we will continue to see provider after provider going to the wall. Allied Healthcare cites £11 million as its own back pay on this issue. When will the Government help these providers?

Lord O'Shaughnessy: On the extra £2 billion of funding, I have not tried to link it with this; it is of course at the discretion of local authorities to use that to support the social care sector in the way they see fit. It is worth pointing out that Allied Healthcare is in this social care compliance scheme. My honourable friend the Minister for Care has written to it to express her disappointment at the approach it has outlined. Its liabilities have not crystallised yet, so it is not right for it to refuse that and she has written to it to demand clarification. However, clearly we understand that the clock is ticking and that there is an urgency to this.

Baroness Watkins of Tavistock (CB): My Lords, can the Minister explain what the legal liability is of commissioners who commissioned care services based on the previous costs?

Lord O'Shaughnessy: That is an excellent question and I will write to the noble Baroness with an answer to it.

National Autism and Education Strategy

Question

3.14 pm

Asked by ***Lord Touhig***

To ask Her Majesty's Government whether they are planning to introduce a national autism and education strategy; and if so, what are those plans.

Lord Touhig (Lab): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and draw the House's attention to the fact that I am a vice-president of the National Autistic Society.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, we welcomed the publication in November of the report *Autism and education in England 2017*. We are carefully considering the recommendations, including creating a national autism strategy. Some recommendations reflect existing policy, such as our funding of extensive autism awareness training for school staff, improving local accountability and providing additional funding. The report is informing our thinking about the next steps in achieving our vision for the SEND system that we will confirm later this year.

Lord Touhig: My Lords, that is a very welcome response because I think we all agree that every child has a right to a good education and to reach their full potential. The National Autistic Society supported the report of the all-party group, which was chaired by two Conservative Members of Parliament, who did fantastic work. The report said that three things are needed: teachers should have autism training, schools should know how to make reasonable adjustments for youngsters who are autistic, and councils should make provision for school places now and for the future. Given that optimistic hope and the Minister's response, will he agree to meet with colleagues across the House so we can press it further with him?

Lord Agnew of Oulton: My Lords, I am very happy to meet the noble Lord, Lord Touhig, and other members of that committee so we can discuss the recommendations and try to include them in our future strategy.

Lord Sterling of Plaistow (Con): My Lords, I have an interest in this via Motability and also because my little grandson is on the spectrum. I congratulate the Government because there is interest in and support for the subject on all sides of the House, including from Ministers. The National Autistic Society has done a marvellous job over the years. There has been a lot of research, there are a lot of statistics and more work is being done in different areas. We know the answers now—there is a huge amount of knowledge. We need the money now. Can the whole system be brought forward so we can get on and give these youngsters the chance they deserve?

Lord Agnew of Oulton: My Lords, we have invested £373 million for local areas to implement SEND since 2014 and have just renewed a grant to the Autism Education Trust to help improve the training of education staff. It has trained some 150,000 staff since 2011-12. Awareness is very much rising in the education sector.

Lord Addington (LD): My Lords, the Minister talked about awareness. Awareness only goes so far. Have the Government identified how many specialist support teachers they need—people trained specifically to meet the needs of this group—and at what density? Without that, you can have all the awareness you need but not know how to implement it properly.

Lord Agnew of Oulton: My Lords, the approach has very much been to include autistic children in mainstream education, and 72% of autistic children are. As I mentioned a moment ago, we are rolling out the

training to staff to ensure that awareness of the condition is more widespread. That is certainly the intention. We have also invested substantially in the creation of special schools. Some 600 local authority maintained schools have a specialism for autistic children.

Baroness Chisholm of Owlpen (Con): I welcome the fact that all teachers are going to be given autism awareness training when the new teacher training starts in September. Can this also include classroom assistants, who are often the first to see children who may have problems? They too need to have training to know how to deal with this.

Lord Agnew of Oulton: My Lords, as I mentioned in an earlier reply, the great work that the Autism Education Trust is doing extends not just to teachers but to all those involved in schools. I reassure my noble friend that that is very much part of our strategy.

Baroness McIntosh of Hudnall (Lab): My Lords, the noble Lord will no doubt be aware that girls on the autism spectrum are often more adept than boys at concealing their difficulties and often go undiagnosed and untreated. What special arrangements are in place to improve the diagnosis of girls with autism?

Lord Agnew of Oulton: I cannot reply specifically on the condition in girls, but I am aware that the highest proportion of education, health and care plans are for people on the autistic spectrum. There is comprehensive acceptance that the new EHC plan system is working. In 2015, we carried out a detailed survey and found that 75% of parents and users thought that the young person was getting the help they needed, but I accept that we need to continue learning and improving in this process.

Lord Christopher (Lab): My Lords, not in any way to underestimate the importance of education, but it seems to me that this extends quite a bit beyond that, and relates very much to the households of autistic children, not least when the autistic child is a boy and the other siblings are girls. I suggest that perhaps some attention be paid to the benefit of dogs in many of these households. I am sitting next to a dog now, who is wonderful at dealing with the difficulties my noble friend has, and I can see one sitting opposite me. I am aware of a number of families in which dogs have made a world of difference to the behaviour of these children in their homes. Although there are one or two small charities doing work in this direction, some expansion and co-ordination would be extremely helpful.

Lord Agnew of Oulton: My Lords, I completely agree with the noble Lord's comments. I know of a vivid example in the academy trust I founded. We had a child on the autistic spectrum who was literally unable to speak to either pupils or staff in the school, although he was very bright. One of the teachers had the inspirational idea to bring a dog to the school. Within a month, that child was talking happily to the dog, and a few weeks beyond that was interacting with the children and teachers in the school. It might be useful to finish on the positive note that many people on the autistic spectrum go on to have remarkable lives, and I will give just a few examples: Hans Christian Andersen, Susan Boyle, Charles Darwin, Albert Einstein, Bill Gates, Thomas Jefferson, Steve Jobs, Michelangelo, Mozart and Isaac Newton. The whole spectrum of life can be enriched by people with this condition.

Immigration Applications

Question

3.22 pm

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government what steps they are taking to improve the assessment of immigration applications by UK Visas and Immigration, given that 40 per cent of immigration appeals heard by the Immigration and Asylum Tribunals in 2016 were granted.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, UKVI is focused on improving the quality of all decision-making. While appeals are allowed for a variety of reasons, and many of the appeals being heard are now fairly historic, we recognise that continued improvement is necessary. That is why investment is being made via a stronger assurance regime, better and more frequent training, strengthened feedback loops, and creating new governance and structures. Additionally, we are working with Her Majesty's Courts and Tribunals Service on reducing the number of outstanding appeals and the time taken through the appeals system.

Lord Roberts of Llandudno (LD): I thank the Minister for her response, but this whole scenario shows that we are in a very desperate situation. For instance, I was told by the Minister that, in 2005, 17% of decisions went to appeal. That was 13,221 decisions. By 2016 this had doubled to 40%. That means that 40% of folk were dissatisfied and, on appeal, won. I imagine that, over the past 10 years, we have had perhaps 200,000 successful appeals. Does this situation not undermine confidence in the Government and in the initial decision system of the immigration process? Is it not time that we did something about this? Forty per cent is not something to be played about with. Can I ask another question?

Noble Lords: No!

Lord Roberts of Llandudno: Shall I try? I am afraid that we have to face facts. With the Windrush—

The Countess of Mar (CB): My Lords, may I ask the Leader of the House to read out what it says in the *Companion* about Questions at Question Time?

Baroness Williams of Trafford: I do not have the *Companion* with me, so I will leave that for another time. The noble Lord rightly makes a point about the number of appeals increasing. Actually, they went down slightly in the past year, but the number of applications is increasing over time and that is something to be mindful of. He also asked about better decision-making.

[Baroness Williams of Trafford]
I have several things to say about that. First, the average age of appeals being determined by the First-tier Tribunal is, according to HMCTS statistics, 50 weeks. That is a considerable length of time. The latest data on win rates is certainly not where we would like it to be.

Appeals are allowed for a variety of reasons. Often it is because new evidence is presented before the tribunal that was not available to the decision-maker at the time. Often, the information is presented very shortly before the hearing and too late for the Home Office to withdraw the case. But one specific reason for the higher rate of allowed appeals is that many cases going through the appeal system are now quite old. The average age of a human rights case is over a year. In that time, often appellants have built up new rights.

Baroness Lister of Burtersett (Lab): My Lords, given that we heard on the news last night that over 60 of the Windrush generation may have been wrongly deported, and the recent observation of the UN special rapporteur that shifting from the rhetoric of a hostile environment to one of a compliance environment will have little effect if the underlying legislative framework remains intact, will the Government now review that legislative framework as a matter of urgency?

Baroness Williams of Trafford: I will refer to the cases that the noble Baroness asked about—63 people who may have been wrongly deported. As the Home Secretary said, the department has been checking records back to 2002, some 16 years ago, when electronic records began, looking at all removals and deportations of Caribbean nationals aged 45-plus. So far, 63 cases have been identified where Caribbean individuals could have entered the UK before 1973. This means that, of the 8,000 total deportation and administrative removal records that came up, so far there is a focus on 63 because something in their record indicates that they could have entered before 1973. Of those, there are 32 foreign national offenders and 31 administrative removals. So it does not mean that 63 people have been wrongfully removed or deported; it is the number of cases that merit further investigation. But I thank the noble Baroness for bringing that point up.

The Lord Bishop of St Albans: My Lords, there has been much discussion about targets for the number of removals over the past few weeks, which we are all aware of. As the average length of time that these appeals are taking is increasing, is it not the case that we need some targets to reduce the length of time, because people are being left in limbo with their lives are on hold as these are going through?

Baroness Williams of Trafford: The right reverend Prelate is absolutely right to point out what we are endeavouring to do, which is to reduce the amount of time that people spend in limbo, to use a Christian term, while their appeals are heard or indeed while their cases are heard. I thank him for making that point. It is what we are endeavouring to do.

Lord Kirkhope of Harrogate (Con): My Lords, is it not correct that, from time to time, we review the criteria that are applied in the appointment of tribunal chairmen and members? Will my noble friend indicate whether that review has taken place recently and what the basic criteria are for appointing the chairs of tribunals?

Baroness Williams of Trafford: My noble friend is absolutely right to make the point about the review of tribunal members. I cannot tell him when the last review was, but I certainly will write to him.

Lord Kennedy of Southwark (Lab Co-op): My Lords, what does the Minister think is the reason for the increasing number of appeals?

Baroness Williams of Trafford: I think I tried to explain that to the noble Lord, Lord Roberts. It is noticeable that one of the specific reasons for the higher rate of allowed appeals is that many of the cases going through the appeals system are very old. As I said to the noble Lord, Lord Roberts, the average age of a human rights case is over a year, and appellants have often built up new rights over that time.

UK-US Trade: Iran Sanctions

Question

3.30 pm

Asked by ***Lord Dubs***

To ask Her Majesty's Government what advice they have given to British companies about the possible impact on their trade with the United States of the imposition of United States sanctions on Iran.

The Minister of State, Department for International Trade (Baroness Fairhead): My Lords, the UK continues to encourage UK businesses to take advantage of trade opportunities in Iran and the US. The Government have updated their services for doing business in Iran on GOV.UK. The UK remains party to the JCPOA, and the UN-EU sanctions on Iran continue to be lifted to allow UK businesses to operate in Iran. We are working with our European partners to explore potential options for protecting UK and European interests.

Lord Dubs (Lab): I am grateful to the Minister. Will she confirm that the Government will not allow British companies to be bullied by the American Administration, the more so that, if that bullying were to succeed, it would totally undermine the nuclear deal with Iran?

Baroness Fairhead: My Lords, the UK is absolutely committed to the JCPOA, the nuclear deal with Iran. We are trying to work with the US to ensure that links with Iran can continue so that the UK and other international parties to the deal are able to allow Iran to get the benefits of the lifting of economic sanctions, so that it can see the benefits of maintaining the nuclear deal. We are also working with Iran, with the E3 and the European External Action Service, to try to work out how we can ensure that Iran sees continued benefit. We are committed to maintaining the deal because we think it is critical for the safety of the world.

Lord Lamont of Lerwick (Con): My Lords, I draw the House's attention to my entry in the *Register of Members' Interests*, both as the Government's trade envoy to Iran and also as chairman of the British Iranian Chamber of Commerce. Would my noble friend say what she thinks the effects of the change in American policy are going to be on Airbus and Rolls-Royce, which have extensive pending orders in Iran? Secondly, following on the point made by the noble Lord, Lord Dubs, I am reassured by her answer, but did she notice the widely reported statement by the American ambassador to Germany in Berlin? Within hours of President Trump's announcement that he was changing policy, he said that German firms should start winding down their operations with Iran. Surely it is completely unacceptable for people to give orders to firms that are acting in accordance with the laws of their own country.

Baroness Fairhead: My Lords, it is clear that there is extraterritorial reach to some of these sanctions. I cannot say anything but that. We are working with the US to see what we can do to make sure that those trade ties can exist. We are working on a range of measures to try to make sure that we protect UK and other EU interests, working with the E3 and the other parties. I cannot give a direct answer because at the moment we are still working through the options. However, I can say that we are working hard to make sure that those interests are protected. We are also working hard to ensure that it is in Iran's continued interest to be part of the deal, to ensure that we maintain the JCPOA, which we think is critical.

Lord Anderson of Swansea (Lab): My Lords, surely the blunt truth is that in international trade, the dollar rules. American banks will comply, and the US Administration have totally failed to listen to the representations from President Macron, Chancellor Merkel and our own Foreign Secretary. In those circumstances, would not any lawyers, in the Government or otherwise, urge British firms to be ultra-cautious?

Baroness Fairhead: We are actively providing advice through our team on the ground in Iran and through our sector and other teams in DIT. We are trying to make sure that any business that is non-sanctioned is able to flow. We would say that all businesses have to take into account the commercial, legal and financing risks in any transaction, and clearly these sanctions make that difficult. We are trying to work with the US. The noble Lord is right that there was persistent lobbying but the sanctions were still imposed. That is why we are working with our EU colleagues and directly with both the US and the EU to try to protect our businesses and encourage the US to allow us to maintain our economic ties, because we think that they are important.

Lord Purvis of Tweed (LD): My Lords, the Government have lauded the US-UK Trade and Investment Working Group for the progress that has been made in the relationship. Can the Minister confirm that this issue in particular has been raised at the trade working group, because it would be utterly unacceptable for UK businesses to lose US market access for carrying out perfectly legal trading relationships under an international agreement to which the UK as a sovereign entity has signed up? Can she further confirm that the arrangements being put in place potentially to shield banking transactions, which are critical to the City of London, will carry on post Brexit next March?

Baroness Fairhead: The conversations we have had with our US colleagues have been very significant. I would say that we do have a deep and strong relationship with the Americans, but when we disagree with them, we say so. There has not been a meeting of the US-UK Trade and Investment Working Group since the sanctions were imposed, so there has been no opportunity for discussion through that group. However, we are making representations through my right honourable friends the Prime Minister, the Foreign Secretary and the Chancellor and we are ensuring that those points are being heard. On banking, post Brexit, we are clearly trying to ensure that we have as fluid a border as possible, so we are trying to make sure that our financial services industry, which is critical to the economy and the country, is protected as much as possible.

Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Bill

First Reading

3.36 pm

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

European Union (Withdrawal) Bill

Third Reading

3.37 pm

Lord Taylor of Holbeach (Con): My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the European Union (Withdrawal) Bill, has consented to place her prerogative and interest, in so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

Amendment 1

Moved by ***Lord Krebs***

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

"Maintenance of EU environmental principles and standards

(1) The Secretary of State must take steps designed to ensure that the United Kingdom's withdrawal from the EU does not result in the removal or diminution of any rights, powers, liabilities, obligations, restrictions, remedies and procedures that contribute to the protection and improvement of the environment.

(2) In particular, the Secretary of State must carry out the activities required by subsections (3) to (5) within the period of six months beginning with the date on which this Act is passed.

(3) The Secretary of State must publish proposals for primary legislation to establish a duty on public authorities to apply principles of environmental law established in EU law or on which EU environmental law is based in the exercise of relevant functions after exit day.

(4) The Secretary of State must publish proposals for primary legislation to establish an independent body with the purpose of ensuring compliance with environmental law by public authorities.

(5) The Secretary of State must publish—

(a) a list of statutory functions that can be exercised so as to achieve the objective in subsection (1); and

(b) a list of functions currently exercised by EU bodies that require to be retained or replicated in UK law in order to achieve the objective in subsection (1).

(6) The Secretary of State must before 1 January 2020 lay before Parliament a Statement of Environmental Policy which sets out how the principles in subsection (7) will be given effect.

(7) The principles referred to in subsection (3) include—

(a) the precautionary principle as it relates to the environment,

(b) the principle of preventive action to avert environmental damage,

(c) the principle that environmental damage should as a priority be rectified at source,

(d) the polluter pays principle,

(e) sustainable development,

(f) prudent and rational utilisation of natural resources,

(g) public access to environmental information,

(h) public participation in environmental decision making, and

(i) access to justice in relation to environmental matters.

(8) Before complying with subsections (3) to (6) the Secretary of State must consult—

(a) each of the devolved administrations;

(b) persons appearing to represent the interests of local government;

(c) persons appearing to represent environmental interests;

(d) farmers and land managers; and

(e) such other persons as the Secretary of State thinks appropriate."

Lord Krebs (CB): My Lords, I wish to move this amendment which has been tabled in my name and those of the noble Baronesses, Lady Jones of Whitchurch and Lady Bakewell of Hardington Mandeville, and the noble Lord, Lord Deben. We have discussed extensively amendments with similar wording and the same intent in Committee and on Report, so I will try to be brief.

Why have we brought this amendment back at Third Reading? On Report, my noble friend Lady Brown of Cambridge withdrew the amendment because the Minister promised the imminent publication of a consultation document which would deal with the issues that the amendment seeks to address. This is what he said:

"Yes, we are saying that we will be able to address this issue again after noble Lords have had a chance to look at the consultation on the statement of principles and the consultation on the new environmental body. I hope my reassurances are enough to enable noble Lords not to press the amendment and that they will take the opportunity to consider the contents of the consultation before we get to Third Reading".—[*Official Report*, 23/4/18; col. 1436.]

We have considered the contents of the consultation, which was published last Wednesday, and we are not satisfied. Although the consultation document is encouraging, it does not go far enough.

Let me recap briefly on the central issue. We have heard many times that the purpose of the Bill is to ensure that everything is the same the day after Brexit as it was the day before, yet for environmental protection things will not be the same. We are talking here about protection of our air quality, water quality, rivers, oceans, habitats and biodiversity. That is because, although the rules for protecting our environment will be translated into UK legislation, crucially, the environmental principles underpinning those rules will not and, furthermore, the current mechanisms for enforcing the rules will disappear and not be replaced. If approved, the amendment would fill those gaps and so ensure that, as intended, the protection of our environment after Brexit will indeed remain the same as it is now.

At first sight, the Government's consultation appears to address our concerns, as the Minister assured us that it would. It includes discussion both of the environmental principles, such as the precautionary principle and the polluter pays principle, and of a new green watchdog to ensure that environmental standards are upheld, thus filling the governance gap that otherwise would be created by Brexit. Those would be part of a new Bill, the environmental principles and governance Bill, to be published in the autumn and introduced into Parliament early in the second Session—in other words, next summer.

However, on closer inspection, the Government's proposals are simply too weak. There is no commitment to enshrine in legislation the environmental principles to which I have referred. Instead, the preferred option is to create a policy statement, which, as the consultation document says, would allow the Government,

"to balance environmental priorities alongside other national priorities",

and,

"offer greater flexibility for Ministers".

The favoured option for the green watchdog's enforcement role is that it would be able to serve advisory notices to the Government or other public bodies. To quote again from the consultation document:

"government believes that advisory notices should be the main form of enforcement".

That is far weaker than the current arrangements, under which the Commission has the power to initiate court action. In contrast, an advisory notice can be ignored and there is no sanction if it is. The consultation document even acknowledges the need for strong enforcement when it says:

"there is a special case to act on the environment. Most EU infringement proceedings against all Member States have related to environmental law, indicating a greater need for oversight in this area. In addition, while there are individuals or bodies with direct interests to protect in other areas of EU law, the environment is in a different position".

Finally, the Government's timetable for their proposals, weak as they are, show that their new mechanisms would not be in place by Brexit day.

I can imagine that the Minister in his reply may well say that the amendment would pre-empt the result of the consultation and that everything would be taken care of in this promised environmental principles and governance Bill, but I do not accept that. If the Government were really committed to maintaining our environmental protection after Brexit, why not seize the opportunity to show that commitment today? Why should we expect the promise of jam tomorrow when it may turn out that the jam is no more than

what is sometimes called thin gruel? Greener UK, a consortium of NGOs, said this in response to the consultation:

"the government has failed to meet the minimum requirement for maintaining the current level of environmental protection. And this disappointment is magnified because ministers – including the prime minister – promised a 'world-class' watchdog, and not just to protect but to enhance standards. In proposing a bill that clearly weakens existing protections, it has fallen very short of expectations".

Noble Lords who care about the preservation of our environment for future generations should support this amendment. After the big reveal of the consultation document, we now know that the Government's proposals open the door to weaker environmental protection after Brexit day. I beg to move.

3.45 pm

Lord Framlingham (Con): My Lords, the days that we have spent debating amendments to the Bill have been very dark days for your Lordships' House. Sometimes when we have successfully scrutinised a piece of legislation in the past, it has been described as the House at its best. Without any doubt, these days will go down in history as the House of Lords at its worst.

Noble Lords, some of whom have been elected to or worked in Parliament for many years, have used and abused the gentle, forgiving system in your Lordships' House to further their own ends of stopping us leaving the EU. I have watched and listened with growing concern and incredulity as people who should know better have tabled and spoken to amendments, most of which have been technically out of order and nothing to do with the Bill. I speak as an ex-Deputy Speaker in the other place: it is interesting to note that if we had a Speaker—and that day may now be much nearer than we think—none of the amendments put down by wreckers of the Bill would have been called and the Bill would have been back in the Commons long ago.

I do not know how the House of Commons will deal with the irrelevant amendments we will send to it, but I know that irreparable damage to our reputation has already been done by the antics of these dark days. We have set ourselves up in such a disreputable way, as guardians of wisdom and the common good, in so many of the amendments that we have passed.

Lord Cormack (Con): If anybody is doing damage to the reputation of the House, it is my noble friend.

Lord Framlingham: That is a chance I will have to take. I do not agree with the noble Lord. I think that I am speaking up for this House, for this country and for what we are trying to do.

I repeat: to set ourselves up in such a disreputable way, as guardians of wisdom and the common good, in so many of the amendments that we have passed, simply in an attempt to wreck the Bill and thwart the will of the people, is both false and dangerous.

The Countess of Mar (CB): I wonder whether the noble Lord would kindly pay attention to the amendment on the Order Paper that was just moved by the noble Lord, Lord Krebs.

Lord Framlingham: I am addressing the amendment and other amendments too.

The House has repeatedly been warned of the recklessness of the course it has taken. The noble Lords, Lord Grocott and Lord Howarth, from the Labour Benches, and the noble Lord, Lord Forsyth, from this side of the House, have made excellent contributions, showing not only their understanding of the workings of Parliament but the damage that we have been doing to our reputation and the dangers we have created for the future of your Lordships' House. They have been derided and scoffed at—not because they were wrong, but because every word they said was true. The scoffers knew this in their hearts and simply could not bear to listen to the truth.

It is not often in life that one is given a second chance to correct a big mistake—a folly of historic proportions—but we will be given one and I sincerely hope that we will take it. When the Bill returns to this House from the Commons, if we all accept, in as healing a way as possible, that whatever side we have been on and however we have behaved, our job is done and we should no longer seek to impose our will on the parliamentary process, perhaps not too much lasting damage will have been done to your Lordships' House. Should the principal remain protagonists continue to pursue controversy, they will serve only to deepen the divisions in this House.

Lord Winston (Lab): Does the noble Lord not feel that, important though the future of this House may be, the future of future generations is very important indeed—our children, our grandchildren and civilisation after us?

Lord Framlingham: Indeed I do, and I think that in many ways this House has recently been demonstrating its detachment from that.

Noble Lords: Oh!

Lord Framlingham: I am sorry, but if this House thinks it understands what is happening in the world outside, that is a grave mistake.

I am trying to be brief, but interventions have made my speech longer—and I am tempted to go on longer, because I feel so strongly about the position this House is putting itself in. This is the most important political issue in which any of us will ever play a part. Our speeches and votes will be on record, and I do not believe history will be very kind to those who continue to hinder the progress of this vital chapter in our country's affairs.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I support the amendment moved by the noble Lord, Lord Krebs. The environmental principles were debated at length in Committee and again on Report. Then, as the noble Lord said, the Minister assured us that a consultation document would be forthcoming before Third Reading. Indeed, it was published last Thursday. In paragraph 9, on page 2, it states:

"This consultation explores the functions of a new, independent, statutory environmental body to hold government to account on the environment and support our longer term objective on this, to be the first generation to leave the environment in a better state than that in which we inherited it".

[Baroness Bakewell of Hardington Mandeville]

This has been the stated aim of Secretary of State on many occasions, and the aspiration is covered in the 25-year environment plan. He further aspires to have a world-leading environmental watchdog to safeguard the environment. I fear that this accountable body proposed in the *Environmental Principles and Governance* consultation falls a very long way short of being a world leader. Neither will it deliver the fine words in paragraph 9 of the document.

As the noble Lord, Lord Krebs, has already demonstrated, advisory notices are not likely to bring polluters to book, nor safeguard the habitats and environments of the countryside and towns that we hold so dear. This is far weaker than the current arrangements through which the European Commission has the power to initiate court action to remedy breaches of environmental law. A world-leading watchdog needs strong legal powers, not merely the ability to make suggestions and issue advisory notices.

The weakness of the powers, functions and scope of the consultation is disappointing. The amendment seeks to remedy that by insisting that environmental law be complied with. While it may often be possible to ensure compliance without recourse to the courts, an effective watchdog will need a range of meaningful legal powers, including the power to initiate court action.

It is essential for the new institution to engage closely with those affected by environmental problems, but the consultation document does not even commit to receiving complaints from the public. This represents a backward step from the complaints process currently in place. Additionally, the consultation is limited in its jurisdiction and suggests that the remit will apply only to central government, and not to other public authorities.

Restricting the enforcement role to central government will take away important safeguards, and risks alienating communities from those responsible for looking after their local environs. It will not be possible to challenge those who make the decisions that affect people and nature directly and personally. The few teeth the watchdog has will fail once people realise that it cannot help them solve the environmental problems they face. The amendment makes it clear that the watchdog and the principles should apply to public authorities in general, rather than only to central government.

Although the publication of the consultation is welcome, it does not provide the reassurances and certainty that many stakeholders had been expecting. As the noble Lord, Lord Krebs, said, it contains no commitment to enshrine environmental principles such as the precautionary principle and the "polluter pays" principle in the forthcoming Bill. Instead, we can look forward to a "policy statement". Previous experience of policy statements in relation to biodiversity is that they have proved ineffective.

The Government have promised a world-leading environmental watchdog and enhanced environmental standards after Brexit, yet, in practice, the consultation proposes to give the environment less protection after Brexit than exists now. The status of the environmental principles is at risk of being downgraded and the proposals for a new watchdog are far from world-leading.

There is no timescale for the Government to publish their response to the consultation, nor can we be assured that the environment Bill will appear in the autumn. There are many examples of government proposals stalling, including there still being no clarity on when the Government intend to announce the next steps following their call for evidence on the important issue of corporate liability. The consultation closed in March 2017 and the response has yet to be published.

The Government wish us to be the first generation to really make a difference to the environment. The clue to how the environment will be protected and saved is in the word "generation". That means all of us—not just Cabinet Ministers and the Government, not just Members of the other place, nor even just Members sitting in your Lordships' Chamber today. Nor is it to be left to the public, who have had the decline in the state of the environment brought to their attention so vividly by Sir David Attenborough.

We cannot afford to leave a gap in environmental legislation that might allow irreparable harm to be done. Every single one of us must play our part, but we will not be able to safeguard our environmental assets—living and breathing, growing and archaeological—if the watchdog on which we rely has no teeth to operate. We have an opportunity today to act; I urge your Lordships to take it.

Lord Deben (Con): My Lords, I declare an interest as chairman of the climate change committee. That is why I strongly support the amendment. We see here exactly what played out during the debates on the climate change committee.

I want first to thank the Government for a serious attempt to move in the direction we wanted. My noble friend and I have not always agreed, but what he promised in the sense of a real contribution has been made. What we have to say now is only in sadness rather out of any antagonism. My noble friend Lord Framlingham, who followed me in part of my former constituency, really cannot say that this is an irrelevant amendment, because we are talking about what the Government have placed before us. This is part of the withdrawal Bill; it has nothing to do with our pro or anti-Brexit position.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): Of course not.

Lord Deben: If my noble friend is going to say that, I shall find it rather difficult to move towards him, because it is not; I speak as chairman of the climate committee because it is not. The reason I speak is simply this: we were promised that we would pass into UK law all the protections that we have as members of the European Union, so that, on the day after our leaving, we would be in the same position in respect of those protections. Under the present arrangements, we will not be.

As I say, this repeats what happened with the climate change legislation. The then Government were in favour of it in general, but when it came to the detailed powers, the Treasury opposed it. The Minister in Defra, or at least its equivalent in those times—it was then the Minister at the Department of Energy and Climate

Change—was in favour of those powers. That battle was fought in the then Government, and they decided that they would not give the powers until we were able to show that there were enough Labour Members to give a majority in the House of Commons so that they would have to give way. Happily, it therefore became an all-party Bill that we can all claim credit for, passed by the Labour Government and ultimately supported by every party in Parliament.

4 pm

I want it to be the same here—for all of us to support this because it is the parallel and the same battle. There is an argument within the Government as to whether we should go further, as the amendment suggests, and I want us to support that part of the Government that wants us to go further. This is being critical not of the Government but of an attitude of some parts, not of this Government but of all Governments when one tries to enhance and enshrine environmental matters. We are not in any way being combative but standing up for the same principles for which we stood up and successfully passed in the Climate Change Act.

Let us realise that we want a "world-class" watchdog. Those are the words, not of me, rebels or those who do not like Brexit, but of the Prime Minister and this Government. "We want to be a Government who set standards we have never set before". Those are not my words—although they are my sentiments—but those of this Government. What we are asking the whole House, unitedly—and people in favour of our movement from the European Union and those against—to accept that after we leave the EU we want the same protections as we were promised. This is the simple way to achieve it.

These are not dark days, I say to my noble friend. These are the days when we are standing up for the future for our children and grandchildren. They are the same days as those when we stood up in the past and are not to do with disagreements about Brexit, but with the carrying through of the government promise and the view of many members of the Government. We know that when the case against the amendment is put forward, it will be the case not of the whole Government but of part of them, and it is our job to try to support those who want this kind of protection. We have seen what happens if you do not have it. When I was Secretary of State for the Environment, the Environment Agency had some independence; I insisted that it spoke publicly and that it could criticise the Government. It is now part of the department and its chief executive sits on Defra's board of management. We did the same with what was then English Nature. It is now part of the set-up and is drawn into the Government.

The consultation paper has been written by two hands. It is written by the hand that says, "We really must have an independent watchdog. We must stand up and say, 'The environment comes first and we have to pass it on'". The other hand says, "Ah, but Ministers must always be in charge and we must balance this promise with all sorts of other things". I want us to strengthen the hand of the future and of the commonality of Britain. My noble friend Lord Framlingham suggests that we are somehow running against public opinion. I have to say that we are running entirely with public opinion on this. The public want proper protection and to make sure that their children and grandchildren live in an enhanced and better world.

For the Government to fight the amendment, they must explain why weakness is strength, why doing less is doing more, and why not accepting the views of those most concerned with the environment—inside and outside the Government—is better than accepting them. It is a difficult task and I do not think it is winnable task. I say to the whole House that this is a chance for us to vote seriously for the future and to do here what we did 10 years ago with the Climate Change Act, which this House would never dream of saying was other than a success because it is the lead for every country in the world. If the Prime Minister is right and we want a world-class watchdog and to set standards for the whole world, there is no better way than to take the lessons of the Climate Change Act and put them in the Bill, as the Government promised they would.

Lord Rooker (Lab): My Lords, I wish to confirm exactly what the noble Lord, Lord Deben, just said about the Climate Change Act. I moved the Second Reading of that Bill in this House: it started in this House, not in the Commons. At the end of the day, it required that effort down in the Commons, referred to by the noble Lord, to make it an all-party operation. So it is an Act genuinely owned by Parliament.

I want to be brief. It is only since the Maastricht treaty that the ECJ has had the ability to levy fines on non-compliant states, a power that the UK thought to give to the court. It had the advantage of lifting the laggard member states, which benefits us all. And the UK fares well on the scorecard of cases won. We have the third highest success rate of any country now in the EU. Of 750 cases opened against the UK since 2003, 668 were resolved before reaching the court, but the number on the environment suggest that a new system of environmental enforcement might be needed after we leave to maintain standards.

Overall, 34 environmental cases brought before the court by the Commission against the UK actually went to judgment. Four were dismissed as inadmissible or unfounded. The 30 remaining cases resulted in a judgment against the UK, in whole or in part. I am talking only about environmental cases; these do not include cases on agriculture or fishing. In our 44 years of membership of the EU, there has been a roughly 60/40 split between Tories and Labour: both have been bad on the environment and have needed a kick up the backside. In the four years from 2007 to 2010, the UK was the fourth worst in infringements among the 28 member states. In the six years from 2011 to 2016, we were the ninth worst in infringements among the 28. So it requires an external push to get change.

I know from my experience at MAFF and Defra, and from being responsible for agriculture at the Northern Ireland Office, that actions taken to avoid fines are cheaper than paying the fines. Infraction by the EU, or the threat of infraction, has driven environmental policy in this country for 30 years on all the issues referred to by the noble Lord, Lord Krebs, whether it is clean beaches or better water quality. Without the

[Lord Rooker]
threat of a fine, an ultimate sanction that cannot be levied by the Supreme Court in this country, no action would be taken. This, therefore, is a very modest proposal to try to protect against some of the pressures that necessarily come from the economy, the Treasury and business on the environment. Who speaks for the environment? We had better all speak for the environment —without it, we are all sunk.

Baroness Jones of Moulsecoomb (GP): My Lords, I support the amendment of the noble Lord, Lord Krebs. He laid it out extremely well, but I cannot resist adding to his comments. I say, first and foremost, that this has nothing to do with Brexit, nothing to do with exiting the EU; it is all about British institutions. Quite honestly, I take deep offence at the disgraceful contribution just now. I voted to leave; I very much want us to have a successful Brexit, but for me a successful Brexit is a green Brexit. It is also about the Government honouring their promises to move all European law over. In my view, this is the most important amendment that we have considered in the whole passage of the Bill. This House has the opportunity today to secure our world-class environmental protections that have come about through our membership of the EU.

Lord Framlingham: Will the noble Baroness give way?

Baroness Jones of Moulsecoomb: No.

Lord Framlingham: Just briefly?

Baroness Jones of Moulsecoomb: No, no, no. These protections are for our air, our food, our animals, our countryside and ourselves: it is for us that we are doing this.

I have had a lot of flak from people for voting for Brexit, and one of the biggest things that they are unhappy with—obviously I get a lot of green people emailing me—is the risk of losing our environmental protections when we leave the EU. It is something that I worry about as well. Currently, our Government are policed by the Commission and the European Court of Justice. But our Government cannot be trusted on environmental issues, on which they have routinely lost legal cases. Examples include ClientEarth forcing the UK to make good on reducing our lethal levels of air pollution, and the Commission forcing us to reduce the disgusting levels of human waste in the River Thames. So I agree with the criticisms levelled against me and levelled against Brexit. If we do not replace the legal powers of the Commission and the ECJ and maintain the environmental principles that underpin them, Brexit will be a disaster from an environmental point of view. This amendment is our chance to put that right.

The naysayers to this amendment—if there are many in the House—might suggest that the whole point of Brexit is to remove ourselves from EU institutions and so it is wrong to try to recreate their functions. This is plainly wrong. Parliament can, and should, determine what our environmental principles are and who should enforce them. It is perfectly right for Parliament to insist that a statutory body, with real enforcement powers, should hold the Government legally accountable to its national and international environmental obligations.

To me, the crucial part of this amendment is proposed new subsection (1). The Government have repeatedly promised us that leaving the EU would not mean any diminishment of rights, obligations and protections. But, clearly, if we do not pass this amendment, we will be diminished.

Other Members of your Lordships' House have said how feeble the option is that the Government are offering us. The reason for this feeble environmental watchdog is probably because of the divisions in the Government. On the one hand we have a wonderfully ambitious Environment Secretary, whom one can almost imagine frolicking in a field of wheat. On the other hand we have an International Trade Secretary who dreams of GMO-fed beef and chlorinated chickens from factory farms in America.

Viscount Ridley (Con): My Lords—

Baroness Jones of Moulsecoomb: Really? Really?

Viscount Ridley: I am most grateful to the noble Baroness. Surely her speech and many other speeches would do very well as submissions to the consultation. The supporters of this amendment asked the Government for a consultation and they got a consultation. If they have criticisms to make of what has been proposed in the consultation, let them submit them to the consultation. Is that not how it is supposed to work?

Baroness Jones of Moulsecoomb: I thank the noble Viscount for his intervention. I will most certainly do as he suggests. That is a very good idea.

A compromise appears to have been reached between the Trade Secretary and the Environment Secretary. They seem to have said, "Okay, let's have a watchdog but let's make it toothless, so that it won't actually have the powers and duties it needs to be effective". So the Government propose that the new body will not be able to initiate legal action, will have no legal obligation to operate the current environmental principles—such as polluter pays—and will be kept out of anything to do with dangerous anthropogenic climate change. The consultation fails to propose anything close to what we have already.

The amendment is therefore inconvenient for the Government, so they will oppose it. Of course, a real environmental watchdog could not be anything but inconvenient to a Government. We want it to be inconvenient to a Government. We want it to actually hold them to account. We want it to stop them doing bad things. We want it to uphold all the principles of clean food, clean air and clean seas that we currently have.

The Minister has made good on his promise to put the issues out to consultation ahead of Third Reading, but it is simply too weak. It is weaker than the EU law that we have already and it could, of course, be weakened after the consultation. We have no guarantee that the issues will not be kicked into the long grass under the weight of other legislation coming through from Defra.

It is less than a year to Brexit day, and it is obvious that the Government's promised Bill on the environment simply cannot be passed until long after we leave the EU. That means that there will be a governance gap, which we cannot afford. So I urge every Member of this House to vote for this amendment.

4.15 pm

Lord Smith of Finsbury (Non-Afl): My Lords, I support the amendment moved by the noble Lord, Lord Krebs. I say to the noble Lord, Lord Framlingham, that the irreparable damage that may be done is damage to our environment and our health if we lose the safeguards and protections that we have for our environment.

Lord Framlingham: Will the noble Lord—

Lord Smith of Finsbury: No, I will not. I am sorry. The crucial part of the amendment is subsection (4), which talks about,

"an independent body with the purpose of ensuring compliance with environmental law by public authorities".

When I was chairman of the Environment Agency, action was taken on some of the major issues affecting our environment—such as the fact that we discharge raw sewage into the River Thames 20 times or more a year, and the lethal levels of air pollution in our cities—only because of the prospect of infraction proceedings from the EU. If we lose that lever, we lose the ability to tackle these major environmental issues. It is essential that we insist—not just as part of the consultation but now—that the powers of the new environmental watchdog include the ability to take that sort of legal action.

Baroness Young of Old Scone (Lab): My Lords, I was pondering in bed this morning, as one does, about when the change of tone came from the Government on the watchdog and the principles and the commitment to the environment.

We have heard really quite encouraging statements from the Government over the past year. These have included a pledge to be,

"the first generation to leave the environment in a better state than we inherited";

saying:

"We need to fill the governance gap".—[*Official Report*, 8/1/18; col. 8.];

and promising to create,

"a new, world-leading body to give the environment a voice … independent of government, able to speak its mind freely",

with "clear authority" and "real bite". These are not my words, these are the Government's words. They were not enunciated just by the Secretary of State for the Environment, whom you would expect to say things like that, but they were quite frequently enunciated by the Prime Minister as well. That was jolly welcome to us environmentalists, who believe that the environment is not about birds and bees and tweety things but is actually about the ecosystems on which all of human life and economic prosperity depend.

However, somewhere along the line the cracks in the Government's commitment to their intentions and their fine words have appeared. The consultation document which came out last week was total confirmation of that. There has been a huge watering-down of the status of the environmental principles to a policy statement, which the Government would only have to have regard to, on the basis that it would,

"offer greater flexibility for Ministers".

I am not sure that that ought to be the objective of all this. Even though the Government promised that Brexit would not weaken our environmental protections, the way in which the principles are being dealt with in the consultation will not deliver that. As many noble Lords have said, the watchdog is more like a watchpoodle and simply will not do the task that has been carried out by the Commission and the European Court of Justice very successfully, as the noble Lord, Lord Smith, has just pointed out.

The consultation was very late. We should have smelled a rat when it did not appear as promised in November 2017. As a former chief executive of the Royal Society for the Protection of Birds, I know about little birds and a little bird has told us that this is a sign of cold feet in a range of departments—BEIS, the Treasury, the Department for Transport and, indeed, No. 10. There is a total lack of cross-government agreement and that means that the consultation is late, the governance gap is opening up under our feet and there is no chance of getting even these weak proposals in place before Brexit day.

The Government have made a commitment to ensure legal continuity on day one of Brexit so it is vital that the principles and the watchdog are part of domestic law.

Lord Forsyth of Drumlean (Con): My Lords, I am most grateful to the noble Baroness for giving way. I am just contemplating the case that has been put for a really powerful watchdog to protect the environment. If we think, for example, of the decision to turn off the pumps in order to protect the birds on the Somerset Levels, it had a devastating effect on the people who live there.

Baroness Young of Old Scone: I shall no doubt see the noble Lord, Lord Forsyth, on this matter at a later point because, in fact, the folklore around that decision is wide of the mark. This is not the time or the place, but I am sure the noble Lord, Lord Smith, and I will be able to see him afterwards.

We really need the principles and the watchdog in place so that, on Brexit day, we have public bodies that are following the principles, courts that are applying the principles, and the public are able to rely on the watchdog to have a voice on the environment. This Bill is the only opportunity that will deliver that on time, so the way the Government deal with this now is the ultimate test of whether they really are truly committed to maintaining equivalence in environmental protection post Brexit. I hope the Government will stand up and meet this test.

Lord Dykes (CB): My Lords, I add my thanks to the noble Lord, Lord Krebs, and the others who have their name to this amendment for their speeches and suggestions. I entirely agree with them and also with the words of the noble Lord, Lord Smith, who was in

[Lord Dykes]
that prominent position himself at the Environment Agency. I personally felt very surprised at the rather over-robust outburst from the noble Lord, Lord Framlingham, about the whole purpose of this amendment and indeed the nature of the Bill itself. The noble Lord, Lord Deben, emphasised earlier the ecumenical nature of the formulations that have come out of this very serious and deep study made by many people, including the Government.

Lord Framlingham: My Lords—

The Countess of Mar: My Lords, may I remind the noble Lord that procedure at Third Reading is the same as for Report, and the noble Lord has already spoken? If he wishes to ask a question, he can ask for the leave of the House beforehand.

Lord Dykes: I was going on to emphasise, once again, the ecumenical nature of this whole process, and the tribute paid by the noble Lord, Lord Deben, and others to what the Government have done in response. I am grateful to the briefing note that was given by the Repeal Bill Alliance, which represents so many widespread different bodies, that it is necessary to get the guarantee and the certainty in the text of the Bill. I agree with the alliance when it says:

"The original drafting of the bill leaves gaps in environmental protections by excluding vital environmental principles such as the 'polluter pays' and 'precautionary principles' as well as EU directives that include environmental safeguards and obligations".

Is it a preposterous idea that the Lords should propose serious amendments to a Bill and send them to the Commons, asking it to consider them, even on Third Reading? I think that is quite a normal part of the process of the parliamentary interchange between the Houses. It is up to the Commons to decide how to react. The reality, as we know, is that the Commons does not react in the open and free way that it would if it were on the basis of free votes in all parts of the House. Because of the magic mechanism of the only constitutional safeguard we have—the three-line Whip—the Conservative MPs would end up either having to do that or to become rebels themselves, which is always a difficult thing.

So when the noble Lord, Lord Framlingham, said that he was representing wider interests, I disagree. He was representing the salient interest of the Brexit lobby of the divided and broken Conservative Party in the Commons. Therefore, it is very important for us to remember—I quote from the press on 10 May:

"The cliché that the war is over because the eurosceptics have won is wrong. Brexit has created another divide between those evangelical about the UK going it alone and those that know such visions are fantastical. Every now and again May indicates she is in the latter group. There are some like John Major who is urgently aware from his experience that either way the UK is heading for the cliff's edge".

That means that the logic of what the Lords does is justified; it is nothing to do with party politics.

Baroness Byford (Con): My Lords, this is an important amendment. At various stages, I have spoken very strongly in favour of environmental protection. Whether or not noble Lords agree with my conclusion is up to them, but it is very important that the House be aware that I am absolutely 100% in favour of protecting the environment.

I have a difficulty with the amendment before us. Had the Government not brought forward their consultation document, I would be repeating many of the things that have been said. In fairness, however, they have, and I think there are things we can do in the future better than we have done them in the past. I have listed a number of bodies that are either directly or indirectly affected by things to do with the environment. My question to the House at the end of the day is, could we do it in a simpler way and better way, and is not this consultation document exactly what Brexit is about?

With the leave of the House, therefore, I will talk about existing bodies that have some say on the environment. We have the Commons EFRA Committee and the Commons Environmental Audit Committee; the Lords EU Energy and Environment Sub-Committee; the Lords Select Committee on the Natural Environment and Rural Communities Act 2006, which we have just debated; the National Audit Office; the Natural Capital Committee; the Joint Nature Conservation Committee; a committee on climate change, for which my noble friend Lord Deben has done so much; the Environment Agency; Natural England; the Rural Payments Agency—I am not so sure there—and the many groups and charities dealing with wildlife and conservation. We now have the opportunity of a consultation document—and I wonder how many people who have spoken have actually read right through it; I plead guilty to having read right through it—and we are promised that, in the autumn of this year, a Bill will come forward.

Therefore, I ask myself and other noble Lords: are our present arrangements doing what we want them to do? I would be shaking my head and saying, "I think that we can do it better". We have had an overlapping of many of the organisations, and a waste of money and time. I encourage Members of your Lordships' House to at least consider what is in here, and for those who think that there is not enough in here, this is our opportunity to do something about it.

Baroness Jones of Whitchurch (Lab): My Lords, I am grateful to the noble Lord, Lord Krebs, for setting out so clearly the arguments for this amendment, and to all noble Lords who have spoken in support of it. I say to the noble Lord, Lord Framlingham, that he clearly has not listened to our arguments or to the respectful and considered way in which we have conducted ourselves throughout the debate on the environmental and other issues.

Lord Framlingham: My Lords—

Baroness Jones of Whitchurch: I think the noble Lord has already heard that he cannot intervene, because he has already spoken, so I am not going to give way. I hope that the Minister will echo the fact that we have responded to and dealt with the issues in a very respectful way on both sides.

Lord Framlingham: My Lords—

Baroness Jones of Whitchurch: No, I am not going to give way. The noble Lord has already had several opportunities to intervene, and he does not have the support of the House behind him.

Lord Deben: Would the noble Baroness please give way? It is sensible in debate to give way, and I hope that the noble Lord, Lord Framlingham, will be allowed to intervene.

Lord Framlingham: I am grateful to the noble Baroness for giving way. The point that I am making—

The Countess of Mar: The noble Lord has not asked for the leave of the House.

Lord Framlingham: With the leave of the House, may I ask a question?

Noble Lords: Yes.

Lord Framlingham: Does the noble Baroness accept that nobody is keener on the environment than me, as many people in this House know? I am simply saying that this is not the vehicle for it.

Baroness Jones of Whitchurch: I do not know the noble Lord's record on the environment; I am sure he will have other opportunities to tell noble Lords about it. But certainly, if he cares about the environment, this is exactly the place we should deal with it, and that is exactly why noble Lords from around the House are so passionate about the need to pursue this amendment. I hope that the noble Lord will read our amendment and see the sense of it.

4.30 pm

On Report, the Minister promised a consultation document and finally, five days ago, after much chasing, we received a copy. There were all sorts of stories in the press about why it was delayed, and now we have seen it we can kind of understand why. This version is a pale imitation of what we had been led to believe the document would say. For whatever reason, it has clearly been watered down; I agree with the noble Lord, Lord Deben, who said that it has been written by two hands. As noble Lords said, we were promised a world-leading environmental watchdog and enhanced environmental standards after Brexit. However, this document gives the environment less protection and provides for a watchdog with fewer powers. This is why environmentalists are so disappointed, and why our amendment is so important.

To recap on the arguments, first, the document makes the case for environmental principles to be found in one place. However, it does not specify what they should be and certainly does not echo the EU principles that we have set out in our amendment, and neither does it provide for them to be contained in primary legislation. These principles matter because they impact, for example, on GMOs, pesticides, the habitat, waste regulation and water purity. This is why we have set them out clearly in our amendment.

Secondly, the document makes it clear that the application of environmental principles would be subservient to other government policy priorities. For example, new housing is described as more important than the environment. It goes on to portray the environment as the enemy of growth and development rather than complementary to it—in contrast to the Government's own 25-year environment plan, which recognises the interrelationship between growth and the environment.

Thirdly, the proposed environmental watchdog is a toothless imitation of the powers currently exercised by the European Commission to intervene and compel. Under this document, the proposed watchdog will advise, assess progress and lay reports before Parliament—all worthy objectives but not a substitute for the current enforcement mechanisms. It will have a relationship only with central government and not with other public bodies, and it will not have a remit to engage with people and communities, thus failing to empower people and putting the very principle of access to justice at grave risk of being abandoned. It will not even have a role in receiving complaints from the public.

Instead, great play is made in the document of it being the role of Parliament, including Select Committees, to hold the Executive to account—a point echoed by the noble Baroness, Lady Byford. But of course that is what we have now, and it would be without any of the additional benefits of oversight from Europe. It is that additional oversight we are now seeking to replace in UK law.

Baroness McIntosh of Pickering (Con): I will not support the amendment at this stage; I will probably support it or something similar at the stage when the Bill—the primary legislation—reaches us. However, to help the noble Baroness's argument and to address the excellent points made by my noble friend Lady Byford, should she not address the fact that we are seeking that the European regulations have the force of law after we have left, and how that goes to the heart of the amendment to which she is speaking? She is not addressing those points as forcefully as she might.

Baroness Jones of Whitchurch: I thought that I had addressed that. If after Brexit day we are to have the same powers and enforcement as we had prior to it, we need to have a green watchdog with those enhanced powers that Europe has given us in the past—as we heard from the noble Lords, Lord Rooker and Lord Smith, and other noble Lords. That is the need. If we do not replace that in some way with an independent body that can achieve that, we will have no way of enforcing the regulations to which the noble Baroness referred.

The key thing in our amendment is that we have an independent body with the powers to ensure compliance by public bodies with environmental law. There will be a governance gap, a power gap, if that does not occur. I say to all those people—including, again, the noble Baroness, Lady Byford—who say that the consultation is the right way to deal with this, that the idea that a consultation will deliver a new watchdog with some teeth when it is not included in the consultation is magical thinking. We all know that the reality is that the opposite is the case with government consultations and, inevitably,

[Baroness Jones of Whitchurch]
further compromises tend to occur before legislation is finalised. I do not think that to hold that out as a hope and an offer is going to give us much reassurance.

Finally—and this is also a really important point—Michael Gove has already acknowledged that there will be a governance time gap. This consultation proposes a Bill in the next Queen's Speech. That would not be enacted until, say, the end of next year at the earliest. A lot can go wrong before then. As we have discussed before, a rather large number of Defra Bills have been promised and are already in the queue for enactment. Timescales are already slipping. Even with the most optimistic projections, the current plans mean a time lag where environmental protections will not be—as promised in the Bill—the same as we had before exit day.

Our amendment addresses that gap. It addresses those omissions and requires that the legislation would be produced within six months of the date on which this Act is passed and therefore fill that gap. This is the only way to maintain both the spirit and the substance of continuity with EU rights which the Bill promised and the only way to protect the environment for future generations. I hope that noble Lords will see fit to support it.

Lord Callanan: My Lords, it is, frankly, disappointing that this amendment has been tabled today. We have debated the important topic of environmental protections on numerous occasions in your Lordships' House, and the Government have taken clear action in response to many of the points raised. There was support across the House for the Government's amendments removing the powers in this Bill to create new public authorities and our commitment to do so only in primary legislation.

Indeed, the noble Baroness, Lady Hayter, said on Report:

"the very way that we set up quangos—how they are appointed, funded and run, and particularly their reporting structures and independence from both government and any other organisation they happen to be regulating—is key to how they work, hence the need for primary legislation so that we can interrogate all these things".—[*Official Report*, 25/4/18; cols. 1585-86].

I agree with her. The Government have committed to do precisely that—to bring forward primary legislation so that Parliament can fully scrutinise, indeed interrogate, the powers of a new environmental watchdog. Yet here we have an amendment designed to use this Bill to set the parameters of such a body without the benefit of the consultation that we are now undertaking and without the scrutiny that would come from considering a Bill that is specifically introduced for that purpose.

We have endeavoured to provide as much transparency as possible to our plan for ensuring environmental protections are enhanced and strengthened, not weakened, as we leave the European Union. In November, the Secretary of State for Environment, Food and Rural Affairs gave a commitment on the Floor of the other place to create a new comprehensive policy statement setting out environmental principles, recognising that the principles currently recognised in UK law are not held in one place. At that time, the Secretary of State also announced our intention to consult on a new, independent and statutory body to advise and challenge the Government and potentially other public bodies on environmental legislation, stepping in when needed to hold these bodies to account and being a champion for the environment.

In direct response to the points made by the noble Lord, Lord Krebs, we welcome all consultees' views on how this is best achieved, and that includes on the range of enforcement measures that might be required. On Report, I gave a firm undertaking that this consultation would be published ahead of Third Reading, and we did just that on 10 May. The consultation includes proposals on a new, independent statutory body to hold government to account on environmental standards once we have left the European Union and a new policy statement on environmental principles to apply post EU exit. I say to the noble Baroness, Lady Jones, that this is a consultation: we want to hear all views and we have, as yet, made no decisions on how these bodies might operate.

On the subject of timing, I am afraid that the noble Baronesses, Lady Jones and Lady Bakewell, are simply wrong. The Secretary of State for Environment, Food and Rural Affairs announced that we will bring forward a new, ambitious environmental principles and governance Bill in draft in the autumn of this year, with introduction early in the second Session of this Parliament, to deliver these proposals in advance of the end of the agreed implementation period.

Put simply, Amendment 1 risks compromising the timely and full consideration of many important issues. It requires consultation with stakeholders—a point well made by my noble friend Lord Ridley—and yet mandates a set way forward in primary legislation. This is neither helpful nor necessary, as the issues it seeks to bind the Government to commit to are those we will explore in the consultation. In short, the amendment is premature and it prejudges the views of important stakeholders.

There are good reasons for gathering and properly reflecting on views ahead of taking action. Indeed, if we did not do so, I suspect that we would be criticised by the very people moving this amendment. For example, a significant proportion of environmental policy and legislation is devolved. We need to take account of the different government and legal systems in the home nations, as well as the different circumstances in the different parts of the United Kingdom. Amendment 1 risks compromising consideration of these important issues, as well as the wider devolution settlement, by requiring the UK Government to take UK-wide action, including to publish proposals for UK-wide primary legislation on governance and principles.

The government consultation is concerned with England and reserved matters throughout the United Kingdom, for which responsibility sits in Westminster. However, we are exploring with the devolved Administrations whether they wish to take a similar approach, and would welcome the opportunity to co-design proposals to ensure that they work well across the whole of the United Kingdom. We would also welcome views from a wide range of stakeholders, including environmental groups, farmers, businesses, local authorities and the legal profession. I welcome the comments of my noble friend Lady Byford, who made some excellent points worthy of our consideration.

Turning to the issue of environmental principles, the published consultation outlines our proposal to require Ministers to enshrine these principles in a comprehensive statutory public policy statement setting out their interpretation and application. As we have said many times before, the core purpose of this Bill is to provide for continuity in our framework of laws and rules before and after exit: no more and no less. The Bill takes a comprehensive—

Lord Wallace of Saltaire (LD): My Lords, will the noble Lord clarify one thing? He suggested, I think, that we are going to continue with the European regime until the end of the implementation period, which would give time for consultation. Or will we move away from the European Union arrangements in March 2019? That is important. If we are to continue to maintain all European environmental regulations, as now, up to the end of 2020, then we are in a slightly different position.

Lord Callanan: Yes, I am absolutely confirming that: the principles will continue until the end of the implementation period.

Changes to the law should be taken forward by proper processes allowing for them to receive full consideration by those affected. The Government have acted—

Lord Butler of Brockwell (CB): This is a very important point. Will the means of enforcement continue until the end of the implementation period?

4.45 pm

Lord Callanan: Yes. All current processes will continue until the end of the implementation period.

The Government have acted as a responsible Government should. They have done what this House invariably asks them to do by setting out a range of options and inviting views to inform policy through the consultation process.

Lord Deben: Does my noble friend mean that, until the end of 2020, we would be able to take an enforcement action to the European Court? If he does not mean that, the system does not continue and the Government do have to put into the Bill an alternative. But if he does mean that, it is a revelation.

Lord Callanan: My Lords, as we have announced on numerous occasions, there will be further legislation to consider this matter when we have completed—

Noble Lords: Oh!

Lord Callanan: I ask noble Lords to wait a moment. There will be a further withdrawal agreement and implementation period Bill to consider the details of the implementation period, which have already been agreed with the European Union. This has already been announced and we have already set it out. But there will be further opportunities to consider this, as there will be further opportunities to consider the primary legislation that we are announcing in response to this amendment.

Baroness Butler-Sloss (CB): I do not know which way to vote, so what the Minister is saying to the House is enormously important to me. Are we actually going to be able to have enforcement by the European Court of Justice until the moment of the completion of the implementation?

Lord Callanan: That is what has been agreed in the implementation period that we have agreed with the EU so far—but it will be the subject of legislation that we will be able to consider.

Baroness Hayter of Kentish Town (Lab): Will the Minister therefore explain why our amendment to allow the ECJ to continue until the end of the transition—the implementation period—was not accepted by the Government?

Lord Callanan: Because there will be separate legislation to consider the implications of the implementation period as part of the withdrawal agreement and implementation Bill that we have already announced. We are trying to confine the purposes of this Bill to the originally announced process. I realise that lots of noble Lords want to use this legislation as a way to both influence the legislation and in some cases to prevent the process of Brexit. But we are trying to put forward revisions to the statute that will ensure that European regulations will continue to have effect in British law after the end of the period.

Lord Teverson (LD): Can I point out to the Minister that we have no agreement that there will be an implementation period? Indeed, many government departments are preparing, rightly, for there not to be one—because nothing is agreed until all is agreed. That is why this amendment is even more important in terms of that potential gap.

Lord Callanan: I am afraid that the noble Lord is simply wrong: we do have agreement on an implementation period. It was announced at the March European Council, agreed by the Government and the European Union.

Baroness Smith of Newnham (LD): My Lords, surely, in the event that there is no deal, we leave on 29 March 2019 and there is no implementation period.

Lord Callanan: Obviously if there is no deal, we do not have an implementation period—but we are working towards getting a deal. Each of the stages so far has been announced and agreed. We agreed the issues over the financial settlement and citizens' rights before Christmas. We agreed the implementation period in March. I realise that that the noble Baroness and many of her colleagues do not want the process of Brexit to proceed, but we are acting as a responsible Government and endeavouring to agree these things in a timely and proportionate manner. We have agreed the details of an implementation period. Each time they declare their scepticism, but we are confident that we will reach a deal at the end of the day.

[Lord Callanan]

As I have set out, this is neither helpful nor necessary as the text of the amendment mirrors all of the issues that we are consulting on before introducing legislation that this House and other places will be able to scrutinise. I hope that noble Lords will acknowledge that voting for this amendment would prejudge a significant period of consultation that would go against the principles of good policy-making and be ultimately detrimental to the future protection of environmental law. I hope, therefore—without much optimism—that the noble Lord will see fit to withdraw the amendment.

Lord Elton (Con): I hate to interrupt the Minister again, but I am genuinely confused by his answers to the Cross Benches. Do I understand that there will be an untrammelled means of enforcement until the end of the implementation period, and during that time there will be negotiation about future legislation; or is it suspended while the negotiation goes on?

Lord Callanan: As the implementation period has already been agreed, it will be the subject of further legislation in this House. Irrespective of that, we are giving a commitment to bring forward the environmental legislation already announced by the Secretary of State for Environment, Food and Rural Affairs, on which I have already updated this House.

Lord Krebs: My Lords, I thank all noble Lords who have taken part in the debate this afternoon. We have heard some very passionate and powerful arguments, many in favour of this amendment. I also thank the Minister for his response, although I found it as disappointing as he found my amendment. In fact, I was reminded of the words of Francis Cornford, written over 100 years ago. In his chapter on argument, he said that there are many reasons for not doing something but only one reason for doing it, which is that it is the right thing to do. I strongly believe that in this case, the right thing to do is to support the amendment.

In his speech, the noble Lord, Lord Deben, reminded me of something I heard him say over 20 years ago when he was Secretary of State. He defined sustainability as "not cheating on our grandchildren". One of the advantages that many noble Lords will share with me is that, as you get older, you have grandchildren. I am fortunate to have three wonderful grandchildren. But with that pleasure comes the responsibility to care about their future. This amendment is about caring for the future of our grandchildren. It is not just about birds, bees, butterflies and wild flowers, because the health of our grandchildren is intimately related to the health of the environment that we leave for them to live in. This is about a healthy environment for the future and about the health of future generations. So, in spite of the arguments for not doing so, I wish to test the opinion of the House.

4.52 pm

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O'Cathain, B.
Oppenheim-Barnes, B.
O'Shaughnessy, L.
Palmer, L.
Palumbo, L.
Pearson of Rannoch, L.
Phillips of Worth Matravers, L.
Pidding, B.
Polak, L.
Popat, L.
Price, L.
Prior of Brampton, L.
Ramsbotham, L.
Rana, L.
Rawlings, B.
Redfern, B.
Ribeiro, L.
Ridley, V.
Robathan, L.
Rock, B.
Rogan, L.
Rotherwick, L.
Ryder of Wensum, L.
Saatchi, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Skelmersdale, L.
Slim, V.
Smith of Hindhead, L.
Spicer, L.
St John of Bletso, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stevens of Ludgate, L.
Stoddart of Swindon, L.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Sugg, B.
Suri, L.
Swinfen, L.
Taylor of Holbeach, L. [Teller]
Taylor of Warwick, L.
Tebbit, L.
Thurlow, L.
Trefgarne, L.
Trenchard, V.
Trevethin and Oaksey, L.
Trimble, L.
True, L.
Tugendhat, L.
Turnbull, L.
Ullswater, V.
Vere of Norbiton, B.
Verma, B.
Wakeham, L.
Waldegrave of North Hill, L.
Warsi, B.
Wasserman, L.
Wei, L.
Whitby, L.
Wilcox, B.
Williams of Trafford, B.
Willoughby de Broke, L.
Wolfson of Aspley Guise, L.
Woolf, L.
Wyld, B.
Young of Cookham, L.
Young of Graffham, L.
Younger of Leckie, V.

5.07 pm

Amendment 2

Moved by ***Baroness Finlay of Llandaff***

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

"Public health

The duties imposed on the EU under Article 168 of the Treaty on the Functioning of the European Union apply with equivalent effect to public bodies in the United Kingdom after exit day."

Baroness Finlay of Llandaff (CB): My Lords, I begin by thanking the Minister, the noble Lord, Lord O'Shaughnessy, their officials and the noble and learned Lord, Lord Mackay of Clashfern, for the frank and open meetings we have had to discuss the issue of public health. I declare my interest as an honorary fellow of the Faculty of Public Health and I thank Mark Weiss and Angus Baldwin from the faculty, who have been most helpful.

We discussed this vital issue at some length on Report. At that stage, the noble Lord, Lord Hunt of Kings Heath, requested that we return to it at Third Reading. We are grateful to the Minister for agreeing to that so that we can return to the protection of the public's health being part of retained EU law, as it affects Brexit negotiations and us after we leave the EU. My noble friend Lord Warner led on this principle and, in the light of the Minister's reassurance, withdrew his amendment at the time. The assurances given on Report were important. I want to quote what the Minister said then, if I may, because I think that it clarifies where we are going now:

"All EU legislation in the area of public health which becomes part of retained EU law and domestic legislation implementing EU public health requirements will, by virtue of Clause 6, continue to be interpreted … by reference to relevant pre-exit case law and treaty provisions".—[*Official Report*, 23/4/18; col. 1387.]

This means that Article 168, which was described by the High Court, in a case that went to that court, as at the epicentre of EU policy-making, would be available to our domestic courts in future.

The Minister went on to make it clear that the effect of Article 168 in the domestic law of this country before exit will continue after exit. However, although he had said that in effect Article 168 would be available in the future for UK courts to draw on, conflicting legal advice subsequently obtained by the coalition that had been promoting this is causing concern within the public health and wider health sectors. Since Report further organisations, including the Academy of Medical Royal Colleges, have joined the coalition. There are now 62 major organisations calling for watertight reassurance.

This Brexit-neutral amendment would ensure that both the present Government and future Governments continue to have regard to the Article 168 duty of a,

"high level of human health protection"

as we leave the EU, and ensure that we do not row back on the progress we have made in public health during our time in the EU. The amendment would place in the Bill, and therefore beyond doubt, the fact that Article 168 will be retained law after we leave the EU.

If the Minister cannot accept the proposed new clause—which would be the simplest solution—I hope he will be able to make a clear commitment to this House that Article 168 will be retained EU law after we exit the EU. I also ask him to confirm that the case law itself can be used to hold any Government, now or in future, to account, and that such a statement on the official record of this House can be used in court. Such reassurances would provide additional certainty and clarity about the tone and guiding principles for the UK's Brexit negotiations across the board, including our future trade negotiations. I am, of course, aware that further legislation will come forward. I beg to move.

Lord Warner (CB): My Lords, as the author and architect of the earlier amendment on public health, I think that I should say a few words. I thank the Minister: we had a number of spirited discussions, and he also had helpful meetings with the noble and learned Lord, Lord Mackay of Clashfern. When I read them carefully after Report, I was satisfied with the assurances that he had given. I think the Government

shifted their position from saying that such an amendment was not necessary to recognising that there was case law suggesting that they should make the position absolutely clear on the Floor of the House—and when I had time to read the assurances the Minister gave on Report, I thought that he had done that extremely well.

As my noble friend Lady Finlay has said, there is a good deal of anxiety out there about whether there will be a drop in standards after Brexit. The debate on the previous amendment showed that there was still a mountain to be climbed—not by the Minister himself, but by the Government—to reassure people that many of the pre-Brexit safeguards will be in place, and standards will be met, post Brexit. I think there will be an issue when we deal with any trade Bill in this area: people will want to look very carefully to see that there is no backsliding on public health standards and protections. But for the meantime I thank the Minister for what he has done; I have no wish to make his life any more difficult than it already is.

5.15 pm

Lord Mackay of Clashfern (Con): My Lords, your Lordships will know that I took part in the debate on the amendment tabled by the noble Lord, Lord Warner. A clear decision on this matter was made by the Court of Appeal long before Brexit; it exists in our law and is based on European law. I know of no better assurance than that. The principle is clearly set out in the Court of Appeal and the High Court judgment in the packaging case. I do not know the nature of the legal advice to which the noble Baroness referred, but there are legal advices and there are legal advices. My advice is certainly very clear: if you have a judgment of the Court of Appeal on European law, which was part of our law before Brexit, under the retained law arrangements it will be part of our law after Brexit. If I had any reason to suppose that this amendment had been proposed according to that legal advice, I would feel that the amendment that we had before was, if anything, rather better.

Baroness Wheeler (Lab): My Lords, on behalf of my noble friend Lord Hunt, who is unable to be here today, I fully support the amendment of the noble Baroness, Lady Finlay. It was helpful to be reminded of the strong concerns expressed on Report; I also endorse the comments made by the noble Lord, Lord Warner. It is important to have clarification that the need to preserve Article 168 of the Lisbon treaty as part of retained EU law is recognised, and I look forward to hearing the Minister's comments.

I commend the Minister's willingness to work with noble Lords across the House on this important matter and his helpful role in facilitating this and working through the issues referred to by the noble and learned Lord, Lord Mackay. Article 168 places public health protection and health improvement at the epicentre of policy-making, and the Government's assurances that our domestic law implementing EU public health requirements will continue to be interpreted by reference to relevant EU law, including Article 168, will be welcome.

The Minister's assurance of the Government's commitment to ensuring that the UK remains a world leader in public health following Brexit would also be welcome. I hope he will provide the House with this, to be noted for the record.

Finally, it is important once again to pay tribute to and place on record the work of the wide coalition of major public health bodies, medical colleges, charities and the wider health community in helping us, one hopes, reach a consensus on the way forward.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Duncan of Springbank) (Con): I thank the noble Baroness, Lady Finlay, for bringing back this important amendment before your Lordships' House. I do not think I have ever drunk as much tea as I have in the past week or so as I have met various noble Lords and noble Baronesses, but it has been worth it.

I shall be a little more specific in the words I read out because we need on this occasion to give noble Lords the exact words that I hope they require. Before doing that, I should pay tribute to the noble Lord, Lord Warner—to say that he has been spirited would perhaps be an understatement—and to my noble and learned friend Lord Mackay, who is right about there being legal advices and legal advices, but I would much rather have his advice than that of others.

Let me tell your Lordships a little more about the effect Article 168 of the Treaty on the Functioning of the EU will have after we leave. It is right that we pay tribute to the Faculty of Public Health and the 62 organisations that have contributed to keeping this issue at the forefront of your Lordships' House's discussion. An important coalition has been assembled. I would like to think that there is now genuine recognition on all sides of the Brexit argument that public health must be at the epicentre of our engagement. There should be no back-rolling in any of the health standards. The Faculty of Public Health has been at the forefront of public health, and will continue to be so. That is important to put on the record today.

Many noble Lords have spoken eloquently of the importance of Article 168, notably its role in a successful defence to the legal challenge brought by tobacco manufacturers against the introduction of plain packaging. We therefore recognise why noble Lords are keen to confirm the Bill's effect in that area. The Government should have been clearer on this matter in previous debates and I welcome the opportunity provided by the noble Baroness, Lady Finlay, to provide that further clarity.

The Government fully expect that, after exit, Article 168 will continue to be influential to the interpretation and application of retained EU law. This may include the determination of legal challenges to which Article 168 is relevant, including the consideration of public health legislation before exit day. As was noted on Report in this House, although Article 168 is not a directly enforceable provision of the TFEU, it has nevertheless been influential on EU and domestic law in the area of public health. I reassure the noble Baroness that when retained EU law is interpreted and applied, any such influence will be preserved by this Bill.

The Bill is intended to capture EU law as it stands at exit day and, as we have previously discussed, incorporate it into domestic law. Clause 2 preserves domestic legislation that implements or relates to EU law, including that in the area of public health. It is preserved,

"as it has effect in domestic law immediately before exit day".

[Lord Duncan of Springbank]
This will include, for example, the effect given to the Standardised Packaging of Tobacco Products Regulations 2015 by the tobacco packaging case, which, in a sense, echoes the words of my noble and learned friend Lord Mackay of Clashfern. Similarly, Clause 3 incorporates direct EU legislation, such as EU regulations relating to nutrition and food safety into domestic law,

"as it has effect in EU law immediately before exit day",

and Clause 5 provides that any rights, powers, liabilities, obligations, restrictions, remedies and procedures that were recognised and available in domestic law immediately before exit by virtue of Section 2(1) of the European Communities Act,

"continue on and after exit day to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly)".

I had to get that exactly right; I hope it is. Therefore, any rights or obligations that have been drawn from Article 168 will be preserved as part of retained EU law.

Clause 7 is also important because it ensures that retained EU law is interpreted in accordance with relevant pre-exit case law. This means, for example, that domestic law implementing EU public health requirements will be interpreted by reference to relevant EU law, including Article 168. As my right honourable friend the Secretary of State for Health wrote in PoliticsHome on 18 April:

"Our guarantee of equivalent or higher standards of health protection and health improvement when we have left the EU is unequivocal".

The influence of Article 168 of the TFEU on retained EU law, and existing duties such as those in the NHS Act 2006 and Article 12 of the International Covenant on Economic, Social and Cultural Rights will enable us to do this.

I am sorry that on this occasion I cannot therefore accept the amendment in the name of the noble Baroness.

Lord Lansley (Con): Circumstances have not enabled me to participate in previous debates on this subject but I want to put one point to my noble friend. He has instanced the debate on standardised packaging; I was responsible for the initial consultation. That policy did not stem from a European Union initiative but from one in this country or, one might say, from my conversations with Nicola Roxon, the Australian Health Minister. We do not therefore depend on the treaty for the function of the European Union to lead on public health. We have done so inside Europe, as we have across the world, on issues such as the tobacco control regime, and I hope we will continue to do so. The practical, rather than legal, issue is how effective our continuing co-operation with other European Administrations, national and EU, will be in combating public health threats—for example, the spread of infections. That kind of activity is much more practical than it is legal.

Lord Duncan of Springbank: I thank my noble friend Lord Lansley for that helpful intervention. He is, of course, absolutely right that the judgment did draw upon an aspect of Article 168, but of course the principal driver was not the EU component; that was rather a contributing component and as such it will be available as a contributing component going forward. The second point my noble friend raises is an important one and I hope it will permeate much of the discussion we have had and will continue to have. There needs to be ongoing collaboration with our colleagues and friends in the EU; that must continue. We must learn lessons where we can, not just from the EU but more broadly. I would like to think, again, that where good ideas emerge in the wider world of public health we grab hold of them, take them to heart and move forward on that basis.

Lord Dykes: Bearing in mind that Clause 4 as amended has clear definitions of the protections that were required in the amendment, would it not therefore be possible for the Government kindly to consider reinforcing the certainty and security of the assertions by including the text, or perhaps a revised, shortened version of the text, in the new Clause 5? It would go in the Bill as subsection (1), paragraph (c) to the amended Clause 4. Would that not be a very convenient way of combining two certainties to reassure the public?

Lord Duncan of Springbank: I always welcome interventions of this nature. On this occasion I think that the Government position is clear—I hope so as I look to the noble Baroness—and provides the necessary and useful support and words of comfort. I think that on that basis it should be understood by all who read today's remarks and engage directly with the Government on this matter that what they are seeking is provided for and will be available: as it is today, so shall it be after Brexit day. I hope that those words are of comfort to the noble Baroness on this occasion.

Baroness Finlay of Llandaff: My Lords, I am most grateful to everyone who has intervened. As someone who has felt passionately about tobacco control I am glad to be able to tell noble Lords that I am now involved in working with Hong Kong on its tobacco control measures. UK public health has indeed led the world in many ways and nobody wanted to see that jeopardised. I am particularly grateful to my noble friend Lord Warner for generously sharing some of the background to all this with me, and of course the noble and learned Lord, Lord Mackay of Clashfern, who gave me a tutorial on some of the issues around EU law shortly before we came into the Chamber.

I am confident that the Government's reassurances today will offer the legal certainty that the sector is seeking; I am sure they will be warmly welcomed by the whole health community and all those organisations which signed up to the coalition. They are 62 major health and welfare organisations and it sends a very strong signal that this Government are committed to the health and well-being and individuals, of communities and of the country during the Brexit negotiations and after we leave the EU. It signals that future Governments must retain this as a highest priority. Therefore, I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Clause 8: Status of retained EU law

Amendment 3

Moved by ***Baroness Goldie***

3: Clause 8, page 6, line 20, after "legislation" insert "so far as it is"

Baroness Goldie (Con): My Lords, I shall not detain the House but shall be as swift as possible, because these amendments are straightforward and essentially technical. Amendments 3 and 6 ensure that there is consistency in the wording between the subsections of the Government's status clauses. They do not change the operation of the relevant sections which the new clause signposts but ensure that the House and future readers of the Bill do not infer any difference of intention from a minor difference of language.

Amendments 4 and 5 add in missing cross-references. The amendments do not affect the substance of the clause, that retained direct principal EU legislation and retained EU law by virtue of Section 5 is to be amendable like primary legislation, and retained direct minor EU legislation is to be amendable like subordinate legislation.

Amendments 10 and 11 to Schedule 3 would insert new provisions to update the numbering of cross-references contained within the Government of Wales Act 2006 in consequence of provisions of the Bill that the House considered and approved on Report. This would mean adding a reference to a new provision and removing a redundant reference to a provision that is repealed.

Amendments 12 and 13 would, as we indicated on Report, adjust the wording of paragraph 37 of Schedule 7 to the Bill, which provides for the combination of instruments containing regulations subject to different scrutiny procedures in Parliament and also in the devolved legislatures. They would not change the policy that those provisions deliver but would ensure greater clarity as to the legal effect of the provisions.

I hope that noble Lords will recognise the importance of ensuring that we have a robust piece of legislation and support these amendments.

5.30 pm

Lord Wigley (PC): Before the noble Baroness sits down, were the changes in relation to the Welsh devolution settlement discussed with the Government of Wales?

Baroness Goldie: I have no specific information about that. The amendments are intended to help the Welsh Assembly and, indeed, assist any Government in the Welsh Assembly by ensuring that we avoid confusion and greatly improve clarity. I hope that the noble Lord will accept the good faith of the Government in trying to do everything possible to assist the devolved settlement in Wales. With that clarification, I beg to move Amendments 3, 4, 5 and 6.

The Countess of Mar: The noble Baroness can move only Amendment 3 at this stage.

Amendment 3 agreed.

Amendments 4 to 6

Moved by ***Baroness Goldie***

4: Clause 8, page 6, line 22, after "5(2)" insert "or (4)(a)"

5: Clause 8, page 6, line 22, after "10(2)" insert "or (4)(a)"

6: Clause 8, page 6, line 33, after "legislation" insert "so far as it is"

Amendments 4 to 6 agreed.

Amendment 7

Moved by ***Lord Pannick***

7: Clause 8, page 7, line 4, at end insert—

"( ) Without prejudice to subsections (1) to (5) above, if and to the extent that the status of retained EU law is relevant for any other purpose—

(a) retained direct principal EU legislation shall be treated as if it were primary legislation, and

(b) retained direct minor EU legislation shall be treated as if it were subordinate legislation."

Lord Pannick (CB): My Lords, Amendment 7 is in my name and in the names of three other members of your Lordships' Constitution Committee: our chairman, the noble Baroness, Lady Taylor of Bolton, and the noble lords, Lord Norton of Louth and Lord Beith.

The amendment addresses a difficult issue. In its report HL69, dated 29 January of this year, the Constitution Committee drew attention in paragraph 51 to what we saw as a defect in the Bill: it does not specify the legal status that would be enjoyed in our law by retained EU law—that is, the body of EU material that the Bill incorporates into domestic law as at exit day. The question is: is it going to be primary legislation, secondary legislation or something else? And if something else, what?

The Bill deals with this question in part, for the purposes of the Human Rights Act, in what is now paragraph 28 of Schedule 8. But that exception simply begs the question as to what status retained EU law enjoys for other legal purposes. The recommendation made by the Constitution Committee that the issue needs to be addressed in the Bill was widely approved by expert legal opinion, in particular the Bingham Centre for the Rule of Law and Professor Paul Craig of Oxford University, although they disagreed with the suggestion by the committee that the status of all retained EU law should be that of primary legislation.

Ministers agreed to consider this issue and tabled an amendment on Report to introduce what is now Clause 8 of the Bill. Clause 8 is an improvement because it makes two points clear. It states that the part of retained EU law which derives from earlier statutes and earlier statutory instruments, enacted to implement EU law obligations, will retain the legal status it previously had—either primary legislation or secondary legislation. Clause 8 also addresses the circumstances in which different types of retained EU law can be amended.

However, what Clause 8 does not do is address the legal status of other retained EU law for purposes other than amendment. This may matter, as the Bingham Centre has suggested, for example, in deciding which rule takes priority if there is a conflict between different elements of retained EU law, or if the question arises of when courts may allow a challenge to retained EU law and what remedies they may give. Some distinguished legal scholars have expressed such concerns about Clause 8, particularly Professor Alison Young of Cambridge University.

The Minister made it clear on Report that because of the complexity of the issue, the Government were willing to consider the matter further at Third Reading.

[Lord Pannick]
This amendment suggests addressing the issue of legal status by using the distinction that is in Clause 8 itself —between retained direct principal EU legislation and retained direct minor EU legislation.

I am grateful to the Minister for arranging a meeting for me yesterday with members of the Bill team and parliamentary draftsmen. They explained their concerns about the amendment. They have persuaded me that the contents of the Bill will minimise the occasions on which the legal status of retained EU law will matter. They have also pointed out that the amendment would need to specify more clearly what is meant by "primary legislation", which covers not just Acts of Parliament but Acts of the three devolved legislatures. They also tell me that they are concerned about the generality of a deeming provision of this sort, which might cause difficulties in other contexts.

I have found these arguments compelling and I would be grateful, and I hope the House would be grateful, if the Minister would say a little more about these points when he replies to the debate. I am, however, concerned that it still appears to be the Government's position that if any of these problems about legal status do arise in the future, they can be addressed by Ministers exercising delegated powers under the Bill. I remind the House that the Constitution Committee said in our report at paragraph 69:

"It is constitutionally unacceptable for ministers to have the power to determine something as fundamental as whether a part of our law should be treated as primary or secondary legislation".

I ask the Minister to tell the House whether or not the Government agree with that proposition.

I will add one further point—as a promise, not as a threat—which is that the Constitution Committee intends to keep a very close eye on this issue once the Bill becomes law. If it does become necessary to give particular retained EU laws a legal status, and if this is then done by Ministers exercising delegated powers, your Lordships' Constitution Committee will certainly wish to return to the issue. I beg to move.

Lord Beith (LD): My Lords, I will not add to the exposition of the amendment and the reasons for tabling it, which have been so clearly set out by the noble Lord, Lord Pannick. The committee felt that we ought to see whether we could get a more secure place for retained European law in the hierarchy of law as it would be viewed by the courts in this country. There will probably be difficulties in this area and we are probably persuaded that they cannot be resolved by the kind of declaratory amendment that we have tabled on this occasion.

There are further difficulties which the Minister might refer to, which have been pointed out by Professor Alison Young, who was referred to earlier. For example, constitutional statutes are not subject to the doctrine of implied repeal in the same way as other legislation. What will be the position if an item of retained European law is considered to be constitutional in character and appears to be in conflict with subsequent legislation passed post exit day, when the supremacy principle has fallen away and this has to be resolved?

In passing an earlier amendment which removed a discretionary power from Ministers to, in effect, decide whether matters could be put before the courts, we wanted to assert that, wherever possible, we should protect the courts and the legal system from having to be the subject of individual ad hoc ministerial decisions in particular cases. That was part of the motivation for what the committee sought to do in this case. But clearly it cannot be solved in the way that we first suggested.

Lord Mackay of Clashfern: My Lords, this is an important question. It is just possible that Clause 8 could be used by the courts in a situation arising under this particular amendment to extend the provisions of Clause 8 by analogy, where that seemed suitable. As the noble Lord, Lord Pannick, mentioned, fitting this to everything is quite difficult. On the other hand, for a court faced with a single problem, this way of solving it might be possible. Anyway, I am entirely in support of what the noble Lord, Lord Pannick, said about Ministers determining this sort of matter; I do not believe that that can be right. However, I do not think the court would fail, if faced with this problem, in deciding something about it.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the noble Lord's amendment endeavours to provide a global answer to the question of whether retained direct EU legislation should have the status of primary or subordinate legislation—if and to the extent that is relevant. I am grateful to him for the engagement he has had with the Government throughout the passage of this Bill, especially in recent days. Let me say to the House that the Government understand that there is a desire that these new forms of law should be assigned a particular status. We are sympathetic to that view, which stems from a desire for clarity in the law. Of course, clarity is indeed highly desirable. The Government have gone to great lengths to try to make provision in the Bill for how retained direct EU law should be treated. The Bill addresses treatment of retained EU law by the Human Rights Act, the Interpretation Act and rules of evidence, among other things. That is an important part of this Bill. Our provisions on the principle of supremacy deal with the situation where pre-exit domestic law conflicts with retained direct EU law; our amendments on Report deal with amendability; and other provisions with validity challenges where the aim of the Bill is continuity.

On this specific issue of challenges to retained direct EU law, paragraph 1(1) of Schedule 1 states that:

"There is no right in domestic law on or after exit day to challenge … on the basis that, immediately before exit day, an EU instrument was invalid".

As retained direct EU law under the Bill will owe its incorporation into domestic law to primary legislation, it will not be possible to challenge its validity using domestic public law principles. However, as is currently the case, any post-exit Act by a public authority under direct EU law will be susceptible to judicial review, and the Bill does not restrict the use of other routes of challenges, such as breach of statutory duty or challenges under the Human Rights Act. But the crux of our approach and our concerns with the noble Lord's

amendment is that there is no such thing in domestic law as the "status of primary legislation" or the "status of subordinate legislation". There are many different types of both primary and subordinate legislation. For each of those types of law, there are many different rules about how they are to be treated for different purposes. Whatever we took as our model for how we wished to deal with retained EU law and how it should be treated, we would need to consider each of those different purposes and ask whether that model truly worked in each context.

My submission today is that while the pursuit of a simple rule is laudable, in practice the clarity it would purport to give would be illusory. It would raise more questions than it answered and, ultimately, it would be bad for legal certainty. I will, if I may, seek to illustrate what I mean—the noble Lord himself touched upon this. If we take the status of, for example, primary legislation, we are aware of at least five different types of primary legislation: Acts of this Parliament, Acts of the Scottish Parliament, Acts of the Welsh Assembly, Acts of the Northern Ireland Assembly and, indeed, Northern Ireland Orders in Council. Each is treated differently for different purposes; that is to say, it has a different "status". Furthermore, to the extent that provision is made that provides that retained direct EU legislation is to be treated in the same way as an Act of, for example, the Scottish Parliament, as a matter of course the Government would want to engage with the devolved Administrations before making such a provision.

The so-called status of a particular type of legislation is not encapsulated in a single line or by reference to any simple rule. To take just one example, when this Parliament created the concept of an Act of the Scottish Parliament, it set out in the Scotland Act a number of rules, including how such Acts are made and in what circumstances and with what consequences they can be challenged. Nowhere did it try to define those rules by simply saying that Acts of the Scottish Parliament should have the status of any other existing form of legislation. What was right then is, I submit, right now. Once again, we are creating a new category of law. It needs its own rules, rather than being forced into an existing and ill-fitting set of rules made for another type of legislation.

5.45 pm

The situation is, I fear, even more complex for subordinate legislation. To say that retained direct minor EU legislation is subordinate legislation is also to say that it is like Orders in Council, the rules of the Bank of England, by-laws and any number of other forms of subordinate legislation. This amendment says that retained direct minor EU legislation is like all or some of these. Each of these forms of legislation—primary or subordinate—has its own status. Such a concept only exists in our law as the totality of how other statutes and the common law set it out. There is no place I can go to be told the so-called status of an Act of this Parliament, let alone of primary or subordinate legislation more generally.

This Bill is creating several new types of legislation and needs to provide for how that legislation is to be treated. I am not saying today that the noble Lord, Lord Pannick, is wrong to pursue this point, but I do not believe it is a point with a very clear conclusion. As I have said, the Bill does grapple with this question in each of the contexts where it arises, as is done for all other types of legislation in the United Kingdom. This is complex, but the way in which it is approached by the Bill provides a degree of certainty and sets out exactly how any type of retained EU law is ultimately to be treated.

Of course, what the Bill does not and cannot do is address all of the more than 5,000 references to terms in the statute book such as "Act", "primary legislation" or "subordinate legislation". This is not a problem that could have been solved with simple drafting. We are returning to these provisions because the drafting does become complex. The Government were happy to give noble Lords more time to find areas where the distinction between primary and subordinate legislation was clear, visible and mattered in our statute book. Likewise, we discussed the matter with academics and others outside this Chamber and we have not identified any further issues where a simple rule such as that put forward in this amendment leads us to the right answer. But we do know of plenty where, at first blush at least, it would lead to the wrong answer, so there would at least need to be many exceptions to any simple rule that was enunciated.

Exceptions that one expects would be needed would include both where a rule or provision should not apply to retained direct EU law and where it needs to be made clear that it has been superseded by the provisions in this Bill. They include, but are certainly not limited to, for example, how the common law would apply, including the rule in Pepper v Hart; how we would deal with presumptions about extraterritoriality; how we would deal with the issue of parliamentary privilege to proceedings leading up to an enactment; and how we would deal with the presumption of non-application to the Crown of legislation. Even armed with the most extensive legal team, it would be very difficult to come up with a simple rule, and any finite list of exceptions to that simple rule. What I have endeavoured to do, therefore, is demonstrate that a simple rule that required a large number of exceptions would not be a simple rule. At some point, there would be so many exceptions to any simple rule that it would cease to be meaningful.

I should add that, despite this clear need for exceptions—some of which I have mentioned before—this amendment produces an absolute rule with no mechanism for departing from it. To support this amendment, noble Lords would have to be confident that in each place where the words "primary legislation" appear across the statute book, the provision must apply entirely correctly to the EU regulations and that in each place where the words "subordinate legislation" appear, the provision must apply entirely correctly to EU tertiary legislation. We simply do not see how we can be reasonably confident about that.

I would wish to be able to endorse the simple rule put forward by the noble Lord on behalf of the Constitution Committee, but I am afraid that such elegant simplicity is simply not possible for this purpose. There is no escaping that there will have to be an

[Lord Keen of Elie]
exercise to go through each of the 5,000 references I mentioned to discover in which of them it is relevant to set out how they apply to different types of retained direct EU legislation. The only sensible approach is to look at each of those references and decide the right result in the particular context.

In response to the concerns expressed by the noble Lords, Lord Pannick and Lord Beith, where provisions need to apply to retained direct EU law, this is one of the uses to which the consequential power in the Bill will be put. However, I remind noble Lords that that power is now sunset, it is subject to sifting and any SIs of particular interest can be brought forward under the affirmative procedure. This is not a power to make constitutional provision by secondary legislation but rather to ask Parliament to approve, if required, how a range of references and provisions on the statute book should apply to retained direct EU law. We are conscious that any steps taken in that regard will be the subject of keen and direct scrutiny, and so they should be—we fully accept that.

In the present circumstances, and with that explanation, I hope that the noble Lord will understand that his amendment and his intention to provide for an elegant and elegantly ordered statute book cannot, in our view, succeed in the face of the demands of some degree of legal certainty and good lawmaking. In those circumstances, I invite him to withdraw his amendment.

Lord Pannick: I thank the noble and learned Lord for explaining so simply just how complex this issue is. I am certainly not confident to answer his question about how what he kindly referred to as my elegant simplicity would improve the Bill on this occasion. I also thank him and other Ministers for the care and attention with which they have addressed the many points raised by your Lordships' Constitution Committee on the Bill. I hope it is appropriate for me to say that the committee believes that its report has led to a number of amendments that have improved the Bill—happily, in most of those cases, without the need to divide the House. I beg leave to withdraw the amendment.

Amendment 7 withdrawn.

Clause 15: Retaining EU restrictions in devolution legislation etc.

Amendment 8

Moved by ***Lord Thomas of Gresford***

8: Clause 15, page 13, line 7, at end insert—

"( ) A Minister of the Crown will not normally lay a draft as mentioned in subsection (3) without a consent decision having been made under subsection (5)(a)."

Lord Thomas of Gresford (LD): My Lords, on 2 May on Report, at col. 2148, I pointed out that by reason of subsection (4) of the proposed new Section 109A, which the Bill inserts into the Government of Wales Act 2006, the Minister of the Crown must not lay a draft of regulations to restrict the powers of the Welsh Assembly to modify retained EU law unless the Assembly has first made a "consent decision". Calling it a consent decision is confusing, because the decision of the Assembly may, under proposed new subsection (5)(b), be not to consent or, under (5)(c), to refuse to consent. Therefore, in the proposed new clause as it is currently drafted, the making of the so-called consent decision is just a box to be ticked: a prerequisite step only, which, whatever way it goes, permits the Minister to go ahead to lay the regulation before the UK Parliament for its approval.

Under further amendments to paragraph 43 of Schedule 3, if the Assembly does not consent, the Minister must make an explanatory statement to the UK Parliament when laying the regulations before both Houses to explain his decision to go ahead without consent. At the same time, he must lay before each House any statement of explanation of Welsh Ministers as to why the Assembly has refused to consent. Of course, at the hearing of a statutory instrument, there will not be counsel on both sides putting forward these points of view, but at least both sides will be put to Parliament.

This is the precise point of objection of the Scottish Government. In the event of conflict, this mechanism gives the United Kingdom Parliament the final say, which is why the Scottish Government refused last night to give legislative consent to the Bill. I asked the Minister on Report, if the Scottish Parliament did what they have now done and refused consent,

"should Clause 11 be removed from the Bill altogether, as I have argued at Second Reading and since, and its provisions brought back in new primary legislation after further discussion and … agreement?".—[*Official Report*, 2/5/18; col. 2149.]

The Minister did not answer me then, no doubt because it was a hypothetical question on 2 May. But it is no longer hypothetical, so what is his answer now? What are the Government going to do?

More pertinent to this amendment, I raised the issue of the Sewel convention. Paragraph 6 of the intergovernmental agreement made with the Welsh Government said:

"The implementation of this agreement will result in the UK Parliament not normally being asked to approve clause 11 regulations without the consent of the devolved legislatures".

A similar reference appears in paragraph 8 of the accompanying memorandum of understanding. Therefore, there can be no objection to my amendment in principle if it were to appear in the Bill.

That is not the only way in which people in Wales can get comfort. The other possible course I suggested was that the Government affirm that they regard themselves bound in making any regulations by the express commitment to the Sewel principle which we inserted last year, and which came into force only on 1 April last, as Section 107(6) of the Government of Wales Act 2006:

"But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Assembly".

I said in terms to the Minister:

"I would like an express commitment from the Dispatch Box on this point, either to amend the proposed new Section 109A at Third Reading to put the Sewel convention in this clause, or to confirm that Section 107(6)—last year's insertion into the 2006 Act—will apply".—[*Official Report*, 2/5/18; col. 2148.]

There was no answer to this point from the Dispatch Box. I appreciate that the Minister was busy, and he made an offer to correspond with any noble Lord on any point he had not dealt with and to put a copy of his reply in the Library. However, that is an unsatisfactory way of dealing with matters. The Minister in his response to the last amendment referred to the case of Pepper v Hart in 1992. It was with the greatest difficulty that the judicial committee in that case agreed by majority that what was said on the Floor of the House in Parliament was available to construe confusions and anomalies in legislation. Indeed, the noble and learned Lord, Lord Mackay of Clashfern, dissented and thought it wrong to have to look at *Hansard* to construe a statute. So it is not something that can be extended. I do not think that, particularly on such a sensitive issue, the Supreme Court would be impressed by correspondence between a Member of Parliament and the Minister, even if it was in the House of Lords Library.

The Supreme Court is about to hear exactly what is meant by the words "not normally" if the Government decide to push the Bill through—particularly the devolution clause—without the consent of the Scottish Parliament. It has been described overnight as a constitutional crisis, but what a setting to try to agree UK framework agreements across 24 areas of policy if the mechanism cannot be agreed with the Scottish Government first. The Welsh Government have come to terms with that, recognising that we live in a united kingdom and that Wales has representatives in both Houses. It is very important that there should be no room for misunderstanding. It is only in the most exceptional cases that any UK Government should push through measures that fall within the competence of the Welsh Assembly, particularly through the use of statutory instruments. That is why this amendment is before the House, and I beg to move.

6 pm

Lord Wallace of Tankerness (LD): My Lords, I will speak to Amendment 9 in my name. The Bill was substantially amended on Report with regard to the devolution dimension. Among other things, what one might describe as confidence-building measures were put in to ensure that Ministers, having given certain undertakings with regard to how they would exercise their powers to make regulations, would do that and would regularly report to Parliament to ensure that it was being done in good faith.

The reports have to be done on a three-monthly basis: the first report certainly has to be done three months after the date when the Act is passed and:

"Each successive period of three months after the first reporting period is a reporting period".

That report must explain how,

"principles …agreed between Her Majesty's Government and any of the appropriate authorities, and … relating to implementing any arrangements which are to replace any relevant powers or retained EU law restrictions, have been taken into account during the reporting period".

That is fair enough as far as it goes, but it does not give much colour or substance as to what these principles are.

My concern, which I raised on Report, was that there was insufficient detail as to the principles. However, I asked whether the principles referred to were those agreed at the Joint Ministerial Committee,

"back in October or November, which have certainly been discussed before. However, it is slightly odd to have reference to 'principles' which, as far as I can see, will not actually appear in the Bill. Because we have debated this often enough, we perhaps know what the principles are, or at least know where they can be found, but to anyone coming to this fresh it would not necessarily indicate where these principles are".—[*Official Report*, 2/5/18; col. 2141.]

I asked the Minister if he would confirm that the principles were indeed those agreed in the communique of the Joint Ministerial Committee.

The noble and learned Lord the Advocate-General for Scotland said in his response:

"Noble Lords will recollect that, at the Joint Ministerial Committee in October last year, the principles to be applied were agreed by all those attending: the Welsh Government, the Scottish Government and the United Kingdom Government. I just add in response to a point raised by the noble and learned Lord, Lord Wallace, that where he finds reference in the amendments to 'principles', that refers to the principles that were agreed at that stage and are carried over in the agreements".—[*Official Report*, 2/5/18; col. 2164.]

I hope we have established common ground that the principles referred to are indeed those agreed and set out in the communique of 16 October 2017 from the Joint Ministerial Committee on European Negotiations. I am very grateful that the Printed Paper Office has made available copies of that communique for noble Lords to read.

I will not read it all out ad longum but it is worth noting that they are principles that relate to where common frameworks need to be established. They have to do so to,

"enable the functioning of the UK internal market, while acknowledging policy divergence … ensure compliance with international obligations … ensure the UK can negotiate, enter into and implement new trade agreements and international treaties … enable the management of common resources … administer and provide access to justice in cases with a cross-border element",

and

"safeguard the security of the UK".

It also says that when frameworks are to be established they,

"will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore … be based on established conventions and practices … maintain as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules … lead to a significant increase in decision-making powers for the devolved administrations".

In addition, and this has occupied many hours of debate in your Lordships' House as this Bill has gone through:

"Frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. They will also adhere to the Belfast Agreement".

These are not insignificant principles. In fact, I think they are very important. If the Bill is going to be complete —people coming to the Bill should not necessarily have to try to work out where these principles are to be

[Lord Wallace of Tankerness]
found—in the interests of having a tidy statute book these principles should at least be there by reference. I cannot readily see an objection to that, given that there is an understanding what these principles are. They are not to the exclusion of other things that might be agreed by the UK Government and the devolved Governments but at least they are a starting point. I hope the amendment will commend itself to the Government because it is entirely consistent with their policy.

In passing, I refer to the amendment moved by my noble friend Lord Thomas of Gresford and wonder if that were accepted for Wales, it would help find an agreement in Scotland, if it was also applied to Scotland. I suspect it might not go as far as the Scottish Government want because it does not give them the requirement for consent. It says:

"A Minister of the Crown will not normally lay a draft,"

unless such consent had been given. Perhaps the noble and learned Lord will respond to this. Unlike Section 28(8) of the Scotland Act 1998 and the equivalent provision in the Government of Wales Act which says that Parliament will not normally legislate in primary legislation, here we are dealing with Ministers. I assume that if Ministers are laying regulations, they could be subject to judicial review in a way in which a decision of Parliament would not be. That might give further encouragement to the Scottish Parliament that its concerns have been listened to. In responding, the Minister might also just take the opportunity to indicate the Government's position in relation to the vote of the Scottish Parliament yesterday.

Lord Hope of Craighead (CB): My Lords, to follow what the noble and learned Lord, Lord Wallace of Tankerness, has just said, the Minister may remember that I raised how to deal with the Sewel convention in relation to delegated legislation on several occasions in Committee, in dealing with what is now to be found in Clauses 9 and 11 of the Bill as it is printed for this stage of the proceedings. My recollection is that my points were dealt with by assurances from Ministers that the Sewel convention principles would apply to the making of delegated legislation in the context of both Clauses 9 and 11.

I do not have down an amendment in the same terms as that proposed by the noble Lord, Lord Thomas of Gresford, in relation to Wales because I can assume, I think, that the same principle would apply to the corresponding provision for Scotland earlier in the same clause, and no doubt to Northern Ireland as well. For my part, I would be content if an assurance could be given specifically in relation to the mechanism in this clause that means the Sewel convention would be respected in the way the amendment describes. That would be consistent with the assurances I have had in relation to the earlier provisions and would avoid writing the Sewel convention into the Bill, which I understand Ministers are anxious not to do because, in the case of Miller, it was described as merely a convention—important though it may be. I would be grateful if the Minister, when he comes to reply, would give an assurance in relation to both Wales—which has been sought—and Scotland, and no doubt to Northern Ireland as well, although it is not represented here today.

Lord Wigley: My Lords, I am delighted to support the amendment moved by the noble Lord, Lord Thomas of Gresford, and to speak to the amendment tabled by the noble and learned Lord, Lord Wallace, both of which I support. I do so having listened to every moment of the debate in the National Assembly yesterday and to large parts of the debate in the Scottish Parliament yesterday evening. What came through loud and clear was the incredulity—across party lines, even though the National Assembly for Wales accepted the agreement reached by the Minister, Mark Drakeford—on the very point touched on in the amendment from the noble Lord, Lord Thomas, namely that consent can mean consent or that consent is refused or consent has not been approved. For consent to be interpreted in that way was just unbelievable to Members there, and there was some doubt as to whether the Minister was carrying his troops with him. Indeed, Mark Drakeford himself was clearly not at ease in defending the agreement that he and the Welsh Government had approved. In his closing speech he said:

"Of course we should be ambitious for even more ground to be gained, and we are too. And I said in my opening remarks: there is more that we want to achieve. We have ambitions beyond the agreement".

The fact is that a form of words has been reached, which are in the Bill, but they do not succeed in getting hearts and minds behind them. When one is going to something as fundamental as this agreement, which will need to be tested when real issues arise, there needs to be buy-in from all parties. Will the Minister therefore confirm that further discussions may take place with Mike Russell and his Scottish ministerial colleagues? If progress is made there to move the settlement to a form of words that is more acceptable, will the Minister confirm that that form of words would be equally available for Wales and Northern Ireland and not just be a reward for Scotland for standing out against the decisions that have been taken?

What hit Members in both the Scottish Parliament and in the National Assembly was the implication of these agreements when it comes down to the nitty-gritty. The element that stood out most clearly, in both debates interestingly enough, was public procurement. As Dr Dai Lloyd, an Assembly Member in Cardiff, spelled out, it could mean privatisation by the back door for the National Health Service. That came as quite a shock to many Labour Members, and that very point was made in the Scottish Parliament. In his closing remarks, the Minister, Mike Russell, mentioned that public procurement that leads to probably hundreds of thousands of jobs in Scotland would be affected. As the reality of the settlement hits home, there is a growing unease. We should be heading that off, and if we cannot do so tonight, the opportunity should be taken by the Government in another place, where the new clause can be amended by Members of Parliament. I believe that such amendments are needed.

One consideration that they could perhaps apply themselves to is one not covered by this amendment but which could be covered by further amendments in another place. In bringing regulations that will potentially overrule what the Scottish Parliament or the National Assembly for Wales would decide, or the attitude they might take towards certain proposals, if it is done by

instrument through both Houses of Parliament, that lays the whole process open to the fact that the solution is being imposed. Perhaps the Minister and the Government could consider the possibility of dealing with those instruments in the Scottish Grand Committee and the Welsh Grand Committee by Members of Parliament from the two countries, so that at least there would be a feeling that people from Wales and from Scotland are dealing with solutions that are so important.

I personally believe that there need to be changes in the Bill along the lines proposed by the noble Lord, Lord Thomas of Gresford, and the noble and learned Lord, Lord Wallace. I look forward to the Government's response.

Lord Kerr of Kinlochard (CB): My Lords, I will speak in support of these amendments. I do so with great trepidation as a non-lawyer, knowing that the noble and learned Lord will be marking my homework—and doing so in front of the noble and learned Lord, Lord Hope.

The noble Lord, Lord Thomas of Gresford, is completely correct to draw our attention to the fact that a constitutionally significant moment has arrived. He is quite right to repeat the questions that he asked before. Whether one considers it a good thing or a bad thing, what happened in Edinburgh yesterday was certainly a big thing—and it could have very serious repercussions.

I agree with the noble and learned Lord, Lord Wallace, in wanting to bring out the principles agreed in October, and I am grateful to him for reading them out. But it seems to me that much is going to depend over time on how they are interpreted. Will they be interpreted narrowly or widely? The two key common frameworks are to enable the function of the UK internal market and to ensure that the UK can negotiate and implement international trade agreements. How are these principles going to operate?

6.15 pm

The United States is generally thought to have a single market and it undertakes international trade agreements. But if you drive across the United States, it is not just gun laws that change from state to state but sales taxes and all sorts of things. There is a degree of diversity. The United States undertakes foreign trade agreements. If Dr Fox concludes a foreign trade agreement with the United States, he will have to try very hard if he is to resist the US agricultural lobby's demands when it comes to, say, beef with hormones in it or the famous chicken. It is easy to imagine that the Scots might take a different view, and to me it is not inconceivable that different regimes could apply to the sale of chicken in Scotland and the sale of chicken in England. After all, the sale of alcohol is now governed by different regulations in Scotland, and the price is different in Scotland from what it is in England. I am not saying that any of this should happen, I am just saying that it would be very important if the Minister could give us an indication of how these principles will be applied.

I will ask also for three political reassurances. First, the gap between the two sides that has led to this divergence could now lead to a court case. In my view, that would be very bad. At the time, I considered Clause 2 of the Scotland Act 2016, which handles the Sewel convention, unsatisfactory and ambiguous. But I must say that I think that clarity now might be more dangerous, because clarity in the circumstances we are in now would cause serious trouble for one side or the other. Therefore, I really hope that this does not have to be settled in court.

The gap seems to me to be quite small—I have no view on that—but the atmospherics could be improved. I will give the Minister an example. Last week, the Government published a new paper, *Framework for the UK-EU Security Partnership.* "Published" is probably the wrong word; the Government "slipped out" the paper. It was clearly produced not just in the issuing department—Mr Davis's department—but also in the Home Office. It covers issues such as the criminal records information system, mutual legal assistance, extradition, the Schengen information system, Eurojust, the European arrest warrant, the European investigation order, the prisoner transfer framework position and a lot more. I am sure that the Home Office had a huge input into it, because it is the department responsible for England in relation to the EU in future in these areas. So I asked what consultation there had been with Scotland and was told that the Scots were not consulted at all on this document. That seems to me to be extremely unwise.

The people who are responsible for all these areas in Scotland are not working to the Home Office but to the Scottish Government. What is needed here is a little more tact and talk and a little less discourtesy—a bit more diplomacy. It would be good if the Minister could say that, in working out how these principles will be applied and how the frameworks will work, rather more attention will be paid to Scottish concerns than there has been until now. I am not talking about the substance of the matter—I am not competent to talk on that—but about the atmospherics and keeping channels open and talking.

Secondly, if I am right that the gap is actually very small, and if Mr Russell in Scotland is telling the truth when he writes to us saying that his door is still open and a deal could be done, and if Mr Lidington and Mr Mundell are telling the truth when they say that their door is open and a deal can be done, then somebody should make a move. There is no point in having two doors open but nobody going through them. Somebody has to make a move, and it would be very good if the London Government could do that.

My last point has already been made by the noble Lord, Lord Wigley, and the noble and learned Lord, Lord Wallace, and I have probably made it far too often and bored the House—but it would be so much better if our debates on these issues could be illuminated by hearing the views of the governing party in Scotland, directly by being here. This is a paradigm case. Members of the governing party in Scotland are asking us, when Mr Russell writes to us, to take account of their views—but we do not have the opportunity to cross-examine and interrogate them and work out how strongly held or how soundly based those views are.

Lord Foulkes of Cumnock (Lab): The noble Lord is very well-meaning in what he suggests. However, is he aware that Mike Russell actually agreed to the same

[Lord Foulkes of Cumnock]
proposal from the United Kingdom Government that the Welsh Government agreed to? He went along with that and then went back up to Scotland and was told by Nicola Sturgeon that it would not be approved because she did not like it. She runs it: not Mike Russell. How on earth can the United Kingdom Government—as noble Lords know, I am no fan of the United Kingdom Government on most things—legitimately deal with someone who says he goes along with it and then goes back up to Edinburgh and gets overruled by his First Minister?

Lord Kerr of Kinlochard: The noble Lord probably knows more about it than me. I only know what I read in the UK press, which is almost nothing, and in the Scottish press. But my point is a slightly different one. I thought I would be attacked by the noble Lord on a slightly different grounds. I want SNP representation in this Chamber. On previous occasions the noble Lord has reminded me that it is entirely the theology of the SNP that prevents it being represented in this Chamber—and he is completely correct about that. I do not understand why the SNP, represented in the other place, adopts towards this House the policy that Sinn Féin adopts towards the other House. I do not understand it at all. The onus is of course on members of the SNP to change their minds if they wish to take part in our debates, but I would ask the Minister to say what some of his colleagues in the past have said: if SNP MPs were to change their minds, the Government would be delighted to see them represented in this place.

Lord Mackay of Clashfern: My Lords, it is certainly not my purpose to say or do anything that makes it more difficult to reach an agreement with the Scottish Government—that is the last thing I want to do. But I want to say, in answer to one of the points that the noble Lord, Lord Thomas of Gresford, made, that the provisions that we are talking about in relation to the frameworks are provisions in which the Scottish Parliament does not have jurisdiction because the framework is for the United Kingdom as a whole. Therefore, it is not within the jurisdiction of the Scottish Parliament. That is why I have said so far that the consent of the Scottish Government is not necessary at that stage. But I would like to see a consent to the arrangements: then they can go through pretty well formally in the Parliament of the United Kingdom.

I had understood from Mr Russell from the early days—I will say a little more about this when we come to considering the Bill passing, which I hope we will do in due course—that the Scottish Government have said that they require to consent to the Parliament of the United Kingdom passing these. But, so long as their views are fully heard by the Parliament of the United Kingdom, that is the correct way to approach this. The legal competence in this matter lies with the Parliament of the United Kingdom. Therefore, technically, consent is not necessary from any of the devolved legislatures: otherwise, one of them could make these regulations impossible for the others. So consent at that stage is not necessary. It is highly desirable, which is why I was trying to concentrate on an arrangement under which it should happen.

I think that I am right in saying that the memorandum provides that, in effect, the Sewel convention will apply before these things are put to the United Kingdom Parliament. As I said before, the amendment and memorandum that the Government proposed went slightly further than I had suggested, by giving the opportunity for the dissenter, whichever Government it was, to put their point of view in their terms before the Parliament of the United Kingdom before it was considered.

So far as the question of consent is concerned, the technical question is: what is required? The intention of the legislation so far is that a decision has to be taken by each of the devolved Governments before anything is put in this connection before the UK Parliament. In other words, every opportunity is given for them to reach consent in their committees. I would like to see this settled, but the decision as to what is required is a legal decision, which, so far as I am concerned, does not require as a matter of law the consent of the Scottish Government—although that is very desirable. I am entirely in favour of doing everything that we can to deal with these matters.

Talking of papers going out and so forth, I saw an article about papers dealing with fisheries. It said that the document contained the idea that the UK Parliament can deal with fisheries in the world. Of course, we do not need to have discovered that in this paper, because it is in the reserved matters in the original constitution of 1998. The fact that the UK Government and the UK Parliament are responsible for international relations is well known; it is not a discovery one makes from a recently leaked document. That sort of thing does not help the atmosphere.

I certainly support strongly all that has been said about doing our level best to get the best atmosphere with the Government of Scotland as well as with the Government of Wales—and I would love to see a Government in Northern Ireland as well.

6.30 pm

Baroness Hayter of Kentish Town: My Lords, I would also like to say a word about giving this Bill a Third Reading, in the absence of a legislative consent Motion from one of the two functioning devolved legislatures, as we heard, obviously. We know that this House regrets that absence.

There is no doubt that we are partly in this position because of the failure of the Government to start their Brexit process by engaging with the devolved authorities. Indeed, there was some six months when the JMC did not even meet, even after the outcry over the initial Clause 11, which had been tabled without consultation, much less agreement with the interested parties.

It was, like much of the Government's Brexit handling, the result of no pre-referendum consideration of the impact of any withdrawal and indeed, even after June 2016, inadequate attention to this vital area of returning EU regulation. Of course, it was the result—maybe all of us are slightly to blame for this—of not fully appreciating how devolution has fundamentally affected decision-making across the UK. As in the example given by the noble Lord, Lord Kerr, some of this is continuing. Papers are still being produced

without the consultation that I would by now have hoped was becoming regular. As I have said, I think, to the Minister, I hope that when this Bill is over, the Government will review the status and the functioning of the currently very ineffective Joint Ministerial Committee.

For now there is, as the Scottish as well as the Welsh Government recognise, a need to look at how to protect an internal UK market even as we pull out of the EU equivalents. Indeed—in a way it is quite funny—the Scottish Government have been the most vociferous about staying in the EU single market, so it is slightly odd that they seem to want to turn their back on an all-UK version of that.

The deal now in Clauses 13 to 15 seeks a way forward, allowing most of the non-reserved powers to be, rightly, with the devolved authorities, while on a temporary basis holding back some of those which may be needed either for trade agreements or for our own internal single market. Consumers and businesses will want to know that they can buy or sell across internal UK borders without safety, product or other regulations being different, such that they lead to border checks or inadequate standards or controls. The example of alcohol pricing across the border is not the same. If you are buying alcohol in Scotland, you know you are in Scotland and it may be cheaper or more expensive. But if you are buying a chicken when you are in Durham, you want to know whether it was chlorine washed when it was produced in Scotland. As a consumer, those products will cross the borders. So there are undoubtedly areas that we will want to sort out, for the consumers, as well as for businesses trading across the UK.

The Bill for now allows for decisions on these temporarily frozen areas to be taken by consensus, but where one devolved Administration disagrees, as we have just heard from the noble and learned Lord, Lord Mackay, their rationale—and indeed the UK Government's response to their reasoning for withholding that consent—would come to this Parliament. It would not come back to the UK Government, but to this Parliament for consideration and final decision.

As my noble friend said, until very late in the process, the Scottish Minister had been part of these negotiations and appeared content with their direction of travel and outcome. It was at the very last moment that the Scottish First Minister took another view and demanded a veto—effectively a veto over what both Wales and England might do in some of these areas. This is understandable from an independence party that retains doubts about the role of the UK Parliament over any of its affairs.

We on this side of the House support the union. While absolutely defending and championing devolution—who could not, as an old friend of the late and much-lamented Donald Dewar, and indeed the then Labour Government who implemented devolution?—we do not see it as either separatism or proto-independence.

While acknowledging that the SNP does not share our commitment to devolution—and indeed still campaigns for something different—we nevertheless hope, as others have said, that the UK, Welsh and Scottish Governments will convene cross-party talks to broker an agreed way forward, since we regret that the Scottish Government failed to negotiate something to which their Parliament could consent. We live in hope that it might still be possible. There is still time.

Lord Forsyth of Drumlean: Could the noble Baroness, Lady Hayter, therefore explain why the Labour members of the Scottish Parliament voted in the way they did, to support not giving legislative consent and to support having a Bill, which the Presiding Officer had said was ultra vires?

Baroness Hayter of Kentish Town: My Lord, the wonderful thing about devolution is that it happens within our political parties, just as it happens across the UK.

There is still time for some finessing. Perhaps we can, in the coming months, find an alternative way forward to the approach now proposed, particularly before any draft regulations are laid before this House—maybe from some of the ideas going around today. If we can find a way forward that commands the support of all the devolved Administrations and thus preserve the spirit of the Sewel convention—which those of us who care about devolution rightly believe is of huge importance—we on these Benches would welcome it. For now, we judge that the package in front of us is a positive way forward, and is thus no barrier to our agreement to a Third Reading.

I should add a word about the clauses on devolution and Northern Ireland, given that, very regrettably, it was not possible to have the same level of political engagement from there as was available to the Scottish and Welsh Governments and their legislatures. Cross-UK frameworks have particular relevance to Northern Ireland, given the Government's welcome commitment,

> "to uphold the Belfast Agreement in its entirety, to maintain a frictionless border between Northern Ireland and Ireland, with no physical infrastructure",

while ensuring that any regulatory continuity in Northern Ireland to maintain a frictionless border would not threaten Northern Ireland's place in the internal market of the UK. The future developments of the frameworks envisaged in this package have to respect the wider demands of upholding the Good Friday agreement. We trust that will remain uppermost in the Government's mind.

Lord Keen of Elie: My Lords, I thank noble Lords for their contributions in this debate. We may be repeating some of the ground that we covered at Report, but these are important matters and they deserve full attention. I appreciate that noble Lords want to consider the points made during the debates on the Motions in the Scottish Parliament and the National Assembly for Wales yesterday.

I understand the intention behind the amendment of the noble Lord, Lord Thomas, but I do not accept that the amendment adds anything that is not already achieved by the Bill and by the intergovernmental agreement. This amendment pertains only to Wales, although I appreciate the point made by the noble and learned Lord, Lord Wallace, as to the position in Scotland. It seeks to remedy what is essentially already

[Lord Keen of Elie]
a firm political commitment that we have made, in line with the intergovernmental agreement, that we will not normally put Clause 15 regulations before this Parliament without the consent of the National Assembly for Wales.

I would put it to the noble and learned Lord that the sincerity of this commitment—and the process and agreement that underpin it—is, it would appear, sufficient for the Welsh Government to agree to these provisions, and it is sufficient for the National Assembly for Wales to agree to these provisions, as it did yesterday. There must be a genuine cause for action in the interests of the whole of the United Kingdom if the UK Government ask the UK Parliament to approve regulations without consent from the devolved legislatures. I note what my noble and learned friend Lord Mackay of Clashfern said as to the legal position, but of course it goes beyond that. We are concerned to ensure that moves that have a UK-wide impact have the consent of the devolved Administrations.

The intergovernmental agreement that we have made with the Welsh Government makes this clear. The noble Lord, Lord Thomas, referred to paragraph 6 of that agreement which states that we, the UK Government, will not normally ask Parliament to approve draft regulations in the absence of a devolved legislature's consent. It is also why we will be under a duty to fully explain any such decision to Parliament and to provide the reasons given by the devolved Administrations for why consent has not been given, so that in considering this matter Parliament will be able to take an informed decision on what is right for the United Kingdom as a whole, based on full information. Ultimately, as we have debated fully in this House, it is for the UK Parliament to decide whether to proceed in putting a temporary freeze on the common approaches we have now under EU law. This amendment, while well intentioned, would undermine that. It risks making it a decision for the courts as to whether that question can be put to Parliament. Moreover, the noble Lord himself observed that where you have the issue of what is normal or not normal in the actions of a Minister, it may be amenable to judicial review if he proceeds without the appropriate consent. It would introduce uncertainty because in that context there are no clear grounds on which the courts can consider whether the requirement set out in the intergovernmental agreement has been met.

I am happy to repeat the commitment set out in the noble Lord's amendment and in paragraph 6 of the intergovernmental agreement. The implementation of that agreement will result in the UK Parliament not normally being asked to approve Clause 15 regulations without the consent of the devolved legislatures. The UK Government have committed to making regulations through a collaborative process. That puts a similar commitment on the Welsh Government that they will not unreasonably withhold recommendations of consent. These are political commitments which apply to both of our Governments so that the intergovernmental agreement carries greater weight. For the reasons that I have given, I would suggest that there is nothing to be gained, and indeed something to be lost, by putting those words on the face of the Bill. In these circumstances, I invite the noble Lord to withdraw his amendment. Perhaps I may come on to the legislative consent Motion process of yesterday in a moment because he raised questions directly pertinent to that point.

In relation to the amendment spoken to by the noble and learned Lord, Lord Wallace, I recognise that he raised this point during Report and that he is doing so again through his amendment today. I am grateful for this opportunity to clarify these provisions on the record. The noble and learned Lord has made an important case for why we should seek to provide the utmost legal clarity. Given the extent of the Clause 15 changes, this sort of fine detail can easily be lost, but it is no less important that these provisions should deliver the right outcomes. As I confirmed in response to the noble Lord at Report, the reference to principles in sub-paragraph (b) of the reporting requirement is indeed intended to cover those principles that are the subject of his amendment; that is, those principles which were agreed between the UK Government and the devolved Administrations at the Joint Ministerial Committee on EU Negotiations meeting on 16 October 2017 and published in the communiqué of that committee, to which the noble Lord referred. But I ought to be clear that while this reference covers the same ground as the amendment, the current wording also includes any revisions agreed to those principles and to new principles on the same subject that are put in place to supplement them over time.

I am sure that noble Lords will agree that it is right that as the work on the frameworks progresses—and it continues to progress—and as circumstances may change, we, the UK Government, and the devolved Administrations should continue to review the principles to ensure that they remain fit for purpose. I do not believe that it is the noble and learned Lord's intention that the duty to report on any agreed revisions to the principles should be lifted from the Government or that we should be under a duty to report on the principles as drafted only in October 2017, even where these may have subsequently been revised or updated; but that, on one view, would be the effect of his amendment. In these circumstances, I am grateful for the opportunity to clarify what is covered by the reference to the principles, but again for the reasons given, I invite the noble and learned Lord not to press his amendment.

6.45 pm

On the question of where we are with regard to an LCM, the background which has been described clearly by my noble and learned friend Lord Mackay of Clashfern, I note that the Prime Minister and the Chancellor of the Duchy of Lancaster both answered questions on this earlier today in the other place. Yesterday, the National Assembly for Wales granted its consent to the Bill, as recommended by the Welsh Government, and of course we welcome that. It represents significant progress and a sincere willingness to work together to find the right solution for the United Kingdom as a whole and for its constituent nations. It also recognises that this is not about taking away devolved powers. As Mark Drakeford said to the Assembly yesterday, the effect is,

"not to change the rules but to ensure that they continue as they are today, and to continue until a new rulebook can be agreed".

I notice the point made by the noble Lord, Lord Foulkes, about the background circumstances to us finding no agreement from the Scottish Government and the Scottish Parliament. I am disappointed that the Scottish Parliament has voted not to give its consent at this time, but I emphasise in response to points made by noble Lords that so far as we are concerned, the door remains open for the Scottish Government to reconsider their position. However, communities and businesses across the United Kingdom need certainty. They need to know how the law will apply to them and that after exit day, divergence in those laws will not create barriers to living and doing business across the United Kingdom. We have to maintain that internal market. I would urge the Scottish Government to continue working with us to deliver that certainty for the benefit of those in Scotland, the benefit of those in England, the benefit of those in Wales, the benefit of those in Northern Ireland—that is, for the benefit of the entire United Kingdom, because this is a United Kingdom issue being addressed by the United Kingdom Parliament, as needs to be done.

I would like to put on the record as well that this Government are committed to acting in the spirit of the intergovernmental agreement which has now been published, and I should say too that we are committed to acting with all the devolved Administrations so far as that agreement is concerned, not only those which have given their consent. We will continue to respect the devolution settlements and we will seek the consent of the devolved Administrations, as we set out in the intergovernmental agreement, with regard to matters as we go forward, including the matter of the amendments adopted by noble Lords during the Report stage of this Bill. With that, I invite the noble Lord to consider withdrawing his amendment.

Lord Thomas of Gresford: My Lords, I am most grateful to the Minister for his very full reply, and in particular I note his formal commitment from the Dispatch Box to the application of the Sewel convention to this legislation. Moreover, the principles that are referred to in the amendment tabled by my noble and learned friend are indeed the principles set out by the Joint Ministerial Committee in October last year. As the noble Baroness, Lady Hayter, said, the process of consultation with the devolved Administrations started far too late and there were no meetings of that Joint Ministerial Committee for some seven or eight months; that is, during the very important period when the negotiations with Europe were beginning. It is almost ironic that it is the principles that were set out by agreement between all the parties at the first meeting of that Joint Ministerial Committee which now find themselves as the foundation of the way forward in this Bill.

The noble Lord, Lord Kerr of Kinlochard, said that there should be less discourtesy and more diplomacy, and I agree with him entirely on that. The noble Lord, Lord Wigley, gave us some insight into the proceedings yesterday in both Edinburgh and Cardiff. He described the incredulity that was expressed at the drafting of the very point which I have taken in my amendment—incredulity that a consent decision could mean no consent or the refusal to consent. It is a mark of the state of the relationships that exist between the devolved Administrations that there has been no proper discussion on these issues until now.

I agree entirely with the noble and learned Lord, Lord Mackay, that what we are looking for is a mechanism whereby there is agreement about how these UK framework agreements are to be entered into. It is not so much the agreements themselves as the mechanism by which those agreements are made that is important. The point I was seeking to make was that if the Government choose to push on with this Bill without the consent of the Scottish Government, the chances of coming to a UK framework agreement are that much more diminished. It would be much preferable for the Government to continue their efforts to come to an agreed mechanism whereby those arrangements can be completed.

Having regard to the commitments that have been made from the Dispatch Box, I do not need to press the amendment. I will finish on this note—namely that, as with the noble Lord, Lord Kerr, I think it is a great shame that the SNP are not represented in this Chamber. They merely wish to take control; they merely wish to make their own laws; they are prepared to risk economic security for sovereignty, whatever that may mean; and there are quite a number of people in this House who take a similar view, but not for Scotland. I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Schedule 3: Further amendments of devolution legislation

Amendment 9 not moved.

Amendments 10 and 11

Moved by ***Lord Callanan***

10: Schedule 3, page 44, line 24, at end insert—

"( ) In subsection (9), leave out "and (8)" and insert ", (8) and (8L)"."

11: Schedule 3, page 44, line 26, at end insert ", and

(b) in subsection (7)(a), omit ", (b)"."

Amendments 10 and 11 agreed.

Schedule 7: Regulations

Amendments 12 and 13

Moved by ***Lord Callanan***

12: Schedule 7, page 73, line 32, leave out "that requires" and insert "for"

13: Schedule 7, page 74, line 20, after "Act" insert "(and, accordingly, references in this Schedule to an instrument containing regulations are to be read as references to an instrument containing (whether alone or with other provision) regulations)"

Amendments 12 and 13 agreed.

6.52 pm

Motion

Moved by ***Lord Callanan***

That the Bill do now pass.

Lord Callanan: My Lords, I move the Motion with a tremendous sigh of relief. This is a good time to reflect—briefly, noble Lords will be pleased to know—on the passage of the Bill through the House. As I have said on numerous occasions, the Bill has a simple purpose: to prepare our statute book for leaving the European Union. This Bill is vital to ensuring that, as we leave, we do so in an orderly way.

When the Secretary of State for Exiting the European Union opened the Second Reading debate in the House of Commons, he said:

"I stand ready to listen to those who offer improvements to the Bill".—[*Official Report*, Commons, 7/11/17; col. 343.]

No one can be in any doubt that we have listened. We have brought forward significant amendments to all the key aspects of the Bill, in partnership with many noble Lords in this House, with almost 200 amendments having been made to the Bill in total. The Bill now ensures that our courts are clearer on the interpretation of the CJEU's case law. It ensures that Parliament is better informed about, and better able to scrutinise, the powers in the Bill. And it ensures that, as we leave the EU, more new powers are passed by default to Edinburgh, Cardiff and Belfast than ever before.

We have had 11 extended days—over 100 hours—of Committee debate on the Floor of this House. We have had six days on Report, and we have discussed almost 800 amendments. More noble Lords spoke at the Second Reading of this Bill than any other Bill in the history of your Lordships' House.

The Government have of course suffered defeat on 15 issues. Although I regret the number of defeats, I am grateful to the many noble Lords who have worked constructively to improve the Bill. This House has done its duty as a revising Chamber. The Bill has been scrutinised. It is now right that the Bill be sent back to the elected House of Commons so that Parliament can, as a responsible legislature, complete the job of ensuring a functioning statute book for the whole of the UK. I beg to move.

Amendment to the Motion

Moved by ***Lord Adonis***

At end insert "and, in the light of the vital importance of the issues raised to the future of the United Kingdom, this House urges the Leader of the House to make representations to government colleagues to ensure amendments made by the House of Lords to the Bill are considered as soon as possible".

Lord Adonis (Lab): My Lords, I do not think that the House of Lords has spent longer considering any piece of legislation in its 800-year history. I join the Minister in paying tribute to the hundreds of noble Lords who have contributed over four months of debate. In *Iolanthe*, the House of Lords does nothing in particular but does it very well. This time, I think we have done rather better. Nevertheless, Parliament and the country are in a critical situation on Brexit, and a few comments might be in order as the Bill leaves us.

Wisely, the House of Lords has not been bullied by the *Daily Mail* and the right wing of the Conservative Party into becoming a rubber stamp for extreme Brexit. On no reading of party manifestos in the last election—let alone the present composition of the House of Commons, where no party has a majority—can extreme Brexit be called the "will of the people". We are doing our constitutional duty in asking the House of Commons and the Government to think again on certain elements of the Bill as it came to us, in particular the extensive Henry VIII powers, the failure to provide for a customs union, the failure to entrench the Good Friday agreement, the failure to respect the devolution settlements and the failure to seek continued membership of the EEA.

Negotiations are ongoing on all these issues between Her Majesty's Government and the European Commission. We are a parliamentary democracy, and it is essential that the will of Parliament becomes the voice of the Government. That can only happen if Parliament is allowed to express its will, which is why I am moving this Motion to request the Government to allow early and full consideration by the House of Commons of our amendments.

When this Bill first started, four months ago, the noble Lord, Lord Callanan, whom the House has grown to admire for his persistence and his emerging good humour, told us that it was needed urgently so that the statute book would be in good shape on 29 March next year, when European law no longer applies. Suddenly, that imperative appears to be less urgent. As noble Lords may know, there are all kinds of rumours going round about the Government delaying—perhaps for months, perhaps even for ever—consideration by the Commons of your Lordships' amendments, because the Prime Minister fears a rebellion among Conservative MPs against extreme Brexit. To deny the House of Commons the right to express itself on our amendments in a timely manner is obviously undemocratic, and I therefore look forward to the Minister telling us when the Government intend that our amendments will be considered by the House of Commons.

If and when our amendments are considered by the Commons, what should happen then? The Commons may of course be persuaded of the wisdom of your Lordships in all 15 of our amendments carried against the Government, so we have no further role to play. Looking at the statements of Mr Dominic Grieve, the de facto leader of the sensible Conservatives, and those of my party leader, who of course is always open to good arguments, it is possible that that might happen. If it does not, then we as a House will have to exercise our judgment as to our response.

Noble Lords on all sides of the House have shown a commendable unwillingness to be dragooned into voting for the short-term expediency of party leaders against the national interest, and I am sure that will continue. Speaking for myself, my view of the situation is this. First, the so-called Salisbury convention, which affords

a protected status to the manifesto commitments of a party that has won a general election, clearly does not apply in the case of our amendments to the Bill. Most of our amendments concern issues that did not feature in the Conservative manifesto in the last election at all. Even on the contested issues raised in some of our amendments, the Conservative Party did not win the last election and therefore has no mandate for anything.

7 pm

Obviously, if the House of Commons expresses itself strongly, we take serious note, irrespective of the Salisbury convention; but if the Commons expresses itself with small and declining majorities, which might vanish if pressed to consider further, we take serious note of that too. Furthermore, on fundamental constitutional issues, we have a responsibility to the country to defend essential rights and interests, which is precisely why the Parliament Acts of 1911 and 1949 give us, as an unelected House, a delaying power over Bills such as this one. If the Government do not give the House of Commons an adequate and timely opportunity to consider our amendments, that fact would be bound to have a significant bearing on our future assessment of the public interest.

Lord Forsyth of Drumlean: Does the noble Lord not think that he should be rather more honest about his motives? For example, in January he tweeted this to Donald Tusk:

"We will probably hold a referendum on Mrs May's Brexit terms before next March, so please work on the assumption that we will continue to play a central role in the future of the European Union".

Is that not his real agenda? Is this all not just flim-flam?

Lord Adonis: I very much hope that happens, and I hope that the noble Lord, being a democrat, will support the holding of a referendum on the Prime Minister's final treaty. However, that motivation does not guide us in our consideration of these amendments. Our role is to perform our duty as a revising assembly.

Finally, I want to say a word about the right wing of the Conservative Party, which is calling for our abolition because we are not acting as the unquestioning registry office of the views of Mr Paul Dacre, Mr Jacob Rees-Mogg, Mr Nigel Farage and, indeed, the noble Lord, Lord Forsyth. I am strongly in favour of House of Lords reform. I have consistently voted in favour of an elected second Chamber; if the present crisis leads to that, it would be a great gain for the country. An elected Chamber would be much more powerful than the present House and therefore much more able to stand up to Governments such as this one, with weak and non-existent mandates but big and damaging policies.

Lord Elton: My Lords—

Lord Adonis: I think that the noble Lord will have an opportunity to make his own speech in a moment, if he wishes to do so. I am drawing to a close.

Noble Lords: Oh!

Lord Adonis: I will not give way. Whatever happens hereafter, I am totally unafraid of being abolished for acting according to our conscience and the constitution. Indeed, if we do not act according to them, we deserve to be abolished. Our Writ of Summons requires us to be here at Westminster,

"waiving all excuses … to treat and give your counsel upon the affairs … the safety and defence of the … Kingdom".

I cannot think of any legislation since the Second World War that more seriously concerns the affairs, safety and defence of the United Kingdom. We should do our duty.

The Lord Speaker (Lord Fowler): The original Motion was that this Bill do now pass, since when an amendment has been moved to insert at the end the words set out on the Order Paper. The question I therefore now have to put is that this amendment be agreed to.

Lord Pearson of Rannoch (UKIP): My Lords, I trust that noble Lords are relieved that I have removed my Motion to Regret from the Order Paper. I did so because I did not want to prolong today's proceedings and also because I have an unexpected family commitment this evening that may prevent me staying until the end of the debate.

Noble Lords: Oh!

Lord Pearson of Rannoch: I have saved noble Lords an awful lot of time. I hope that students of Brexit will read what I said at Second Reading on 30 January in column 1392. The core of my argument was that the Government were underestimating the strength of our hand in Brussels, because politicians and bureaucrats do not understand how to do deals; that they should have resiled from Clauses 2 to 4 of Article 50, which give the Eurocrats control over our leaving process; and that they should have dictated our terms for leaving to the Eurocrats. Those terms have not changed, and remain in the interests of the real people of Europe—as opposed to those of the Eurocrats, with their determination to keep afloat their failing project of anti-democratic integration. We should be generous with those real people, by offering them wide mutual residence, our ongoing security support and the continuation of our free trade together, which their exporters need so much more than ours. If the Eurocrats accept all that, we should be generous with the cash that we give them. If they do not, we should leave anyway, and give them no more cash after 29 March next year.

As the Bill leaves this House for the Commons, the Government still do not seem to believe that we can legally resile from those Article 50 clauses and leave anyway—yet I am advised that there have been some 225 unilateral withdrawals from international treaties and organisations since 1945. I recommend Professor de Frankopan's opinion in *Money Week* on 21 November 2016, which covers supportive decisions from the German constitutional court and confirms that leaving without the Eurocrats' consent is just a matter of political will.

The area in which the Government seem most confused—and most unnecessarily under the thumb of Brussels—is trade. We have free trade with the EU,

[Lord Pearson of Rannoch]
so why do we not simply offer to continue it with a new arrangement under the jurisdiction of the World Trade Organization and threaten to go under the WTO's normal remit if the Eurocrats do not agree? As I have said, continuing free trade would be much to the advantage of the EU exporters to us because, if it stops, they would pay us some £13 billion a year in tariffs—under present WTO terms—against the £5 billion that we would pay them. Nothing would change. We would all just go on as we are and the inflated problem of the Irish border would simply disappear. Moreover, there is even an article in the treaties that I do not think has been mentioned in these proceedings. It obliges the EU to continue free trade with us after we leave it and become part of the wider world. Article 3(5) of the Treaty on European Union contains the following:

"In its relations with the wider world, the Union … shall contribute to … free and fair trade".

Have the Government pursued this clause with Brussels?

I conclude with two further observations on the passage of the Bill. First, I regret that not one of our five former EU Commissioners who spoke, and only one of our 17 former MEPs who spoke, saw fit to declare their EU pension entitlements. I refer especially to the entitlements of the former Commissioners, which can be lost if they fail to uphold the interests of the communities—now the EU. Secondly, our 156 hours of debate so far have shown me something that I had not spotted before: Europhilia is a hallucinatory illness. It affects otherwise quite sensible people and leads them to see the European Union as a good thing, when any normal person can see that it may have been an honourable idea in 1950, but now it does nothing useful that could not be done much better by the democracies of Europe collaborating together. It has become a bad, pointless, corrupt and very expensive thing, which the British people, I am glad to say, have seen through. I trust that they will also see through the blandishments of so many of your Europhile Lordships in our debates so far, and take pride in the decision they so wisely took in the referendum on our membership.

Lord Mackay of Clashfern: My Lords, I would like to say a word about my attempts for Scotland. I am going to read this from my note, because I have shown it to Michael Russell. As I said to your Lordships, on the Monday before Clause 11 was due to be discussed in Committee, I met a member of the SNP, Ian Blackford, to whom I said that I had not received any briefing from the Scottish Government on that clause. Next day I received briefing from the Lord Advocate and Michael Russell, the Scottish Minister in the consultation on Clause 11. Having carefully thought over what they said, I tabled an amendment to provide a mechanism for the consultation that I thought would meet their concerns, and in Committee I stated my view of the relevant law that would return on Brexit.

On Report the British Government tabled amendments that fully met my suggestions, and indeed went further. I had suggested that, if the consultation failed to reach agreement, the participants should provide an agreed statement of their disagreement to the UK Parliament before it was asked to approve the instrument approving the framework agreement in question. The government amendment also proposed that any dissenter should have an opportunity to state the reasons for their dissent in their own terms. Your Lordships will understand my dismay when I learned from Michael Russell that the Scottish Government could not accept that amendment.

The First Minister of Scotland then wrote to the Lord Speaker with a number of amendments that she asked him to circulate, which he did. My noble and learned friend Lord Hope of Craighead and I decided that we should table the principal amendments in the letter: he would introduce them and I would explain the reasons why we could not support them. This we did. No member of your Lordships' House questioned my explanations. The First Minister of Scotland has not corresponded with either of us; we have not corresponded with anyone other than Michael Russell and the Lord Advocate on this matter, and I have had talks with the UK Ministers and officials. Michael Russell has publicly and graciously acknowledged the help that my noble and learned friend and I have given, and I thank him for the courtesy he has shown in all his correspondence with us.

I am satisfied that Clause 11 as now amended is entirely in accordance with the devolution settlement, and is an appropriate way of dealing with the unique problem of adjusting the EU provisions for the internal market in the United Kingdom to the post-Brexit situation.

I have had my home in Scotland all my life, having been trained as a Scottish lawyer, and I am profoundly sad that I have been unable to achieve the agreement of the Scottish Government to these proposals. Although my concern was principally with my native land, I am glad that the Government of Wales have accepted the arrangements, and I send my best wishes to those in the other place, in the hope that they will succeed where I have failed.

Lord Wigley: My Lords, as one who—unlike certain other colleagues—has barely missed an hour of the 156 hours of discussions on this Bill, may I say a few words before we send it back to the other place? I join others in thanking the team of Ministers for their patience and good humour, even on occasions when those could have been sorely tested. The noble Lord, Lord Duncan, the noble and learned Lord, Lord Keen, the noble Baroness, Lady Goldie, and the noble Lord, Lord Callanan, have had a heavy workload, and I am sure that they and their officials will be glad to see us pass Third Reading. I thank in particular the noble Lord, Lord Bourne of Aberystwyth, for the way in which he responded, and made himself and his team available to discuss issues of concern. In particular, with his background in the National Assembly, he could readily identify with the concerns emanating from Cardiff Bay, even if his brief did not allow him to respond as fully as many of us—and perhaps even occasionally he himself—might have wished.

I have no doubt that the Bill we now return to the other place is significantly better than the one we received. Ministers should concur with this sentiment. After all, of the almost 200 amendments that have found their way into the Bill, all but 15, and a handful of consequential amendments, have come from the

ranks of government itself. Let no one—the *Daily Mail* or anybody else—claim that this Chamber has delayed proceedings. We have not. The Government have their Bill bang on time, even if, at times, we had to spend 11 hours or more a day on our deliberations to make that possible. The Government clearly needed all this time: as we heard from the noble and learned Lord, Lord Mackay, a moment ago, it was only at the very last moment of Report that they were able to move the final form of amendments that they saw necessary to make Clause 11, as was, workable in the way that they desired.

7.15 pm

We heard in an earlier debate about the deadlock that has emerged with devolved Governments. I believe that this problem is inherent in the model of government that we have in the UK: a unitary state, with limited devolved powers, but without the safeguards that a federal constitution would provide. The problem will not go away, as yesterday's debates in Cardiff and Edinburgh have shown. Welsh Minister Mark Drakeford then acknowledged that the agreement is not as watertight as he would have wished. Undoubtedly these questions will arise again in another place. They will, I fear, flare up even more when these provisions are tested in practice.

Noble Lords across parties have been generous about my role in scrutinising, probing and trying to improve the Bill—and to do so constructively from a Welsh viewpoint while accepting that the Bill has, of course, a UK-wide remit. I thank them for those kindnesses. Noble Lords have also on several occasions, including tonight, expressed regret that there was no SNP presence in the Chamber. That sentiment was usually expressed for the best of motives, and I understand the thinking. But I have to say this: if they were placed in the same invidious position as I have found myself in at times during our deliberations—a one-man band trying to do a job for which a party team is needed, unable on one occasion even to respond to the calls of nature because of having a sequence of Plaid Cymru amendments under consideration, and no one in my own party with whom to share the workload—SNP colleagues might well conclude, as do I, that such a presence is unsustainable, and that our system at Westminster is not able to cope with multiparty representation in a quasi-federal state.

That is not an experience that I intend to repeat, single-handedly, on any future occasion. It is not just the SNP, Plaid, Sinn Féin, or whoever, that need to buy into the Westminster system. Westminster itself has to do more than express regret for empty seats and absent voices, and has to make the necessary and reasonable adjustments, if the genuine sentiments expressed during our debates are to be more than hollow words. I shall say no more, but I hope that those in authority will heed that message.

In passing 15 amendments against the Government's wishes we have given elected MPs an opportunity to think again on the matters in question—particularly those relating to a customs union and the single market, to the Irish border, to a flexible departure date and, at the end of negotiations, to a meaningful vote, whether by Parliament or by the people. Much water has gone down the Thames since MPs considered the Bill last year. Our proposed changes will give them a hook on which they can attach further amendments of their own, if they cannot accept our precise wording. They also give the Government an opportunity to pause and consider whether the model of Brexit they concocted last year is, in fact, fit for purpose.

For what has emerged beyond doubt from our debates is that there can be more than one model for Brexit, that each one has its positives and its downsides, and that no one model answers all the attendant problems in one fell swoop. For Brexit to work—for young and old; for working people and for employers; for manufacturing, service industries and agriculture; for exporters and importers; for our universities and our tourist operators; for our public services and for those with special needs—and not only for England but for Wales, Scotland and, particularly, for Ireland—it cannot be a simplistic one-dimensional model. There will have to be give and take on all sides, and only a complex balanced package can meet those reasonable needs and aspirations.

Our work, for now, is done. We pass this amended Bill over to elected parliamentarians. We can only hope and pray that they will have the courage of their convictions and—yes—improve it further, and, by so doing, make it reasonably acceptable to all the diverse interests, values and viewpoints across these islands.

To those who see it as a quite simple matter to cut ourselves off from all the European institutions which we—yes, we, many here in this Chamber tonight—have helped build, to forget all that and exit into a setting sun over a distant horizon and whatever cliff edge lies beyond, let me say this: you exit if you want. But a majority of us in this Chamber, I suspect, will do everything within our power to keep the European dream alive, albeit in a new, more limited context; a dream of a continent working in peace and harmony, and a dream worthy of being transmitted to our grandchildren. To quote an absent friend, it is a dream that will never fade.

Lord Elton: I congratulate the noble Lord on his "hwyl"—

Baroness Oppenheim-Barnes (Con): My Lords, my eyes have misted over with gratitude that I have lived long enough to see this happening. My congratulations go to the Government and everybody who has participated in making this possible and making it acceptable to all sides. Thinking of the day when I voted not to stay in the first place, I can only say that, now at last, the air is fresher. We can breathe again and do all the things that we, and we alone, believe are in the interests of this country and of many friends across all countries in Europe.

Lord Elton: My Lords, in moving the Motion that we are now discussing, the noble Lord, Lord Adonis, made one assertion which cannot go without comment. I had intended to ask him—I now ask your Lordships—to recognise that, whereas an elected House would be stronger against a weak Government, an elected and paid House would be weaker against a strong Government. I do not think that the noble Lord was here, because I think that it was in 1953, when the terrorism Bill was

[Lord Elton]
passed by this House. The ping-pong stage lasted from 2.30 pm on a Thursday till 7.31 pm on a Friday without interruption. I doubt whether the Whips of any Government with any majority in the House of Commons and a paid House here would fail to drive through such legislation. There would be no such resistance.

I raise that now merely because it will be a big issue later on. Let us not swallow the fiction that an elected and paid House is a stronger protection against an overmighty Government.

Lord Hamilton of Epsom (Con): My Lords, I am grateful to the noble Lord, Lord Adonis, for this opportunity to say what I want to say now: those whom the gods would destroy they first make mad. Through the progress of this Bill in Committee and on Report, noble Lords collectively have taken leave of their senses and, in doing so, have put the whole future of your Lordships' House as an appointed Chamber at stake.

When the coalition Government decided that they wanted to reform your Lordships' House, I became a humble foot soldier supporting my noble friend Lord Cormack in his campaign to preserve an appointed House. We emphasised at that point that our job was to revise and improve legislation, but never to challenge the supremacy of the elected Chamber. I am not sure that we have kept to that. We seem to have had a very large number of amendments—much reference has been made to the 15 amendments made by your Lordships' House. Many of them strike me as having been quite outside the scope of the Bill.

I went to see the Clerk of the Parliaments when I was withdrawing my amendment, which talked about preparing for no deal if we wanted a good deal, because I thought it completely irrelevant to the Bill. The Clerk of the Parliaments assured me that everything was completely in order and the amendments were quite acceptable; indeed, he said that they would have totally acceptable in the other place as well. I then talked to a right honourable friend of mine in the other place who has watched the progress of the Bill in the House of Commons. He said that Conservative rebels had tried to table an amendment basically mandating us to remain in a customs union. This was judged in the House of Commons to be outside the scope of the Long Title and ruled out of order. Now my noble friend Lord Framlingham, who has experience of being a Deputy Speaker in the other place, tells me that many of the amendments that we have passed here would never be allowed in the other place.

This raises a serious question: are we as an appointed House going to have greater powers to put down amendments than the democratically elected House down the way? How comfortable are we in that position, when we have no democratic legitimacy whatever?

My right honourable friend Dominic Grieve at least has constituents whom he must go to and he may even stand at the next general election, but I do not have to remind the House that we have no constituents and probably will not stand at any general election ever again. The rebels in your Lordships' House are therefore in a completely different position from those in the other place.

I have to say that support for our appointed House is drifting away. We are losing friends and gaining no new ones. One might reckon that my honourable friend Jacob Rees-Mogg would support an appointed House. Even he gave the warning the other day that we were playing with fire, so I do not think that we can rely on his support either.

When we beat off attempts during the coalition Government to reform your Lordships' House, the person who really came to our aid was one Jesse Norman. We owe him a great debt of gratitude that we exist in an appointed House today. Jesse Norman was very courageous and sacrificed several years of his ministerial career as a result of taking such a courageous stand. He is now a Minister and I am glad that he is there, so we cannot count on him to rally right-wing Tory MPs and to save us next time round.

I am afraid that we have done enormous damage to our reputation in the country generally. Everybody says, "Oh, there's nothing to worry about". I have been in this House for 12 years now. I have never known a petition going down asking for the abolition of your Lordships' House, but my noble friend Lord Robathan yesterday told me that the number of names on it was 163,000 and rising. We are being rather complacent if we think that we can carry on in this extraordinarily arrogant way telling people of this country who voted to leave the EU that they got it all wrong and that somehow we must come out with a solution that keeps us half in the EU and deny the people the vote they have made.

Lord Cormack: My Lords, I feel provoked to respond, because my noble friend Lord Hamilton of Epsom was kind enough to the Campaign for an Effective Second Chamber, of which he was indeed a valued member and which my noble friend Lord Norton and I founded some 16 years ago. However, after that, I part company with my noble friend. He has read it completely wrong. By implication, he criticises the Clerk of the Parliaments and the advice given to your Lordships on tabling amendments. But what do Members do? They take advice and according to the procedures of this House, advice is given. I speak as one who was a Chairman of Committees for 15 years in the other place. It is not precisely the same advice as would be given in another House but we have behaved entirely according to the rules. One of the fundamental precepts of, and our whole purpose in, the Campaign for an Effective Second Chamber—the members of this group are drawn from all parts of your Lordships' House, including a number of prominent Members on the Liberal Democrat Benches—is to fight for an effective second Chamber while always acknowledging the primacy of the other place.

7.30 pm

All we have done over the past few tiring weeks—although I cannot claim to have been in the Chamber quite as much as the noble Lord, Lord Wigley, I run him fairly close—is seek, within the rules governing this House, to draw attention to important issues surrounding the Bill, and we have passed a number of amendments. I have not voted for all of them. I voted in the Government Lobby on two or three occasions and abstained on others, as I did this afternoon.

We have all been exercising our freedom and tried to improve the Bill. It is now up to colleagues in the other place, the elected House—which has supreme power—to decide whether to take our advice.

We have exercised our rights and duties. I stress that there may be some who do not accept the result of the referendum. After all, one does not cease to be a Labour person the day after one's party has been defeated in a general election. One does not cease to be a Conservative the day after one's party has been defeated in an election. One does not cease to be a leaver, or one does not cease to be a remainer, if one has lost a referendum. However, most of us, the overwhelming majority in your Lordships' House accept the result—reluctantly and sadly but we accept it—and all we have sought to do is try to improve the terms on which we will leave.

There is no cause for hysteria and no need for my noble friend Lord Hamilton of Epsom to be upset by 160,000 names on a petition, almost all of them, I imagine, drawn from the Europhobes. I take pride in being a Europhile. My identity is English, my nationality is British and my civilisation is European. I wish us to remain on the closest possible terms. I believe passionately in Parliament, in a House in which I sat for 40 years and in this place, its rights, duties and limitations. All we have done is act according to that.

Lord Liddle (Lab): Perhaps I may make three brief points or what the noble Lord, Lord Pearson, described as hallucinations—although I see that he has gone.

First, I have sat through most of the 156 hours—80 to 90%, I should think—of debate on the Bill. I pay tribute to the Front Benches, my colleagues on the Opposition Front Bench, the Liberal Democrats and the Ministers who have tried to deal with all the complicated issues that have been put to them. I mean that most sincerely, even though I do not agree with them on many of the fundamentals.

Secondly, I was one of those passionate pro-Europeans like the noble Lord, Lord Cormack. I could not bring myself to vote for the Article 50 Bill and voted against the Motion then that the Bill do now pass. I am not going to do that today because we have greatly improved this Bill in the amendments that the Government have brought. In the amendments that we have passed, we have done our duty and it is for the Commons to decide. We are not doing anything undemocratic. I shall put on the back of my bathroom door a photograph of me as an "enemy of democracy" in the *Daily Mail*. I am proud of that. In fact, we have just been doing our job, and it is up to the Commons to decide. On that, I should say how much I have admired the Conservatives in this House who have spoken so well on many of the issues and their courage in defying the party line.

When the Bill goes to the Commons, a lot of people will debate in their hearts whether they put the national interest before the party interest. However, I have a point for my own party. It is time that the Labour Party stood for the national interest on this issue and opposed a hard Brexit. If all we are going to get is a hard Brexit, then we should have no Brexit at all.

Lord Newby (LD): My Lords, it may surprise them, but I begin by congratulating and thanking the Government Front Bench. I congratulate the ministerial team on passing the first test of successful politicians: they have survived, and that is a signal achievement. I also thank them for at no point suggesting that your Lordships' House should not pass amendments. During previous Administrations, it has been common, even at this stage, for Ministers on the Front Bench to stand up, on amendment after amendment, saying, "This should not be passed because the Bill has been through the Commons and the House of Lords should simply do what the Commons has instructed". It must have been extremely tempting for the Government Front Bench to say that repeatedly as the Bill has gone through. It reflects well on the House that Ministers have not done so, and I thank them for that.

I should like also to thank my team, both in the Chamber and our staff supporting us, on what has been a tiring process—in particular, Elizabeth Plummer and Sophie Lyddon, who worked exceptionally hard.

As the Bill leaves your Lordships' House, it faces an unclear future. We do not, for example, even know when it is going to be taken in the Commons. Certainly, it is not going to be taken until June. This begins to set the seal on what will be a huge challenge for the rest of the year, because the Bill presages 1,000 statutory instruments, many of which need, I assume, to be in place before the Government's preferred exit day in March next year. The Government are also committed to bringing forward a whole range of other Brexit-related Bills before that deadline. They even have to bring forward a Bill to disapply the vast bulk of this Bill during the transition period. We are in for a very difficult period. I am not going to embarrass the Minister by asking how he hopes to get through this legislative logjam, because I know he does not know and in any event that is for another day. Today, all we can do is send the Bill to the other place and wait for the explosions.

Lord Cavendish of Furness (Con): My Lords—

Baroness Hayter of Kentish Town: My Lords, I think the view of the House is that we should conclude.

On Second Reading, I referred to a mixture of "Hope, Judge and Pannick" as the tasks that faced us. I think my words were prescient, and it is delightful to see all three here who have been through the long nights with us. At the end of Second Reading, I asked the Minister,

> "to defend the right—no, the duty—of this House to advise him and the Commons on the detail of the Bill".—[*Official Report*, 31/1/18; col. 1692.]

Never was that defence more needed than when two of our national papers, as we have heard, can have thought to threaten to chop off our heads for carrying out our statutory, lawful duty to send back to the Commons those parts of the Bill we find deficient to meet the purpose of the proposed Act. We have even heard prominent Brexiteers in the Commons accuse the Lords of being "drunk with their own prejudices" or "traitors in ermine". Even today the noble Lord, Lord Framlingham, talked of "dark days" and of us doing "irreparable damage". I do not think we have been ordering the massacre of the firstborn. Indeed, as we heard from the Minister, we have had 800 amendments, 200 of which went back to the Commons, only 15 of which were because the Government were defeated in the voting Lobbies. This is hardly a constitutional crisis or anything like it.

[Baroness Hayter of Kentish Town]

Like the noble Lord, Lord Newby, I add very warm thanks to the Bill team, though I have to tell them that their work is not yet quite done. I also thank the team of Ministers. The noble Lord, Lord Duncan, is not in his place, but his poor back led to some interesting dancing at the Dispatch Box. I thank the noble and learned Lord, Lord Keen, whose legal exchanges with my noble and learned friend Lord Goldsmith left me not understanding the language they were speaking at times, let alone the content. The noble Baroness, Lady Goldie, put up a sterling defence of what we thought of as the indefensible, with charm, humour and great tolerance.

And what can I say about the noble Lord, Lord Callanan, other than that I share with him the pain at losing a vote, even if it happened to me only once? The noble Lord, Lord Newby, and I did wonder whether we should thank him for making our task easier, but that would be unfair. He has taught us a lesson in sheer commitment to the Brexit cause, whatever is thrown at him, though I do wonder whether he shares the views of his friend, Daniel Hannan, that "leaving the EU is not quite going to plan". I think not. His confidence that it is great for the north-east remains, and for that consistency and persistence—some would say in the face of all evidence—we can only admire him and wish him some well-deserved rest after the rigours of the Bill.

My own personal thanks are to my colleagues. My noble and learned friend Lord Goldsmith of course took on all the tricky amendments—except one. My noble friend Lord Griffiths handled devolution; my noble friends Lord Murphy, Lord Collins and Lord Hunt and my noble friends Lady Jones, Lady Wheeler, Lady Thornton and Lady Sherlock all merit high mentions in dispatches. My noble friend Lord McAvoy marshalled the troops and my noble friend Lord Tunnicliffe marshalled our preparations. My noble friend Lady Smith of Basildon opened the Second Reading, in the presence of Mrs May, setting out the shortcomings of the Bill and our objectives for change. Of course, I thank our staff back-up team, who do all the hard work—in case noble Lords thought it was down to me—especially Dan Stevens, whose amendment-writing, briefing and negotiating skills have caused the Government such grief.

We send this much-amended Bill back to the Commons, though with little expectation that they will deal speedily with it, as the Government have first to resolve deep divisions within their own Cabinet, particularly over the very first amendment passed by your Lordships House, on the customs union. So while we take a breather, we hope they will see some sense and accept our changes as improvements to the previously flawed Bill. It is only the first Bill. We still have Bills on trade, customs, agriculture, fishing, immigration and withdrawal and implementation, so we will see noble Lords back here on many occasions. For the moment, I shall say just one thing: this is not about whether we leave the European Union but about how we leave. That we must do properly, in the national interest, and that is what I believe this House has set out to do.

7.45 pm

Lord Callanan: My Lords, all of us have travelled a long way—in my case, it seems like an awful long way—over a long time on this Bill since its introduction what seems like years ago but apparently is only a few months.

First, I thank the Opposition Front Benches for their work and for their kind words. I pay particular tribute to my colleagues, particularly the Leader, the Chief Whip, my noble friend Lady Goldie and my noble and learned friend Lord Keen—of wet trousers fame—for all their help and support throughout. If noble Lords do not understand that remark, I think it is on YouTube.

I also offer my considerable thanks to the team in my private office and to all the dedicated civil servants—Marianne and her team—in the Bill team, who have worked tremendously hard. Do not forget that they also took the Bill through the House of Commons: they have worked all hours of the day and night and are a credit to the Civil Service. I am very grateful for all the support and help they have given me and the rest of the Front Bench.

Let me briefly reply to the noble Lord, Lord Adonis. The House will be pleased to know that I am not going to engage in any disagreements or arguments with him at this stage—well, I am slightly—but, to reply to his question, I am sure that the other place will consider this House's amendments in due course but it is not for me to determine its timetable. For my part, I am pleased that in his amendment to the Motion he seems finally to have recognised the need to get the Bill on the statute book in good time to ensure that we successfully deliver on the instruction given by the electorate on 23 June 2016 to leave the European Union.

Lord Adonis: My Lords, I beg leave to withdraw my amendment.

Amendment to the Motion withdrawn.

7.47 pm

Bill passed and returned to the Commons with amendments.

Social Workers

Question for Short Debate

7.48 pm

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

To ask Her Majesty's Government, in the light of the report by Dr Jermaine Ravalier, *Social Workers—Working Conditions and Wellbeing*, published in July, what strategies they have considered to alleviate the workload demands faced by social workers.

Lord Kennedy of Southwark (Lab Co-op): My Lords, first, I declare an interest as vice-president of the Local Government Association.

I am delighted to have secured this debate following the report of Dr Jermaine Ravalier on the working conditions and well-being of social workers, published in July of last year. Dr Ravalier is a senior lecturer in psychology at Bath Spa University, where he co-leads

the psychological research group. The research was commissioned but not paid for by the Social Workers Union, and the views and conclusions in the report are those of the author alone.

Social workers are dedicated professionals dealing with very complex, very challenging and very stressful situations. They deal with vulnerable children and vulnerable adults. The decisions that they make have a huge impact on people, and getting the assessments right so that the right decisions are made is crucial. Good social work can transform people's lives and protect them from harm. To deliver that, social workers must have and maintain the skills and knowledge to establish effective relationships with children, adults and families, as well as professionals from a range of agencies.

It is important in this debate to set out the key points, so that the report is seen in that context. In her response to the debate, I hope that the noble Baroness, Lady Manzoor, will set out what strategies the Government have considered and are deploying to alleviate the work demands faced by social workers.

The research undertaken by Dr Ravalier had five specific aims: to investigate stress levels in UK social workers; to investigate differences in stress levels experienced by social workers in different job roles; to investigate the working conditions faced by UK social workers; to demonstrate how satisfied social workers are with their role, how many are seeking to leave the role in the next 12 months and the level of presenteeism in the job role; and to demonstrate how the working conditions that social workers are exposed to influence stress, job satisfaction, turnover intentions and presenteeism.

Stress can have devastating consequences for the individuals experiencing it. It has serious health implications, including the development of coronary heart disease, insomnia and musculoskeletal pain. It has also been demonstrated that exposure to chronic stress can have an adverse effect on the immune system. On the effects of stress on workplaces and the number of days at work lost due to stress, the Health and Safety Executive showed that 11.7 million days were lost due to stress in 2016, and the *Labour Force Survey* of 2016 identified that the highest levels of sickness and absenteeism due to stress was in the health and social care sector.

The report drew out some interesting and concerning aspects that need to be explored and addressed to avoid even more serious problems in the future. Work was done with social workers in a variety of roles and levels of experience across different disciplines, and with social workers of different ethnic origins and both with and without a disability. The first thing to note is that 92% of social workers worked more hours than they were contracted and paid for; on average, they worked 10 extra hours a week. That, in itself, demonstrates the dedication of those working in the profession. Overall job satisfaction was high, and they were highly engaged in their jobs. Even when ill, social workers had often gone to work rather than take time off. However, it was also shown that up to 52% of those workers had contemplated leaving the profession in the next 12 to 15 months.

It was also shown that working conditions were poor across all areas of social work and that demands were high, but there were poor levels of support, which must be of concern to us all, and in particular to the Government. Workloads were seen as a real problem, with too many cases—and too many complex cases per individual social worker—and a general view that more social workers were needed to ensure that the job was undertaken to a sufficiently high standard. Concerns were also expressed about the levels of admin support available and the amount of paperwork that was routinely required. In many cases, workers did not even have their own computer to work from, and hot-desking was not helping the situation.

There were also concerns about the desire expressed by social workers to have more dialogue and supervision from more experienced colleagues as part of a professional development programme. I believe that is linked to a desire and a need for better managerial support within local authorities and other organisations which have a knowledge and understanding of social work and can thereby provide greater support. This could be an issue, as we have seen a number of council departments merge to create super-departments, covering a number of disciplines. But it is incumbent on them, when making these changes, to ensure that the structures in place have professionals in the various disciplines in sufficiently senior posts to provide the managerial and professional support needed.

There was also a feeling that the research picked up that social workers and the roles they undertook were not well understood by the general public. I think that is true. People understand what doctors, nurses, teachers and police officers do, but they are less clear about the range of work undertaken by social workers and the highly skilled and complex nature of their job. It does not help that, when things go tragically wrong, as sometimes they do, that is often the only time you hear about social workers and the work they do. That can paint a very unfair and negative view of the profession, which is unjustified.

Can Minister outline what the Government are doing to raise the status of the profession? What are the Government doing to assist the recruitment of more social workers and to retain more social workers in the profession? In particular, what action is being taken to keep more experienced staff in the profession? We are all aware that budgets for local government are under pressure, but can the Minister tell the House what the Government are doing to help protect vulnerable groups who need support—children, families and elderly people—as the pressures on local authorities are so great and it is in the Government's gift to do something about that? Can the Minister give us her thoughts on what action should be taken to support new and existing social work managers in their jobs? Can she confirm that she would be happy for representatives of the Social Workers Union to meet with a Minister, and for a representative of the union to come in to discuss with officials in the department the issues contained within this research to see what further measures can be brought to bear to improve the situation? These are serious problems that need addressing. The funding gap facing children's services is £2 billion. The Government have made cuts to programmes such as the early

[Lord Kennedy of Southwark]
intervention grant, which has lost £500 million since 2013 just in children's services and is projected to have a further reduction of £183 million by 2020. This is just one example of how the situation is getting worse every day.

Finally, can the Minister say something about the Return to Social Work campaign, which I think has been a very worthwhile initiative that needs to be supported for future years to make a real difference in tackling the problems we are discussing this evening? I thank everyone who is speaking in this short debate and look forward to the Minister's reply.

7.58 pm

Lord Parekh (Lab): My Lords, I begin by thanking my noble friend Lord Kennedy of Southwark for initiating this debate so well. I am disappointed that the debate has been so poorly subscribed today, especially as this is a subject of such great importance. But that is for reasons on which I can only speculate—maybe it is the end of the day, or maybe the European Union debate took up a lot of time. Had I not been able to participate in this debate myself, I think the debate would have been limited to the initiator of the debate and the spokesmen for three parties. I put down my name, but it is not a subject on which I am known to have done any academic work. It has interested me greatly, especially when I read Dr Ravalier's report and had the occasion to meet social workers in recent months. I felt that the subject was of such great importance that I had to speak.

Social workers deal with all kinds of important issues: mental health problems, addiction, alcohol and drug dependency, family breakdown and so on. Think of almost any human frailty or human weakness and they are expected to deal with it. They give life to people and they even attempt to heal broken selves. For a profession engaged in this kind of activity, the questions are: why is it under so much stress and why is it not content with the kind of work it is doing?

Here I will make a very simple point. It is not just that social workers are under stress. Everybody is under stress. There is no job I can think of that is stress-free. In a world like ours, anything we do is always going to subject us to stress. What is peculiar to social workers is a certain kind of stress: stress brought about by a combination of certain kinds of factors. These are the factors that Dr Ravalier highlighted and I want to highlight as well.

Several of these factors are worth mentioning. The first, of course, is the sheer amount of work. As the report points out, 92% of people work more than they are contracted for and that amounts to 10 extra hours per week. Secondly, the working conditions are not satisfactory. Social workers share computers, they may share desks, and they work with very little managerial guidance. Thirdly, the inflexible working hours mean that not many of them are able to work from home. Fourthly, social workers do not enjoy respect or the kind of managerial and institutional support that they are entitled to expect. Fifthly, clinical supervision on a regular basis is not available.

It is also rather disappointing that the profession is not valued as highly as other professions of comparable social significance. A graduate careers survey about two years ago showed that 73% of final-year students knew little about social work and had not even considered it as a possible career option. Then of course there is the bureaucracy which bedevils all areas of life; for example, where there is a 40-minute visit to a child and three hours spent filling in the paperwork. In addition, social workers carry the blame when things go wrong even though they themselves are not to blame.

In combination, all these factors—excessive hours, poor working conditions and inadequate recognition and appreciation by people outside—lead to a low sense of self-worth and that generates a degree of stress where one is struggling to do things and unable to produce results. If social workers could hope that things will get better, the stress might be less, but there is no hope that things are getting better. There are the public sector job losses, the climate of austerity and, if I remember correctly, the demotion of the Children's Minister to Parliamentary Under-Secretary of State. All these factors have combined to block off any kind of future hope for improvement in their condition.

What do we need to do? Here the report has a few ideas and other reports have come out over the years which have had many interesting ideas as well. If you put them together, you would get a wonderful programme. I am not going to talk about the programme. In the few minutes that I have, I will talk about four ideas that I think worth pursuing.

First, no profession can generate a sense of pride or self-worth unless it is valued by its peers and its contribution to society is widely appreciated. Therefore, there should be a publicly supported campaign to raise the profile of the profession. This can be done not only by highlighting what the profession does and the contribution it makes to society but by cherishing and valuing the contributions of different social workers to different areas of life.

The second thing that needs to be done—the House of Commons Select Committee report talks about it—is the creation of a professional body for social work. That will help raise the quality of leadership, regulate the performance of social workers and raise the profile of the profession.

Thirdly, there is also a strong necessity for co-operation with universities, with universities training social workers and providing benchmarks for what training is needed for a social worker at what stage.

Fourthly and finally, it is very important that public authorities should find ways of finding and retaining staff. That is not easy. It requires a lot of things. It requires that people do not have to work longer hours than they need to, some hope that salaries will be better than they were last year, and the kind of climate in which one is valued and can hope for better conditions to come.

I hope the Government will take into account the many suggestions that have been made—not just by me and my noble friend Lord Kennedy—and that the Minister will respond to the question of what the Government intend to do with plans to promote a

public campaign about the profession, set up a professional body and find ways of retaining people within the profession, especially the younger ones.

8.05 pm

Baroness Walmsley (LD): My Lords, when we come to the end of this short debate and we all go home for our piece of toast because all the cafés here are closed, I hope that the noble Lord, Lord Parekh, will feel that we may not have had quantity but we certainly had quality. We have certainly had that so far from him and from the noble Lord, Lord Kennedy.

The job of a social worker is always difficult. They have to make finely balanced judgments every day, based on a large number of factors. Every case requires them to use their professional judgment and experience and very often they are themselves judged by those who know little about it. When it comes to decisions about taking children into care, they are often damned if they do and damned if they don't—but I thank them for what they do.

As vice-chair of the All-Party Parliamentary Group for Children, I will focus on children and family social workers, because last year our group carried out a very revealing inquiry in this area called *No Good Options*. We are currently part way through a piece of follow-up work. Many of the issues we revealed are applicable to all social workers.

The big issues are heavy case loads and stress; staff turnover and stability of the workforce; and the opportunity to undertake further professional development, with pathways to progress in the profession. Staff were also concerned about the status of the profession. I hope that the new regulator, Social Work England, under the able leadership of the noble Lord, Lord Patel of Bradford, will be able to contribute positively to that status and quality with the right kind of regulation. Social workers want their professional views to be respected and to bring about the best outcomes for the children in their care. I think I can say that anyone who becomes a social worker really cares about the people they serve, and we should value the work they do for society.

We found evidence of rising demand, rising thresholds for intervention, and increasing case complexity—at a time when resources are falling. Schools are now taking on tasks that used to be carried out by children's social workers. As a result of this, one of our recommendations was that the Department for Education and the then Department for Communities and Local Government should carry out a review of the resourcing of children's social services and provide the resources needed to enable local authorities to adhere to the LGA guidance on case loads. One problem reported to us was that local authorities cannot afford the early, low-level interventions that can prevent a case escalating into a more complex and serious matter that costs more to treat. All our witnesses were committed to this preventive work, but many found it impossible to afford because they can afford only the mandatory services.

This upward cost and case-load spiral puts a very heavy burden on staff and supervisors. All this leads to high staff turnover, which hinders the development of stable relationships with service users. When social workers leave a stable job and go to work for an agency, they often have more work flexibility, a more manageable workload and sometimes higher pay, so you cannot really blame them. But this is not the ideal way to serve vulnerable children who suffer when their social worker keeps changing.

Some local authorities have managed to reduce the use of locum staff, but some still have very high levels. Whereas the average was 16%, five authorities had 40% and one had 100% locum staff. In response to this, many authorities have grouped together to sign a memorandum of understanding to keep the cost of locums down and reduce churn. This has worked well and we believe that 80% of children's services now work in this way—but will the Government please look into whether there could be a national memorandum on the payment of locum staff, as the costs are crippling some hard-pressed local authorities?

Case loads vary tremendously. A number of our witnesses recommended 12 families per social worker as the optimum case load. In Essex, where average case loads have decreased in recent years, from between 25 and 40 per social worker down to 12, the inquiry heard that staff turnover had markedly decreased and morale had improved. The LGA advises that all employers should use a workload management system that sets clear targets for safe workloads in each service and regularly assess each social worker's case load, taking into account complexity, capacity and the need for supervision. We recommended that the Department for Education should develop a strategy to reduce churn in the children's social work system. Will the Government seriously consider the need to do this?

Cafcass is one of the country's largest employers of children and family social workers, because of their role in making assessments and advising the courts. Under the recently ended chairmanship of my noble friend Lady Tyler of Enfield, who cannot be in her place today because of other commitments, Cafcass has been turned around from what some in past years regarded as a failing organisation to one that recently received an outstanding inspection report from Ofsted. My noble friend, her chief executive and every single Cafcass staff member are to be congratulated on this achievement.

Although, as with most organisations, some still criticise aspects of Cafcass's service, it might be instructive to look at how it made such impressive improvements. The answer, of course, is complex—and a lot of hard work. However, two paragraphs of the Ofsted report stand out in relation to our debate today. Ofsted stated:

> "Successful workforce planning and innovations in Cafcass's recruitment processes (plus additional investment secured by the chief executive) have resulted in a higher number of frontline practitioners with more capacity to sustain a high-quality service. Senior leaders are not complacent. They are committed to maintaining average caseloads for staff at manageable levels to safeguard employee well-being and productivity. In our survey of Cafcass staff, 97% agreed or strongly agreed that Cafcass, as a national organisation, continually strives to improve".

This comment is a great credit to the management and governance of the organisation, but I did notice that very important phrase,

"plus additional investment secured by the chief executive".

I suspect that all employers of social workers would want to be able to say that.

[Baroness Walmsley]

Attention at Cafcass was also paid to staff well-being, continued professional development and promotion opportunities. Ofsted stated:

"Staff report that they are well supported, feel valued and have good access to a wide range of training and development opportunities. Many staff have benefited from in-house development schemes and have been promoted to more senior positions within the area. Staff turnover is low and caseloads are manageable across all areas of practice. Managers are readily available and guide and advise the skilled workforce effectively. The performance and learning review (PLR) process works well and includes a good balance of staff development and well-being, self-assessment, reflection and case discussion".

This has clearly been a blueprint for success that others could follow.

The fact that careful case planning allows the majority of Cafcass staff to consistently provide excellent, timely services for children, their families and the family courts contributes to staff morale and a high level of staff retention. I know that a big effort was also made to ensure that staff produce strong, evidence-based and succinct reports that minimise the need for additional experts, and reduce delay and the need for further appointments, which can only be helpful to service users. The voice of the child is very powerful and often quoted verbatim in reports.

Social work is a people business and those who find ways to invest in their staff reap the rewards, as has been demonstrated. What plans do the Government have to invest in the quality and status of social work, for the sake of the workers themselves and that of their clients?

8.14 pm

Lord Watson of Invergowrie (Lab): My Lords, I pay tribute to my noble friend Lord Kennedy for securing this debate on a subject of much greater importance than is evident from the number of noble Lords who have chosen to participate.

I start by also paying tribute to the essential work that is undertaken by social workers the length and breadth of the country. As my noble friend Lord Kennedy said in his opening remarks, they transform lives—often the lives of children and vulnerable adults unable to care for themselves. We all, even if we have never personally made contact with them in a professional context, owe a debt of gratitude to social workers for the service that they contribute to making this a caring and civilised society. So we should all be concerned at the content and conclusions of the report by Dr Ravalier and Mr McGowan.

Workplace stress is a well-known determinant of employee health and is the biggest cause of long-term sickness absence in the UK public sector. It can and does cause both physical and psychological ill health, yet it is both an underestimated and an underreported problem. It should be neither, because it is calculated to cost the UK economy approximately £800 per employee each year. Given that the public sector workforce numbers some 5.5 million, that amounts to around £4.4 billion annually. For that reason, it comes as something of a surprise to learn that the Ravalier-McGowan report is in fact the first of its kind into stress within the social work profession.

I have to say that, hitherto, I have been much more aware of stress among another part of the public sector workforce: schoolteachers. The National Union of Teachers conducted a survey of its members in 2016 and found that 90% had considered giving up teaching in the previous two years because of the workload. In response, the Department for Education produced three reports in an attempt to reduce workload pressures for teachers and committed to an annual review of workloads. That process is continuing, but the teacher unions are facing the workload challenge and working with the DfE to get assurances on workload reduction. It is clear that what is required is a similarly positive approach from government as regards social workers and their workload.

The Ravalier-McGowan report contains some stark and troubling findings, perhaps the most hard-hitting of which is the revelation that UK social workers are working more than £600 million-worth of unpaid overtime each year. The profession is unequivocal in its view that it is government cuts to services that have led to the forced extra hours. Because social workers have too many cases allocated to them and have to cope with the associated administrative work, they work an average of 64 days a year of unpaid overtime. That is the equivalent of more than nine weeks' work. I await with interest the Minister's view on that rather chilling statistic. We should pause to consider what that means for the public sector pay bill. It is a double whammy, because social workers are asked to do more—some of it unpaid —with fewer resources. It is also a double whammy for the Government, because not only do they save money through cutting the resources allocated to local authorities, and hence social work departments, they then get greater productivity from social work staff, whose dedication to their job and the vulnerable people they joined the profession to help means that they do not incur the additional wage costs to which they are entitled.

Unprecedented upheavals are taking place in the social work sector due to reforms that include—as the noble Baroness, Lady Walmsley, referred to—a new regulator, new and untested models of delivery and new routes to qualification. Closures to services because of cuts to local government budgets are welcome, but inconsistent efforts to integrate health and social care are adding to the rising demand on social workers. These events highlight the necessity of finding ways to reduce staff turnover among social workers and to prevent them leaving the sector altogether. Unsurprisingly, the volume and the diversity of the work was found to be directly related to increased stress levels. That and poor working conditions means that over half of social workers say they intend to leave the role within the next 18 months. Dr Ravalier pulled no punches when he commented that:

"What our research has revealed is that most social workers are actually deeply fulfilled by their work but the satisfaction they feel can no longer outweigh the lack of support they are experiencing … If this keeps up, and the social workers we spoke with do leave the profession, local authorities will be forced to pay for contract workers who are expensive, transient, and certainly won't be working lots of free hours".

Furthermore, the respondents to the Ravalier-McGowan survey also described that, all too often, there was a

culture within social work of institutional racism that played against non-white employees. In addition,

"with respect to those social workers with a disability, respondents described a lack of understanding from management and colleagues within their organisation, and others also described a lack of reasonable adjustments for their disability at work".

I would be obliged if the Minister would comment on that aspect of the report as well.

The impact of the working conditions of social workers—particularly excessive overtime, which means that they simply have too many cases to manage—could lead to an increased risk of crisis situations developing. Noble Lords will be only too aware of a number of tragic cases in recent years, which led to the new Child Safeguarding Practice Review Panel emanating from the Children and Social Work Act 2017.

The British Association of Social Workers has identified several developments that it believes are necessary if we are to avoid—or at least reduce to a bare minimum—such crisis situations. It has called for a reduction of the demands placed on social workers to ease stress and attrition rates. That means employing more social workers, ensuring a consistent approach to caseload allocation and enabling flexible and remote working through improved use of technology. The BASW believes that not enough time is currently available for reflective supervision to work through complex cases and it urges that additional administrative support be made available to enable social workers to focus on their caseloads. Perhaps the most pertinent proposal from a morale point of view is the need to end the blame culture that the media first seize upon and then feed off. That means giving social workers the respect and positive support that their dedicated professionalism deserves.

There is much in the report that is the subject of this debate that should both inform and alarm us. I make no apology for again quoting the authors:

"What the research has revealed is that most social workers are actually deeply fulfilled by their work but the satisfaction they feel can no longer outweigh the lack of support they are experiencing".

That must sound a warning to Government, and I cannot believe that anyone, be they Ministers or officials, not to mention the Chief Social Worker, can have read the report with anything other than a sense of foreboding.

Ten months have now passed since the report was published; there has been adequate time to consider it. The key now is for the Minister to inform us what she and her department intend to do in response to the report's findings and recommendations, and I look forward to her reply to the debate.

8.22 pm

Baroness Manzoor (Con): My Lords, I congratulate the noble Lord, Lord Kennedy of Southwark, on securing this important debate. I thank all other noble Lords for their valuable contributions today. There was a small number of speakers, but the debate has been excellent. Noble Lords have set out many challenges that social workers can face, and I will endeavour to answer as many questions as I can in the time I have.

This report, *Social Workers—Working Conditions and Wellbeing,* raises some pertinent questions for all of us who want to see social workers valued and recognised for the vital work they do. I agree with all noble Lords who spoke—the noble Lords, Lord Kennedy, Lord Parekh and Lord Watson and the noble Baroness, Lady Walmsley—that we need to understand and think about the vital work that social workers do and really recognise the efforts that have been made. I recognise that this is a difficult time for social work and for social care. We know that local authority budgets have faced pressures in recent years and of course the noble Lord, Lord Kennedy alluded to this. That is why we have taken steps to help to secure a strong and sustainable social care system. We have given councils access to up to £9.4 billion more dedicated funding for adult social care over three years. Moreover, we have supported councils to use the flexibility in funding for children's social care to increase spending to around £9.2 billion for children and young people's services in 2016-17.

This summer, the Department for Health and Social Care will publish a Green Paper on care and support for older people and a joint health and care workforce strategy. These publications will be vital in helping to achieve a long-term sustainable future for the social care system and address the challenges facing the social care workforce. I agree with everyone who spoke that we want social work to be a respected and valued profession that supports people to remain in it for the whole of their career, should they wish it. We recognise the impact that high workloads, stress and low morale have on recruitment and retention. That is why the Government continue to provide the £58 million social work bursary, which supports over 4,000 students into social work courses. We also continue to provide £20 million through the education support grant for practice placements for social work students.

The Government must do all they can, as has already been said, to empower and champion social work, but we must also acknowledge the responsibility of local authorities to ensure social workers have manageable workloads and receive quality supervision and support, which prioritises practice over process. The noble Lord, Lord Kennedy, said that 92% of social workers are leaving over time. I have to stress that the survey looked at only 12,000 social workers out of a 92,000 workforce. While this number is troubling, it is not really representative of the whole profession when new practice models and improved supervisions—

Lord Watson of Invergowrie: I thank the noble Baroness for giving way. Frankly, that statement cannot go unchallenged. Opinion polls covering the whole of the UK—some 60 million people—are held to be reasonable based on 1,000 respondents. A survey of 12,000 out of 90,000 seems to me to be a pretty high and representative sample of the profession.

Baroness Manzoor: The number is 1,200. If I said 12,000, I apologise. I am not saying that it is not troubling, but I am saying that the survey looked at only 1,200 out of a workforce of 92,000. Although it is troubling, it is not really a fully representative picture of the whole profession. However, I understand the problems: the noble Lord shakes his head, but what I am saying is that we need to look at improving working conditions and practice quality. I entirely agree with the assertion that the noble Lord has made.

[Baroness Manzoor]

The noble Baroness, Lady Walmsley, also asked about heavy caseloads leading to a lack of preventive work. She spoke of Cafcass and the very important improvements that have taken place there in relation to children's social work. There is increasing evidence of innovative practices and approaches for supporting children and young people. I agree with her that this shows examples of very good practice. Ofsted inspections are including caseloads and supervisions in their judgments on quality of local authority children's services, and this is to be welcomed.

The noble Baroness and the noble Lord, Lord Watson, also asked about further workloads and improving supervision and support of social workers to ensure that they had appropriate workloads. We are improving staffing capacity and the children's social workers have increased to approximately 30,000 in statutory children's services over the last two years. The noble Lord also asked about pay. As well as outlining the challenges facing the profession, the report suggests that there are some solutions to help improve social workers' working conditions. I have just alluded to what we are doing in relation to pay.

The noble Lord, Lord Kennedy, asked about strategies that the Government are undertaking overall. The Government have an ambitious programme to raise the status and standing of the social work profession. I want to highlight the action we are taking in some key areas, which will help to deliver the improvements we all want to see.

In professional regulation, an area raised by all noble Lords, we are establishing a new specialist regulator for social work, as the noble Baroness, Lady Walmsley, mentioned: Social Work England. Focused purely on social work, this bespoke regulator will cover the whole profession and have public protection at the heart of all of its work—the noble Lords, Lord Watson, Lord Kennedy and Lord Parekh, said that they wanted to see greater emphasis placed on prevention. The new body will be about more than just this. We want to support professionalism and standards across the profession. As a social work-specific regulator, it will be able to develop an in-depth understanding of the profession and use this to set standards for the knowledge, skills, values and behaviours required to become and remain a registered social worker. That addresses the comments made by the noble Baroness, Lady Walmsley. Finally, it will play a key role in promoting public confidence in the profession and helping to raise the status and standards of social work.

As the noble Baroness, Lady Walmsley, said, I am sure noble Lords will join me in congratulating the noble Lord, Lord Patel of Bradford, on his role as the newly appointed chair of Social Work England as he leads work to establish the regulator in 2019.

As the noble Lords, Lord Kennedy, Lord Parekh and Lord Watson, and the noble Baroness, Lady Walmsley, said, education, training and continuous professional development is absolutely key. I have already addressed the issue regarding Cafcass that the noble Baroness, Lady Walmsley, raised, the importance of staff development and case planning and the improvements that Cafcass has undertaken. I am sure that the new regulator will look at those models very carefully.

We are making sure that those entering the social work profession receive the best training possible. We have established 15 teaching partnerships, bringing together universities and local authorities to improve the quality of social work education. We are also delivering fast-track programmes to bring high-potential graduates into the social work profession. For newly qualified social workers entering the profession, the transition from education to the realities of practice can, as we know, be daunting. That is why we have introduced an assessed supported year in employment to provide social workers with valuable additional support during their first year in practice. The programme has benefited over 20,000 child and family and adult social workers since 2012, helping to improve recruitment, retention and performance management.

For established social workers we are funding a range of assessment and development programmes to enable people to progress into more specialist or senior roles. I hope that addresses the question raised by the noble Lord, Lord Kennedy. We are also supporting social workers who have left the profession and want to return, through the Return to Social Work programme, with the aim to train up to 100 social workers across three regions.

In conclusion, local authorities, like all parts of government, have had to make difficult choices to help us balance the public finances. We also recognise that demand for social care services is rising. That is why, across adult and children's services, we are looking at how local authorities can safely make best use of the resources available. Funding is important, as most noble Lords highlighted, but a range of factors will influence service quality and workforce capacity, including leadership, support and professional development, which the Government are addressing through our reform and improvement programmes. I add that while we have made good progress, there is more to do to create a sustainable social care system that stretches beyond any electoral cycle to provide world-class care and support for future generations.

I am checking to see if I have missed any questions. The noble Lords, Lord Kennedy and Lord Parekh, asked about the Return to Social Work Programme, which I will touch on. This has been supported by the Local Government Association, the DHSC, the DfE and the chief social workers, and it is particularly focused on areas experiencing recruitment challenges. We will look at how that goes as we move forward. I am now out of time, so if there are questions I have not answered, I will endeavour to write to noble Lords and ensure that they get answers.

Lord Kennedy of Southwark: We should get one point on the record. I asked whether the Minister would arrange for John McGowan, the general secretary of the Social Workers Union, and some of his colleagues and officials, to meet a Minister of the department or some of their officials to discuss the important details. I hope the Minister will be able to agree to that over the Dispatch Box. Finally, I hope the Minister will go away and think carefully. Although she may not like

some of the issues that came out of the report, on any basis of the quality of quantitative research, a sample of 1,200 people out of 92,000 is certainly well within the norms of what is considered justifiable to be looked at.

Baroness Manzoor: I thank the noble Lord, Lord Kennedy, for those two points. I will take the latter first, and say that I recognise the problems and the issues. Certainly, the Government are not dismissing those issues, which is why I tried to address the strategy the Government have put forward. We have taken the report seriously; I read it, and some of its findings, as the noble Lord rightly highlighted, were disturbing. We plan to do more and can do more. Secondly, on the issue of meetings, I will certainly pass on the message to the Minister in the department. However, personally, I am always happy to meet anyone who wishes to do so.

House adjourned at 8.36 pm.

Grand Committee

Wednesday 16 May 2018

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Lord Rogan) (UUP): My Lords, good afternoon. If there is a Division in the House, the Committee will adjourn for 10 minutes.

Skills for Theatre (Communications Committee Report)

Motion to Take Note

3.45 pm

Moved by ***Lord Best***

That the Grand Committee takes note of the Report from the Communications Committee *Skills for theatre: Developing the pipeline of talent* (3rd Report, Session 2016–17, HL Paper 170).

Lord Best (CB): My Lords, I am delighted to introduce this debate on the report *Skills for Theatre: Developing the Pipeline of Talent*. This resulted from an inquiry by your Lordships' Select Committee on Communications, which I had the honour to chair at that time. I am grateful to noble Lords who are here to participate in this debate and I place on record my appreciation to the members of the Communications Committee, which included real experts with invaluable experience in the theatre and related creative arts. I am delighted that so many of them are speaking in today's debate, including my successor, the noble Lord, Lord Gilbert.

On behalf of the committee I thank our clerk Theo Pembroke, who brought our report together, our policy analyst Helena Peacock and our committee assistant Rita Cohen. She was Rita Logan when she did this work but she is now Rita Cohen and I congratulate her on that change. Our thanks are also due to our specialist adviser, Professor Jen Harvie, professor of contemporary theatre and performance art at Queen Mary University of London, whose input was immensely helpful. I declare my own very modest interest as vice-patron of York Theatre Royal.

Sadly our inquiry had to be cut short, as did my term in the chair, when the unexpected general election was called last year. We could not conclude our task in the normal way, with a set of conclusions and recommendations. Instead, our report represents a summary of the evidence we received from six sessions with expert witnesses, from visits to the Royal Court and the National Theatre, and from a session with Matt Hancock, then Minister of State for Digital and Culture and now Secretary of State at the Department for Digital, Culture, Media and Sport.

The first conclusion which anyone looking at this country's theatre will swiftly reach is that it is a huge cultural and economic success. Its quality is world-beating. It is one of the big attractions for visitors to the UK. Theatres in London last year sold a record of over 15 million seats and box office receipts topped £700 million. We heard how,

"more people go to shows in our venues than go to all league football games in the UK".

Our successful film and TV industries feed off the theatre industry's content, artists and technicians and theatre plays a key supporting role for the country's wider commercial creative industries, including advertising, design and crafts. Yes, theatre in this country—especially in London—is flourishing. However, our witnesses also expressed serious worries about the future. They identified a number of hazards which, together, point to a "leaking pipeline of talent". Will there be a continuing flow of talented individuals to sustain the brilliant success of this industry in the years to come?

The first reason for concern was around education policy. Schools in the private fee-paying sector are likely to have excellent drama facilities and teachers, and will ensure that children experience out-of-school visits to the theatre. But our witnesses worried that state schools have downgraded arts subjects, with the emphasis of the EBacc on the STEM subjects of science, technology, engineering and mathematics. Cuts to extra-curricular activities have meant children in many state schools never encounter theatre and drama. We noted that the number of students taking A-levels in performing arts and drama had declined over recent years. Although Matt Hancock told us that the number of GCSE entries had risen, there is a clear perception that the pipeline of talent is becoming ever more dependent on the affluence of parents. Tuition fees for higher education, the concentration of opportunities in overpriced London, reliance on networks of family and friends and an expectation of starting work for very low pay or no pay—despite progress by Equity in ensuring that the national minimum wage is paid—all conspire against those from less affluent households.

We heard how those barriers were compounded by a "woeful" lack of career advice on jobs in the theatre. The opportunities range from the obvious roles of acting and directing to technical areas—lighting, sound, design, wardrobe, carpentry, even wig making—and administrative areas such as stage management, accountancy, IT and fundraising. Those many and varied work opportunities in the industry were not being promoted.

Then there were the worries on the training side. Apprenticeships have not proved as helpful as the industry would like. Greater flexibility was called for, with apprenticeships needing to be tailored to the special characteristics of theatres as small, niche employers. As the committee heard, if the apprenticeship system can be made fit for purpose, it can be a great leveller. It should be a way into the theatre for a much more diverse group of young people than just those with parents who can help with tuition fees, poorly paid internships, and indeed London rents.

Many of today's leading figures in the industry have come from less privileged backgrounds, such as John Tiffany, awarded best director last year for his Harry Potter production, who told us of his pride in his working-class roots and of his concern that, educationally and financially, opportunities were diminishing for the next generation of people like him.

Inevitably, the issue of funding was also raised with us. The contribution of the Arts Council has held up pretty well, but hard-pressed local authorities, with

[Lord Best]
core services to protect, have significantly reduced funding to local theatres. Public funding remains vital for the big national companies, in effect as their R&D, enabling them to take risks. Alice King-Farlow of the National Theatre explained how famous productions such as "War Horse" and "The Curious Incident of the Dog in the Night-Time" were only possible—often to the benefit of the commercial theatre too—because of public subsidy.

We heard a catalogue of examples of regional theatres having to close, or being on the verge of closing. In other cases, they had stopped developing new work and putting on new productions—using locally employed actors and producers—and had become "receiving only" theatres with productions that came in and then moved on. These regional theatres play a key role in the local economy as well as in the cultural life of the communities. However, we noted how regional theatre feeds into the London scene as well, not least as the starting point for people's careers. Sir Ian McKellen cut his teeth at the Bolton theatre, Hugh Bonneville at Colchester's Mercury Theatre, and so on. Diminishing the role of regional theatre threatens the ecosystem for the industry and, we were told, will eventually undermine UK input into productions in the West End, on Broadway, on TV and in cinema.

We noted the hazards facing the theatre world and, since we reported, problems have of course been uncovered around sexual harassment—as highlighted by the #MeToo and Time's Up movements—from which theatres have not been exempt. However, the committee also heard good examples of theatres compensating for financial constraints through efficiencies, fundraising and cross-subsidy from their commercial productions, as with the Royal Shakespeare Company's hit musical "Matilda".

The world of theatre is also seeking to counter the shift, about which we heard so much, from being an egalitarian industry in times past. The Royal Court is taking on paid trainees. The National Theatre has a target of 25% of performers from black, Asian and minority ethnic backgrounds. The RSC has its Next Generation outreach scheme with 10 regional theatres across the country. The noble Lord, Lord Lloyd-Webber, has funded a bursary in Liverpool, and I noted last week that Benedict Cumberbatch has said that he was acutely aware that he was a white male public school boy but was determined that his new production company, SunnyMarch, would in its staffing and work make a real difference in diversity in all its forms. The call from so many of our witnesses is for central government in its education and training policies and local government in its funding policies to support the efforts in the industry to draw in the talent from all our communities, to the great benefit of the cultural economy of the whole country.

Theatre in the UK is a fantastic success story and, for sure, that success has been based on attracting and sustaining homegrown talent. We hope that our report draws attention to possible stumbling blocks—educational and financial— to maintaining that flow of talent. I very much look forward to hearing the Minister's response. I beg to move.

3.56 pm

Lord Gilbert of Panteg (Con): My Lords, it is a pleasure to follow the noble Lord, Lord Best, and a privilege to succeed him as chair of your Lordships' Communications Committee. He was a very effective chair of a highly experienced and expert committee. I know that noble Lords are very grateful to him for his chairmanship. It typifies his dedication to public service and to the House.

As we heard evidence about the breadth of talent in the UK creative industries and the contribution it makes to our lives and economy, I reflected on the extraordinary contributions in this field of a number of my committee colleagues. I was struck by the passion and commitment to using their own experience to improve the lives of others. It is the capacity of the theatre industry to improve well-being, provide opportunity and drive our economy forward that led us to this inquiry in the first place.

The theatre industry is more important than ever in our national lives. As we leave the EU and face the challenges of automation and the rapid development of artificial intelligence, the creative industries are rightly a critical part of government industrial strategy and are powerfully championed in government by Matt Hancock—the Secretary of State—and my noble friend.

Wherever you sit on the Brexit debate, we are all pretty much agreed that we want an open Britain, one that is welcoming of talent, vibrant and outward-looking. We want to play a confident role in the world, as we always have, not retreat into ourselves. There can be no doubt that our creative industries are at the heart of that vision. In these times, they are an increasingly important part of our economy, as the noble Lord, Lord Best, outlined, employing 3 million people and growing at four times the rate of the wider economy. But it is the nature of these jobs that makes the industry so important and presents it with serious challenges.

As some jobs in our economy disappear, whole industries will fundamentally change and career paths vanish, but many of the roles in this sector will survive and flourish. The creative industries will provide some of the most satisfying, enriching and fulfilling work in our future economy. That is an exciting opportunity, but places more responsibility than ever on the industry to ensure that these jobs are open to all. At the same time, the industry faces challenges from Brexit. It is an industry dependent on global talent, often freelance and needed at short notice in this ever faster-moving, smaller world.

Looking at all these issues—projecting a global Britain, providing future-proof jobs in doing so fairly, enriching our lives as we have more free time—we come back time and again to people, talent and skills. The central role that data plays in the wider creative industries makes it an excellent focus for examining many of the issues facing the wider creative economy. Incidentally, our committee's next inquiry was into the UK's advertising industry—a hugely successful global industry. Looking at these two inquiries together, we saw the interdependence of the creative industries and the vital role played by theatre in providing a pipeline of talent, as well as many other shared issues.

Let us start with access to the industry. We were concerned with equality of access not just to performance roles, but to the wide range of non-performance roles too. To succeed in the future economy, young people will need a melding of skills. I am certain that a strong focus on STEM subjects is important and that the Government rightly emphasise the importance of digital and other technical skills that have been neglected, but it must not be exclusive. Resilience, self-confidence and adaptability are key attributes and the instilling of these soft skills, which come with a rounded education, is vital. The teaching of arts subjects is not just about—maybe not even mainly about—equipping talented young people to succeed as artists, performers and writers. It is about equipping all young people to work in multidisciplined teams and to open their horizons so that they see the opportunities that lie ahead in a broad range of careers. We should examine whether it is still appropriate for children to specialise so much at an early age.

Like the noble Lord, Lord Best, I was struck by the evidence suggesting how difficult the industry finds it to attract young people who have a good grounding in STEM subjects into roles in stage management, automation systems, carpentry and, as he said, even accounting. State schools need to do better at footpathing this career route to young people. Again in its report on the advertising industry, the committee called for government and industry to act. Given the interdependence of the creative industries, the highly successful advertising industry could take some greater responsibility for a wider campaigning approach that highlights the range of roles in the creative industries and to provide resources to help introduce pupils from all backgrounds, parents and teachers to roles in the wider sector.

In taking evidence we found enthusiasm for the principle of apprenticeships and the opportunity they offered to widen the pool of talent coming into the industry, as the noble Lord, Lord Best, outlined. We found some success stories, but there was a widespread feeling that apprenticeships are not working well in the sector—that the scheme is not sufficiently flexible for the demands of the industry and not well suited to SMEs, which make up a big part of the industry. As the Government continue to review the apprenticeship scheme they need to address the peculiar demands of the creative industries in general and theatre in particular.

The theatre industry, like others in the sector, has much work to do to attract the widest range of people to work in it and to watch its performances. I have no doubt that the industry gets this and is working hard, particularly in the area of performers and audiences. The greatest creativity comes from drawing on the widest possible pool of talent and backgrounds so that theatre has an interest in constantly improving diversity. But there is a wider responsibility on the whole sector to be open, welcoming and proactive in attracting young people from a range of socially diverse backgrounds to the careers of the future, which cannot continue to be disproportionally open to a fairly narrow section of society.

However hard we work to teach the skills and attract young people to our global creative industries, often through the career pipeline of theatre, there will always be a need to attract workers from around the world. As Britain leaves the EU and meets the challenges of the rapidly changing economy, we need to be nimble and fast-moving as well as open and welcoming, so a visa regime that serves our national interest will have a focus on providing the skills needed in theatre and other similar industries speedily and with minimal bureaucracy. There needs to be a provision in the visa system for rapid project-based freelance visas. The Government should seek reciprocal arrangements for the industry with other countries.

I have not touched on resources. I know that other noble Lords will. There have been many calls for public spending and there was particular anxiety about funding from local government. Maybe it is time to uprate in line with inflation that old adage about public spending: a few billion here, a few billion there, and pretty soon it adds up to serious money. There is an argument for more public funding of the subsidised theatre sector, which plays a vital role, as the report evidence suggests, in developing the pipeline of talent that feeds not only commercial theatre but our highly successful broadcast and TV industries, advertising, event production and many others. But there is a role for these commercially successful industries to contribute more to funding the development of skills in the theatre industry, from which they benefit, and a whole-sector approach is called for.

In committee, the noble Baroness, Lady McIntosh of Hudnall, who knows a thing or two about this subject, admonished me when I often mistakenly referred to "creative" versus "non-creative" roles. She rightly told me that the distinction I was trying to make was between performing and non-performing roles, and that many of the off-stage roles I was talking about were highly creative. She was completely right.

We have great creative industries full of great creative people. They will drive our economy, improve our lives and strengthen society. As human beings, we are blessed with different talents and skills but—whether we are performers or not, whether we are highly creative or not—our lives will be enriched if the opportunity to take part in or enjoy and appreciate creative endeavour is open to us, which is why resolute focus on opportunity for all starts here.

4.06 pm

Baroness McIntosh of Hudnall (Lab): My Lords, I thank both the noble Lords, who I would like to call my noble friends although I cannot do so formally, who have chaired the committee during my time on it. They have set out the issues in this report so comprehensively and lucidly that, frankly, there is little left for the rest of us to say—but it ain't gonna stop us, is it?

I start by declaring my interests. Currently I am deputy chair of the Royal Shakespeare Company. I am a former executive director of the Royal National Theatre, and I have form going back many decades, both as an employee and a board member, of many other theatrical enterprises. I concede that the noble Lord, Lord Gilbert, is right that I know a thing or two about the theatre. Whether what I know is still relevant will emerge as my remarks go on.

[Baroness McIntosh of Hudnall]

I endorse everything that both the noble Lords, Lord Gilbert and Lord Best, have said. I particularly light upon the remarks of the noble Lord, Lord Gilbert, on access, which I am not going to concentrate on but we have to take special note of. It is becoming more difficult for people to access the kinds of jobs that the theatre offers. As he said, that is partly because not enough is known about them, but also because getting into them requires a kind of determination and, sometimes, some economic support that is not open to everybody. We must try to do something about that.

I want to concentrate on the theatre not just as a place within which certain kinds of skills are needed, but a place or places within which skills are developed. That goes to the point that the noble Lord, Lord Gilbert, said somebody would raise—and they will—on resources. How we support theatre as an innovator and developer of skills, as well as how much it needs the skills it can usefully take from other areas, is not very much discussed.

I make it clear that I am completely and unashamedly parti pris in this debate, because theatre has been my entire professional life and remains a continuing source of delight to me. This is not something everybody who has spent their professional life in a particular area can always say. Perhaps I do not need to say this in this company, but there is a kind of spit-and-sawdust residue of an old language about the theatre that still hangs about, and suggests that theatre is, as it were, the entertainment equivalent of coracle-making—a bit old-fashioned and not very useful and not very many people are interested in it. Actually, the theatre industry today is highly sophisticated and extremely wide-ranging in the skills that it uses and develops, including some cutting-edge digital technologies that are being developed.

I have to talk quite a lot about the Royal Shakespeare Company, I am afraid, because that is where I currently get most of my experience in the theatre. Noble Lords may have seen a production of "The Tempest" last year, in which Simon Russell Beale played Prospero, which used very sophisticated digital technology to create avatar figures for some of the leading characters. That came about as a result of a collaboration between the RSC and leading technology companies that wanted to work with the theatre, including Imaginarium, the company that developed all the technology for the "Lord of the Rings" films, particularly for the wonderful character of Gollum. Those of you who have seen the films will remember it.

The business of putting on a stage production has always been complicated, and it is very much more complicated now than it used to be. What lies behind the performances that we see as audience members is a network of very highly trained professionals, including the directors, who create the work with the performers, but also the stage managers, who run the shows, technicians operating lights and sound and changing the stage picture in a variety of ways—and, behind them, producers, who know about raising and managing budgets. That is not a glamorous activity, and certainly not one that makes them popular; they also know about ensuring through marketing how to get audiences through the door. It is also true that most theatre companies these days do far more than just present shows. They are involved in education, in community work and sometimes in healthcare. When you put all that together, you have a very rich mix of very diverse skills.

I just want to give noble Lords a couple of examples, mostly from the Royal Shakespeare Company, to point out what I mean. At the moment, the RSC has a project called Stitch in Time to refurbish its costume workshops, which sounds like people sitting and making tiny stitches under awful lighting. Indeed, that is exactly what it has been like at the RSC for quite a long time, because the facilities have not been great. The project is to create much better facilities for these very highly skilled people, who make costumes using the skills of cutting and sewing, which are certainly traditional but are diminishing. Very few people have them any more, but they are highly necessary within the theatre. The noble Lord, Lord Best, mentioned that they are also evolving very sophisticated ways in which to create wigs, and there is make-up and all that stuff. Those are old-fashioned skills being done in new and important ways. The Stitch in Time project is creating within a heritage building new facilities for people to do those old skills even better. To do that, they will need the skills of a highly trained building industry that knows how to work with heritage buildings. In that one little project, you have a range of skills that the theatre requires and draws upon and is developing.

The second thing I want to mention, which also concerns the RSC, is a partnership that it has recently developed with a pioneering technology company called Magic Leap. This partnership, which was announced recently, will explore creative technologies to make theatre—specifically theatre using special computing. I am no expert in this area, but I saw some of what is involved and it is quite extraordinary. For example, you can scan your ticket across your mobile phone, or whatever, and you will get 3D images of the show concerned, or the programme. This is all in development, but it is being developed in an almost SME way within the RSC—it has managed to create a new partnership to take these technologies forward for the benefit of the theatre and more widely.

The last kind of skill that I want to mention is perhaps slightly different; I will not point to the RSC so much as far as it is concerned. This is the evolution within theatres of social skills—the kinds of skills young people need to become effective and rounded citizens. As it happens, the RSC has an education department and does an awful lot of work in that area, including the creation quite recently of a company of young performers drawn mostly from people who would not normally get access to this kind of training. They will present some of their first work quite soon.

I also want to point to the work of a company that I am not formally connected with but am very impressed by—Chickenshed, based in north London, which I have mentioned to your Lordships before. It works with young people of all abilities, from an early age. Some go all the way through their time at Chickenshed and pick up a BTEC, or sometimes a degree-level qualification, as part of their work there. Through the process, they acquire skills that they might find hard to acquire by other means. Many of these people—not,

I have to say, including my granddaughter, who also goes to Chickenshed—are people who would not normally find themselves working in the theatre. It is important that this kind of work, which is helping to develop the well-being of a lot of the people involved, is remembered and celebrated.

I am in danger of going on too long and I do not want to do that. I will finish by saying that theatre can, and does, make a very extensive contribution to our social and economic culture, as has already been said by my two chairpeople. This is why theatre needs a workforce of wide-ranging creative and technical ability, and why the current education system, and the policy that lies behind it, is in danger of letting the theatre down. The system does not encourage schools or other educational institutions to see and understand the opportunities available in this kind of environment. In my view, it focuses much too narrowly on examination results and does not see the need to join up various kinds of educational discipline to create people whose education experience equips them for a new world, within which they will be required to be many different kinds of person—all within the same person.

This also applies to apprenticeship schemes, as the noble Lord, Lord Gilbert, said. The Magic Leap partnership with the RSC creates fellowships to bring two young people on board to learn these skills. I hope the Government are listening on this subject. They are not hearing it for the first time. I hope that, by the end of this debate, the Minister will be able to give us a little encouragement that they have taken on board how important this is.

I am sorry to go on, but I have one last thing that I want to say to the Minister. He will not be ready for it and I am sorry that I have not had a chance to tell him about it. There is a problem that the theatre industry is now facing and it concerns the European Commission's Directorate-General for Energy. How boring does that sound? However, it has the potential to have a devastating—I use that word advisedly—impact on one of the most creative aspects of theatre, which is lighting. I see the Minister nodding, so I will not take up the Committee's time by explaining it. I simply say to him that if he is not able to give the Committee an answer today about how the Government intend to prevent this very damaging initiative going forward—or indeed to tell the noble Lord, Lord Grade, when he asks a Question about it in a couple of weeks' time—can he please consult his colleagues and write to us?

In the meantime, I thank everybody who has been involved in the committee's report and I apologise for taking so much time to say what I have said.

4.20 pm

Baroness Bonham-Carter of Yarnbury (LD): My Lords, I thank the noble Lord, Lord Best, for his exemplary chairmanship, not least for being willing to take on this subject. I think that we took a bit of persuading but he then took it on with gusto.

"The stage is not merely the meeting place of all the arts, but is also the return of art to life".

That was brilliantly put, not of course by me but by Oscar Wilde, and I think that it brings together a lot of what we have already heard from the previous speakers. We Brits are good at this creative meeting place and we have a thriving theatre sector. Our writers, directors, craftspeople, producers, performers and technicians practise their talents across the British Isles and across the globe, and are showered with appreciation and awards. However, as the noble Lord, Lord Best, mentioned, this report reveals concerns that certain issues could lead to serious problems if they are not addressed.

All of us here know that the creative industries are the fastest-growing sector of our economy yet, despite the fact that at the moment there are 17 creative roles on the Government's shortage occupation list, creative subjects are being squeezed out of the school curriculum. I am sorry that I have to repeat what your Lordships have already heard.

As Grayson Perry presciently observed:

"If arts subjects aren't included in the Ebacc, schools won't stop doing them overnight. But there will be a corrosive process, they will be gradually eroded … By default, resources won't go into them. With the best will in the world, schools will end up treating arts subjects differently".

He was right—they are, despite it being a fact that schools that provide high-quality cultural education get better academic results across the board, and despite it being a fact that private schools entice parents with access to culture. Thomas's Battersea offers specialist teachers in art, ballet, drama and music. This is the school chosen by the Duke and Duchess of Cambridge for their son. Surely what is offered to a prince should be offered to all.

It is a fact that the current Secretary of State agrees. He said it himself to our committee:

"Our message to people who lead schools is that the arts help in what they would think of as the core subjects and with life chances. The evidence is pretty strong that music helps you with maths. I would say that drama and theatre helps with your English".

He goes on for longer and I urge noble Lords to read what he said. To my mind, it is absolutely conclusive that he believes in STEAM, not STEM. It is a fact that for most young people and for a disproportionate number of those from less affluent households, theatre is first encountered in schools.

It is suggested that it is up to individual schools to choose what is on their syllabus, but there is no incentive to offer creative subjects. There are 119 accountability measures that a state secondary school has to consider and not one pertains to the arts. As Amanda Spielman, the current chief inspector of Ofsted, commented in a recent Ofsted report:

"School leaders need to recognise how easy it is to focus on the performance of the school and lose sight of the pupil. I acknowledge that inspection may well have helped to tip this balance in the past".

Does the Minister not agree that a requirement of the Ofsted inspection process should be to ensure that no school can simply drop creative subjects? As it seems that both the Secretary of State and the chief inspector of Ofsted back STEAM not STEM, does the Minister not think it best for the Government to listen to the noble Lord, Lord Baker—Kenneth Baker, once a Tory Secretary of State for Education—and his Edge Foundation's baccalaureate? It suggests delivering a stretching curriculum that provides a solid academic core, alongside creative subjects. Does the Minister not agree with that aspiration?

[Baroness Bonham-Carter of Yarnbury]

The career advice on offer comes to the point about access or lack of it from the noble Baroness, Lady McIntosh. As the committee was told, the perception of a career in the theatre is associated with insecure employment. "Low pay or no pay" was the way it was put to us. Actual careers advice is poor. We are not just talking about encouraging careers of so-called talent. I will not mention wigs, because they have already been mentioned twice, but carpenters are also needed. As Bryan Raven from the National College for the Creative and Cultural Industries told us, there is a lack of awareness of the careers available in the creative industries. Take carpenters; make them aware that there is a whole career associated with making sets—and maybe coracles, I say to the noble Baroness, Lady McIntosh; I do not know. Julian Bird of Equity said that it is important

"to inspire people who may have technical abilities in other areas that our industry needs".

This lack of careers advice exacerbates the problems faced over diversity. Low pay or no pay is an assumption, as Christine Payne from Equity told us, that a job in the theatre is not proper work. It dissuades parents, teachers and careers officers from encouraging young people from less affluent and culturally diverse backgrounds to pursue careers in this area. That takes us back to the curriculum and the disparity in access to art subjects between children in state and private schools. Many witnesses who came before us felt that the consequence of this is a pipeline that is becoming ever more dependent on the affluence of parents. The knock-on effect is a lack of mobility, reflected both front of stage and backstage.

Sir John and Frances Sorrell's National Saturday Clubs provide schoolchildren with an environment in which to learn from industry experts for free. They help young people gain qualifications and give them an understanding of career opportunities in this wonderful world. Does the Minister not agree we need more of this kind of collaboration between businesses and schools?

Our committee heard that the theatre sector is impressive in its outreach work, as touched on by the noble Lord, Lord Best. I have experienced this personally at the Lowry, where the learning and engagement team programme brings in harder-to-reach young people from the community, not just as spectators but as participants and creators. I recently heard that the National Theatre is using new technology to stream their productions into state schools and help them put on their own productions. We have heard some wonderful stories from the noble Baroness, Lady McIntosh. There are many examples. We heard concerns from those who spoke to us that these are being eroded because funding is being squeezed, particularly at local government level. In some areas, the local authorities have cut extra-curricular provision of arts education in half.

In his acceptance speech for the BAFTA rising star award, Daniel Kaluuya was clear:

"I am a product of arts funding in the UK. I want to thank people who support that, mainstream arts and grass-roots levels. Thank you for letting me think different".

Role models such as Daniel are needed to inspire others.

Of course there is also funding from the EU; my fellow committee members know that I cannot speak without mentioning Brexit. I think another noble Lord is going to mention Brexit but I will not mention lighting, because that has already been done. Our creative industries have benefited massively from our membership of the EU, so can the Minister confirm that where access to EU funding is lost, the Government will maintain investment through UK-based schemes? Will he confirm that they will maintain future involvement in Creative Europe and Erasmus? Without the right deal on the movement of talent and skills, our theatre industry will face big challenges. Can he give us an assurance that the Government understand the need for the continued ability of people to move freely between the UK and the EU for creative activities?

I will end where I began, with education. Rufus Norris, the artistic director of the National Theatre, wants an answer to this question. He said:

"What … explanation can there be for the baffling disconnect between",

the Government's,

"industrial strategy, which prizes the creative industries as a priority sector, and an education policy that is deliberately squeezing creativity out of our children's learning?"

4.31 pm

Baroness Kidron (CB): I, too, begin by thanking both chairs of the Communications Committee. Committee work contributes so hugely to the work of the House and, speaking personally, I have always relished and continue to relish Tuesday afternoons.

I struggled a little with what I wanted say this afternoon, as the question of the arts in schools is something I feel passionately about. So too is a pipeline for talent, beset by problems of class, diversity and lack of access outside London; the undervalued reputation of the creative professions; and, as in every one of our conversations at the moment, the question—or should I say the cost—of Brexit to an international and open industry, which holds a unique place on the world stage.

However, as luck would have it, last night I went to the theatre. I saw "The Inheritance", which, in a spellbinding seven hours over two evenings, managed to give a detailed account of the AIDS epidemic of the 1980s, a history of homosexuality over four generations of Americans and a truly masterful account of love and loss. It raised a challenging question, which I am sure everyone in this Room has considered at some point: is it possible to love honestly across the political divide? I was reminded of our witness who said that,

"the NHS looks after us physically but theatre looks after us spiritually".

It is on that theme of the theatre ecosystem and its importance to our civic life that I wish to address my remarks.

I draw your Lordships' attention to my interests in the register, in particular as president of Voluntary Arts, a membership organisation that represents 63,000 organisations in the voluntary arts sector—please note that number—and to say that my husband is a playwright.

Politicians and policymakers have become very comfortable with asserting that resources are finite, so we must adhere to a utilitarian hierarchy. While I have

yet to meet a Minister or government spokesperson who did not profess the importance of arts and culture, their declarations of personal attachment to Welsh choirs, Shakespeare's tragedies or "The Angel of the North" are almost invariably followed by the assertion that the demands of our cultural life must be seen through the lens of other, indisputably more important matters. While there is maths to teach and there are criminals to catch, the burden of social care and the health of the nation at stake, arts must wait patiently in line.

However, culture is not confined to exhibition or performance. It is the way in which we explore who we are and our values, challenge and record our histories, consider how we live with one another and how we invent our future. Culture, and theatre within it, happens when people, with their ideas, skills and imaginations, find opportunities to engage with one another—opportunities that require money, equipment, time and place, and opportunities that can be created or be snuffed out by a lack of political understanding and will.

The Society of London Theatre reported £1 billion in ticket sales across the UK in 2017. Subsidies account for only 14% of all funding in the theatre sector. Venues and companies contribute ticket sales, workshops, cafés, education schemes and sponsorship to a vibrant mixed economy. Also clear from our witnesses was that industry professionals flow seamlessly between television, film, commercial and digital content, honing their skills and sustaining their incomes. Theatre, indivisible with the broader arts economy, is worth £7.7 billion annually.

Beyond the known theatrical professions, as the noble Baroness, Lady McIntosh, mentioned, lies an army of secondary services, from accountants and agents to theatrical dry cleaners, that all benefit from and intersect with the sector. Far from being a burden or government subsidy being a free cheque for theatre luvvies, it is an investment that brings a palpable net economic benefit. As the Arts Council reports, for every £1 of salary paid by the arts and culture industry, an additional £2.01 is generated in the wider economy.

But theatre offers two separate accountings: the economic contribution and the creation of public good. Even here, one thing is indivisible from another. Theatre—or, more usefully, drama—takes place in three interconnected spheres: the commercial, the subsidised and the amateur. Many of the commercial theatre makers, while unashamedly set on raking in the cash, also offer a public good—for example, by exploring contested subjects, such as in "Miss Saigon" and "The Book of Mormon", offering creative excellence, as in the current Pinter cycle, or even making political waves, such as by casting a black Hermione in Harry Potter. All are deeply commercial endeavours.

Similarly, subsidised theatre may well be experimental or for a minority audience, but just as often it offers the space and resource to create work that ends up as a commercial hit. "War Horse", "The Curious Incident of the Dog in the Night-Time", "Matilda" and "The Ferryman" are just a handful of the shows that would not or could not have found their feet in a purely commercial setting.

Meanwhile, more than 5,000 registered amateur theatre companies are in the UK, paying copyright fees that sustain writers, act as a driver of audience development, particularly in the regions, and contribute to the economic activity and popularity of festivals and local community venues.

This same 14% also covers drama, very often of extraordinary quality, that reaches parts of the community that would otherwise be overlooked. Examples include the award-winning women prisoners theatre company Clean Break, the Big House, with its young participants who have been through the care system, the Beyond Borders festival of refugee and asylum stories in Sheffield, and "Inside Out of Mind" from the Meeting Ground Theatre Company, which goes from care home to care home playing to the families, carers and sufferers of Alzheimer's. There are scores of companies that make our country vibrant, help the vulnerable find a voice and, I would argue, spread considerable joy while they do so.

For young people, school drama is often the first cultural activity that a child participates in, and a school visit to the theatre is the first professional art they see. It can be transforming, impacting on self-development, cultural understanding and educational outcome. I hope that I will be forgiven for saying that I know this because I am married to someone whose school production of Brecht was the first step to a life in the theatre that has to date included youth theatre, university drama, subsidised theatre, regional theatre, West End theatre, Broadway theatre and beyond—a life made possible only by the vision of a drama teacher in a Newcastle school.

We are not shy of saying that the Greeks, the Spanish golden age, Elizabethan theatre and mid-century Broadway have offered the world a great deal more than entertaining distraction. We have understood the importance of meeting in public to tell the stories of our day, respond to the demands of a public and offer visions of possible futures. With only a little timidity, I would suggest that we are in our own golden age; since the mid-1950s, our playwrights, directors and actors have told stories so important and compelling that they have travelled the world. They dominate the creative industries globally; they are showered with awards, the Nobel Prize for literature among them. It has been a continually fruitful, sophisticated and extraordinary time and, as the world has moved inexorably towards the pre-eminence of the individual, I would argue that theatre has remained a crucial expression of our civic life, challenging our perceptions of politics, narrative and form, and it is not something that we can afford to lose.

The threats to the sector have been set out admirably by other noble Lords, so I will add only that the current health and brilliance of the theatre sector is not proof of its longevity. Yes, it is wonderful now, but this generation of practitioners are based on the policies of a generation ago. What we are doing now is starving the practitioners of the future. Without a healthy sector, without solving the education issue, the pipeline of which we are all speaking will have nowhere to land.

I finish by offering my thanks to all those who gave evidence for their wisdom and phenomenal commitment, and by making four practical suggestions. First, we

[Baroness Kidron]
should put art subjects, including drama, in their rightful place in the school system. Drama offers the exact skill set outlined by the OECD, the European Union, the Global Learning Alliance and UNESCO as being essential to the 21st-century workforce and society more broadly. Collaborative working, critical thinking, project based, iterative and interdisciplinary—it ticks all the boxes.

Secondly, as we have argued often in this House, we should ring-fence money for cultural activities in local authority funding. The swingeing cuts to local authority budgets have hurt the most vulnerable parts of the theatre ecosystem—the regional, marginal, amateur and the young. Thirdly, we should take the VAT money from theatre tickets, estimated last year at £107 million from London box office alone, and reinvest it in the subsidised sector. It will create growth. Fourthly, noble Lords should go and see "The Inheritance". If nothing else, you may learn to love across the political divide, or not.

4.43 pm

Viscount Chandos (Lab): My Lords, as the first speaker this afternoon who was not a member of the committee, I extend my thanks on behalf of the guests to not just the noble Lord, Lord Best, but all the previous speakers for their work as members of the committee. The 2017 general election truncated not just the Conservative Party's more grandiose ambitions for political dominance but more regrettably, perhaps for me at least, the work of the committee on this report. Despite that, it has come to five very important and clear conclusions, which I unequivocally endorse.

Listening to the noble Baroness, Lady Kidron, talk about her husband's formative experience at school made me think about my performance as Macbeth, aged 12, which my father—a very kind but an even more honest man—described as the most monumental piece of miscasting he had ever seen. That has perhaps spared me from the need to declare interests that are rooted in real knowledge and experience of the theatre. But among my interests in the register are two particular ones to which I should, perhaps, draw your Lordships' attention: first, as a trustee and past chair of the Esmée Fairbairn Foundation, which funds a number of theatres and theatrical ventures and is referred to by National Theatre Wales in giving evidence; and, secondly, as a newly appointed trustee and vice-chair of the London Academy for Music and Dramatic Art, which is better known as LAMDA.

The first section of the report talks about the importance of the theatre industry, both in its own cultural and economic right and, as noble Lords have already stressed, as the seed from which other more recent industries, including film, television and digital, have grown and flourished. I thought there was a striking, if not revelatory, quotation from Julian Bird, the chief executive of UK Theatre and the Society of London Theatre, when he said:

"Hollywood is packed with British technical and creative skills, 90% of which have come through regional theatre".

Although the report is about developing the pipeline of talent—implicitly, I think—into professional theatre, it is important to recognise that developing that pipeline in schools and at school age will also drive the stimulation of cultural, social, educational and communication benefits and skills for many times more people than will ultimately enter the profession.

There has already been discussion this afternoon of the education environment, the trends in schools on EBacc, the emphasis on STEM and the horrifying divergence in the provision of drama and theatre between state and independent schools. It is important to emphasise that this is not just in terms of the curriculum but, almost more importantly, in terms of extra-curricular, external theatre visits, for which there may not be funding even if the regional theatre is within travelling distance.

On higher education—I suspect because the committee's deliberations were cut off in their prime—there is relatively little discussion of the role of the drama schools and conservatoires. Given the interests that I have declared, I would like to spend a little time talking about them. One of the challenges is how best to describe them. I guess that, in the era of fervent Brexiters, the term "conservatoire" sounds altogether too foreign and too French. However, the more technical description of them as small, specialist higher education institutions seems rather dull so, with your Lordships' permission, I shall continue to refer to them as conservatoires. The conservatoires are at the top of the tree, but they are not and should not be elitist. When Nicholas Hytner attended the ground breaking ceremony at LAMDA for its wonderful new building with the Sainsbury Theatre, long before I was a trustee, he said: "Without LAMDA, there would be no National Theatre".

In looking at what the committee discussed in relation to drama schools and conservatoires, I was a little concerned by the quote from Sue Emmas of the Young Vic when she said:

"We are not getting the diversity of talent that we need through … the drama schools, which is a blockage in the talent pipeline".

Without being complacent or saying that there is not still room for improvement, I was looking at the statistics for the past couple of years at LAMDA. In the current academic year, 23% of undergraduate students are from a black, Asian or minority ethnic background. It was 20% in the previous year. Before there is a boorish intervention by the dyspeptic theatre critic of the *Daily Mail*, I should say that I do not believe that this reflects primarily the efforts of LAMDA to make access as good as possible. It really reflects the intensity of talent that exists in those communities. Twelve per cent of students have a declared disability; 38% of BA acting students come from households with an income of less than £26,000 a year. LAMDA gives bursaries or scholarships to 20% of all students. The disparity between that 20% and the 38% of students who come from households with income levels that low is a constant reminder of how much we at LAMDA still need to do to increase funding for bursaries and scholarships.

4.52 pm

Sitting suspended for a Division in the House.

5.09 pm

Viscount Chandos: If I may have a couple of minutes' grace, I want to give one other statistic from LAMDA because it confirms one of the points made by the committee relating to careers advice for technical and stage management. LAMDA graduates from technical and stage management courses have a 100% employment rate in the first year, yet the applications are proportionately massively lower for that course than for the acting course. While the glamour of acting might account for some of that, there is strong evidence that career advice could be more helpful in that respect.

Where does this point? I think of the educational side as a pyramid, with the specialist conservatoires at the top then, in other higher education, the universities' drama departments and then the schools. Then there is the theatre sector itself and the creative industries. Not to make this the Venn diagram from hell, but these have to intersect. One of the challenges is to get all the different parties to pull in the same direction. That, of course, requires money at every level: government money, central and local—I totally endorse the comments of the noble Baroness, Lady Kidron, about ring-fencing local authorities' arts budgets—philanthropic funding, which can never replace yet can complement government funding, and commercial funding.

To conclude, if this is not a guest being more outspoken than he should be, I find it extraordinary that, a year after the publication of the report—quite a slim one, for the reasons discussed—there has been no government response. It is very hard not to draw the conclusion, for all the distractions that other unmentionable events pose, that that is an implicit statement of priorities. I very much hope that the Minister, in winding up, will do something—perhaps more than something; a lot—to reassure your Lordships that this is a priority for the Government.

5.12 pm

Lord Grade of Yarmouth (Con): My Lords, I declare my interests. I am a West End and Broadway producer in the theatre. I will get the plug in now. I currently have "Chess" running at the Coliseum and "42nd Street" at Drury Lane. See me after for tickets, anybody who is interested.

I suspect that this is less a debate than a unanimous declaration of fear for the future of this precious sector of our creative endeavours in this country. I welcome the report. It is timely, valuable and worthy of the attention of the Government and the sector. I hope that, as a result of this debate today, it gets that.

I fell in love with the theatre in 1948, when I sat on a bucket in the wings of the now-gone Finsbury Park Empire watching my aunt, the dowager Lady Grade of Elstree, playing principal boy in "Babes in the Wood". That love affair has lasted a lifetime. I did tread the boards once. I never quite made the lead in the Scottish play, I have to say. I thought I had better try it out, because it was in the family. At my posh school, age 13, I auditioned for a part in Gogol's "The Government Inspector". To my delight, I landed the part of the sergeant's wife. Soon after the first performance, I hung up my bra and decided that I was not cut out to tread the boards.

One of the joys of the theatre sector is that it is digital-proof. It has survived every form of technological development known to man from movies to television and radio—you name it. There is no experience that you can create on a screen to equate, or get anywhere near, to sitting in a theatre in rows of seats watching the magic in the creation and realisation of great works for the theatre. Some are not so great, but you have to try. It may be digital-proof but it is not skills-proof, which is why this report is so very important.

Successive Governments, to give them their due and full credit, have recognised this and there are tremendous supports for the theatre. Obviously the Arts Councils could do with more money, as they always could; there is no limit to the good works they can do. In a note to the Treasury, I would say that a little money in this sector goes a very long way. I hope that that message will go back.

We must encourage theatre and drama training, as so many of my noble friends have said, to be part of what schools do. There are some worrying figures showing that fewer and fewer schools are offering drama at GCSE and A-level. This should be a worry to us all, not only because it is in these lessons that the world of the theatre is opened up for many—a world they may not feel was their world—but because of the skills in communication, teamwork and being creative that drama enriches within people's lives, and indeed their spirits. The news is currently full of reports of an alarming increase in young people's negative mental health. What a worry this is. Drama and theatre in schools is proven to be an essential subject where youngsters can find a way to express themselves, explore their imaginations, and develop their sense of themselves and empathy for others. There is nothing like learning drama in schools to help kids. We should be absolutely certain that schools are supported to have drama and theatre at the heart of their curriculum.

I have apologies from my dear friend the noble Lord, Lord Puttnam, who is going to a creative industries' graduation ceremony outside London. He would otherwise have spoken and he asked me whether I would be kind enough to express his full support for what I am saying here. We must encourage a drama curriculum that is active and vocational: not just Shakespeare read in English literature classes. I hear recently of schools not having time to do a school play, where the school stage is being turned into science labs or where other subjects are now so much the—perfectly proper—priority that head teachers feel that plays and theatre are the extra, the add-on and the dispensable. They are not. We would not be training the most exciting actors and stage crews in the world if this view came to dominate. We must understand that to keep the pipeline of theatre talent of all kinds open—on stage, backstage and front of house—we must encourage schools to have theatre at their heart. The kids absolutely love it.

Last month, I visited one such school that has theatre very much at its centre. I speak of the BRIT School in Croydon, a free state-funded performing and creative arts school for 14 to 18 year-olds. I spent the day there and was blown away because it was absolutely eye-opening. It is known as the school that taught many of the world's leading music performers

[Lord Grade of Yarmouth]
including Adele, Amy Winehouse, Katie Melua and Leona Lewis. I am told that its former students have sold a staggering 140 million albums since it opened just over 25 years ago—what a record. It has produced numerous actors—none of them posh, I hasten to add—who are part of our cultural landscape today. But along with Olivier award-winning performers from "Hamilton", "42nd Street", "Everybody's Talking about Jamie" and "Follies", the school has a technical theatre course for aspiring costume designers, producers and prop makers.

We need the backstage staff—the technicians of tomorrow—to be encouraged and trained from as early an age as possible if our rich history of creating the world's best is to continue. As well as the high standards of professionalism, what struck me most about the school were the levels of independence, confidence and belief that the students had. Many did not possess any of those characteristics when they arrived at the BRIT School.

These were young people going places. Although they were likely to enter the world of work in the creative industries, they also had skills that would set them up for life. Over the past five years, the BRIT School has seen a decrease in its funding of over 20%. It currently has an annual shortfall of £1.25 million. The demand is there. For some courses there are 10 qualified applicants for every place. I am not talking about flaky kids who say: "Wouldn't it be nice to go to the BRIT School?", I am talking about kids who have talent, who pass the auditions or the qualifying standards. The average is four to one: four kids for every place it can offer. The school has had to cut and reduce courses and, of course, the classes are getting bigger.

The funding shortfall must be fixed. I know this is not a matter for the DCMS but for the Department for Education. However, it is symptomatic. Here is a joyous place, which is contributing more to social mobility than any other single institution anywhere in the country. Many of these kids come from troubled backgrounds—they may be kids who have dropped out of school but who have suddenly found a talent they can pursue at the BRIT School, and they go on to get jobs in the sector. The creative sector is a fantastic engine for social mobility, probably the best we have ever had. I remember talking to Sir Ridley Scott—still an A-list Hollywood director, whose father was a riveter in the shipyards of the north-east, and he was very proud of getting as far as he had from such a humble background—although he told me that his mother was interviewed after he and his late brother, Tony, became very successful and when the journalist asked her: "What did your husband do?" she said: "Oh, he was in shipping."

Social mobility is one of the great prizes of the creative industries, most particularly in the theatre. I know that the department is very supportive of the BRIT School and that the Government are very supportive of the creative industries. But a small amount of money goes a long way in our sector. In summary, I ask my noble friend: does he agree that taxpayers would get a better return from their investment in the theatre, and in the education of youngsters, than from spending millions on Leveson 2?

5.22 pm

Baroness Quin (Lab): My Lords, there was at least a touch of controversy in the last remark, which has knocked the very large consensus there has been in this debate so far, but most of the points made by the noble Lord, Lord Grade, are ones which I shall echo in my own remarks. Like the majority of your Lordships who have spoken in this debate, I am a member of the committee that drew up the report. At the time that it was drawn up I was listed as having no relevant interest. I should perhaps say that, since that time, I have an appointment in the cultural sector as chair of the strategic board of Tyne and Wear Archives and Museums. Although that is not directly part of the theatre industry, it is part of several regional partnerships in which the theatre industry is represented and is very active.

I would also like to join others in the tributes that have been paid to our former chairman, the noble Lord, Lord Best. It was a pleasure to be part of his team as a member of the committee and I am glad that the current chair, the noble Lord, Lord Gilbert, has also been present at this debate and has spoken.

At this stage, so many points have been made that I would simply like to reinforce one or two matters which I am keen to stress and, perhaps—in mentioning my connection with the north-east—to use the north-east as something of a case study, to reinforce some of the points made.

One point that should be stressed is that in our report we concentrate on theatre skills, but what we say about them is relevant to many other parts of our creative industries. Some of the comments in our report and some of the evidence that we received have an obvious read-across to other parts of the creative sector.

Let me give one example. Concern was expressed by several people giving evidence and by members of the committee about the quality of careers advice in schools regarding careers in the theatre, but of course it was about careers not just in the theatre but in the whole of the creative sector, and the importance of careers advisers knowing about the huge variety of jobs available in that sector—from the most obvious, such as acting, to all the technical jobs which are very important in terms of both technology and scientific innovation. In that sense, although I totally support the comments made about STEAM rather than STEM, there are subjects in the STEM curriculum which are very relevant to the creative industry sector.

An issue that I and others have been very concerned about is access to employment in the theatre for those from less affluent backgrounds. I rejoice in some of the examples that the noble Lord, Lord Grade, gave of those who have done spectacularly well from non-traditional backgrounds—to put it mildly—but none the less, great concern was expressed to us in our evidence sessions that the trend is rather negative at the moment. It is therefore important for Government to take great notice of this issue. Obviously, when we were talking about people from less affluent backgrounds, we were also talking about the need to encourage people from a diversity of backgrounds into the theatre sector.

There was a regional aspect to this issue, particularly given that, understandably, there is so much theatre activity in London. It is difficult, because of the cost of accommodation in London for people from less affluent backgrounds from the regions to access those jobs, particularly when they are of the no-wage or low-wage variety. That is a real disincentive for people to move from the regions to get that experience in London, and then perhaps move back to the regions subsequently.

In response to a question that I asked a representative from the National Theatre about how many apprentices had come from areas outside London, I had the reply, "I think there was one from the West Midlands some time ago", which I must say was not totally reassuring. The Minister giving evidence to us, who is now the Secretary of State for Culture, showed himself to be very sympathetic on the subject. I urge the Minister here today to pass on to the new Secretary of State his commitment to us when he said:

"Further work on the diversity of workforces in theatre is important".

I hope that the Minister can assure us that such work is being carried forward.

The educational angle has been fully covered in this debate, but I have talked to representatives of some of the theatres in the north-east, and they have found that there has been a reduction in school visits to theatres. It has been a combination of financial difficulties—schools have not wanted to hire buses or cover the cost of tickets and so forth—and an issue referred to by the noble Lord, Lord Grade, and others: time. There is so much concentration on the core curriculum that it is very difficult to find time to fit in these enormously valuable—indeed, life-changing—activities. That is something that we cannot stress too much.

Local authority funding and the pressures on it is a subject that has been raised by many people. That is certainly the experience I have had in talking to local authorities in my own part of the country. On this issue the Minister was less sympathetic. He said that he felt it was a "political choice" to decide whether to support the theatre and the creative sector. But local authorities have had some terribly difficult choices to make when it comes to funding, particularly if we are talking about making a choice between funding the care and social care sector, which is vital, and the theatre sector. It is an extremely difficult choice to make. The funding angle needs to be looked at more sympathetically by Government.

My noble friend Lady Bonham-Carter and I probably vie with each other as to which of us is most exercised by Brexit on our committee. It is almost impossible to have any debate that does not mention it. In addition to the issues that she quite rightly raised, there is a general worry in my part of the world, partly arising out of the Government's impact assessments of Brexit on the different economic regions of the UK. The impact assessment seems to show very clearly that under whatever outcome—even the Government's preferred outcome—the north-east, with its strong reliance on exports to Europe, particularly in the automotive and pharmaceutical sectors, would take a substantially greater hit than most other areas. Obviously if the economy of the region is hit, that will affect all sectors. It has been mentioned to me by people in the region that they are concerned about this and that they hope it will not affect the vibrant cultural sector we have in terms of attendance at theatres, box office receipts and so forth, and of the links with Europe that have been built up in recent years.

However, I do not want to end on a gloomy note because I share our committee's enthusiasm for our theatre industry and its tremendous reputation at home and abroad. I hope the ideas and issues raised in the report will be treated very seriously by Government.

5.32 pm

The Earl of Clancarty (CB): My Lords, we are having this debate soon after it was announced that "The Ferryman" will transfer to Broadway in October with much of its original cast—the continuation of something of a tradition in recent times. In the English-speaking world this is by no means one-way traffic. Many of us are indeed still waiting to see "Hamilton".

I do not believe that there has since the late 1950s, when Harold Pinter, whose plays I love, and others arrived on the scene, been a single moment when British theatre has not been interesting. This has been not accidental, but a result in part of this country opening itself up to the world, including Europe, but also of the state trusting in that long-term artistic development. In that light, this is a disturbing but much-needed report, so ably summarised by its chair, the noble Lord, Lord Best. Although our debate is a year on from its publication, it is even more relevant now.

The five key concerns are the right ones, to which I could only add a year later as a sixth the effects of Brexit and how it might affect young emerging talent. I will deal with that first. A production that has stuck in my mind over the years was one I saw in Berlin back in the 1990s, "The Unanswered Question", a work by the Swiss director Christoph Marthaler, who included within his company a number of young British performers—actors and singers—working alongside fellow Europeans. It is the possible loss of the European cultural context, the chance for young workers to come and go freely within Europe and collaborate on artistic productions, that would be so damaging. The chance to work in companies abroad will, without a doubt, become significantly more difficult and costly if, in particular, we leave the single market, when every theatre worker from most other European countries will not suffer that potentially huge disadvantage of the loss of free movement.

The report correctly talks about tuition fees as part of its third key concern. This should not just be about costs per se. By effectively monetarising and commercialising higher and further education, we discriminate against both arts subjects and students from less-privileged backgrounds, creating what could be termed a negative multiplier effect, because of the increased significance that is given to whether the arts are a reliable career as a source of income. This effect was referred to by the noble Baroness, Lady Bonham-Carter. This is notwithstanding the irony that the creative industries are now worth £92 billion. I for one believe that we should return to a grant system.

[The Earl of Clancarty]

There is also the application of audition fees for entrants to drama schools, a particularly scandalous extra cost that will inevitably deter less-privileged students. Factor in multiple auditions, because students apply to a number of drama schools, and follow-up auditions, not to mention travel costs, and the whole process can cost several hundred pounds with no guarantee of being accepted at the end of it. Audition fees should be scrapped and, if necessary, made illegal. Liverpool Theatre School removed these fees earlier this year, and all other drama schools should as well.

On secondary and primary education, it may be more than three years since the then Education Secretary Nicky Morgan said that arts subjects could "hold" pupils,

"back for the rest of their lives".

We are still inhabiting that same political culture, although the Government, in contradictory fashion, profess to believe in a rounded education. Around me I see others who have been fighting the EBacc battle for some years. The only benefit that time has bestowed on us, if the Government would take notice, is in the amount of evidence that has built up. Last year alone, GCSE entries in drama fell by 9%, on a par with music, art, dance, design, film and TV. The Cultural Learning Alliance reports DfE figures from last June that show a fall of drama teacher numbers by 17% and hours taught by 13% over the period 2010-16. I will say again what many of us have been saying in the House: the EBacc should be scrapped. I would say the same for Progress 8, since that measure is firmly contained within the EBacc frame.

A properly rounded education is not just a good in itself or empowering for students making career decisions, it would also allow subjects to talk to each other within schools on equal terms. This is particularly important for theatre, because it is an activity that draws on so many different skills, including STEM skills, as the report makes clear and as referred to by other Lords. A single school production can, for example, draw on students' contributions in many areas—fine art, set design most obviously, printing, fashion and textiles for props, film, computing, design, technology and engineering. Some schools do this, but too many state schools seem to keep subjects in their boxes. Particularly at a time when funding and resources are depleted, this kind of interaction will be the last thing on departments' minds.

In an ideal environment, the opportunities for apprenticeships, which the report admirably treats in detail, would properly come into focus within the school setting. Interested students, no doubt inspired by musical theatre and performance generally, wish from an early age to learn a wide number of skills, not just acting but singing, playing musical instruments and dance in a variety of styles. The noble Baroness, Lady McIntosh, mentioned many more skills that theatre employs. That demand cannot possibly fit into an education system so rigidly controlled by the EBacc. We need to be much more flexible.

The report rightly gives space to the issue of diversity. The actor Eddie Marsan, who is passionate about this concern, kindly provided me with a statement for this debate. There is unfortunately not time to quote it in full, but he says,

"if you don't give access to this profession to people from diverse and multicultural backgrounds then you can never fully express the true nature of that world. No matter how well-meaning people from a more privileged background will be in writing and producing work that encourages a more benevolent and fairer society, it will always be from a limited perspective. Sometimes you need a writer, artist or actor from a certain community to not only challenge our perception of that community but to also challenge the orthodoxies inherent in that community".

I would certainly agree with that.

The regional theatres, theatre companies and the associated projects such as the Royal Court writers' groups, which the committee visited, are important in their own right. They are important, too, as the seedbed as the West End but also, as the report notes, they are where most theatre workers start their careers. Yet, as Nicholas Serota said in his first speech last year as chair of the Arts Council—we have quoted this before in the House, but it is even more worth quoting now,

"the loss of local authority funding … is now the most pressing issue, day-to-day, for many cultural organisations across the country".

I would add that that is particularly true for regional theatres. Local authority funding cuts urgently need reversing and, in terms of this debate, in theatre as in many of the arts, the relevant effects are fewer opportunities and less creative risk-taking alongside the additional concerns of maintenance and building repairs.

The report does not mention fringe festivals, such as the Edinburgh or Brighton festivals, which are often where young performers get their breaks and provide work for many others. Their success is threatened not just with the loss of state funding but with the danger, too, of sponsors pulling out in part as a result of the climate over Brexit.

This is an excellent report. I shall just end with something that Richard Eyre said earlier this year in an interview with the *Guardian* on supporting the arts in Britain, in a week, too, when Germany has announced further increases to its annual arts funding deal. He said,

"government and education must and should play a part … It's not a question of feather-bedding. It's just part of the responsibility of a modern state".

5.41 pm

Lord Willoughby de Broke (UKIP): My Lords, I am grateful for the opportunity to speak briefly in the gap. I had better declare my interest as chairman of the St Martin's Theatre company, which puts on "The Mousetrap" at the St Martin's Theatre, the world's longest-running play and unashamedly commercial, I am afraid. I am also honorary governor of the Royal Shakespeare Company. I quite agree with what the noble Lord, Lord Best, said in his opening remarks about the success, national and international, of British theatre. However, unlike the noble Baroness, Lady Quin, I end on a very gloomy note.

What is coming down the road is the EU Commission's eco-energy working plan 2016-19. This means that every single light in every single theatre in Britain,

whether it is the National Theatre, the RSC or the regional theatres that we have heard so much about, will have to change all their lighting without exception. The total cost of this has already been estimated at about £1 billion across the country. The National Theatre itself thinks that it will have to spend £8 million to redo all its lighting. What that means for St Martin's I have no idea, and I do not want to know yet, but for smaller theatres it means that they will have to close, if these proposals become law.

In case noble Lords think that I am exaggerating, I have a couple of quotes here. Paule Constable, who is responsible for designing "War Horse" and "The Curious Incident of the Dog in the Night-Time" says that she will not be able to continue to do her work any longer if this regulation comes into force. She says:

"I can't do my job".

Equally, Nick Allott, the managing director of Cameron Mackintosh Ltd, which has given us "Les Misérables", "The Phantom of the Opera" and "Hamilton", even warned that it might be curtains for those big, long runs altogether. He is quoted as saying:

"I can't see a situation where we'd allow flagship productions to carry on in a simpler visual state".

He adds, rather touchingly,

"We're not being luvvies about this".

This regulation is due to come into force on 1 September 2020 at the moment, which is after we leave the EU in 2019—there are about 318 days to go, I think. It seems possible—the Minister may be able to enlighten us—that when we leave the EU, we might not have to bring these regulations into British law. That would obviously, at a blow, save these theatres due to the lighting not being a problem.

Equally, I fear, like Cassandra, that there is a proposal to fast track these regulations to get them into law in October 2018. Again, perhaps the Minister can enlighten us on this, if not today then in writing, placing something in the Library with copies to all members of the committee and anyone who has spoken this afternoon. Perhaps he could also indicate whether the Government intend to put these regulations into law once we have left the EU, having regard to the extraordinarily damaging consequence of doing so. I look forward to his reply in due course.

Lord Grade of Yarmouth: I am so pleased that the noble Lord has brought that to our attention. I was not intending to speak on this but it is more serious than has been recounted. The lighting that will pass muster under the new regulations is completely useless for the theatre. Perhaps you could do "A Shot in the Dark", but basically no lighting that passes the new regulations will be useful in the theatre. Therefore, it is not just a matter of the cost of replacement; the fact is that there are no replacements—it is an absolute catastrophe.

5.46 pm

Lord Griffiths of Burry Port (Lab): My Lords, having braced myself to declare my own humility in the presence of such luminaries and experts, not only not being a member of the committee but not being a member of the theatrical world at all, I am delighted now to be on my feet among such distinguished company, although the note of gloom that has just been cast upon us will possibly be the note that we all go away with.

My only interests to declare are that I was a student of English literature, that for many years I taught an undergraduate class on the origins of English drama, and that I am a customer of the theatre as often as I can afford it, which in London is not very often.

Just two days ago, in the concluding stages of the Data Protection Bill, I sat through an impassioned debate which pitted those insisting on maintaining the freedoms of investigatory and innovative journalism against others who depicted the way that journalists had only too frequently abused those freedoms, inflicting serious financial and reputational damage on a wide range of people. Again and again in that debate, I heard speakers—on both sides of the argument, as it happens—declare their conviction that a free press is a vital component of any democracy. It speaks truth to power and holds us all to account.

I want to hold on to the memory of Monday's debate as I put forward my own argument for the health and well-being of our creative industries in general and for a vibrant theatre sector in particular. I believe that this dimension of our national life plays its own part in keeping individuals and our institutions in check. It was our supreme dramatist—the only one who does not have to be mentioned by name—who gave us not only the fruits of his wisdom in the plays he wrote but the theatrical device of a "play within the play", as if to second his own motion, or seal his own conviction, about the capacity of drama to get to the heart of things. "The play's the thing",

he wrote,

"Wherein I'll catch the conscience of the king".

If the press can pass as the fourth estate of the realm, why not, with Arnold Wesker, Harold Pinter, David Hare, James Graham and so many others in mind, consider the theatre as the fifth?

It is a matter of regret that, as we have heard, the House of Lords Select Committee on Communications could not complete its study of the subject before us today. It was cut short in its deliberations by the suddenly announced general election, which, as we now know, brought parliamentary death into the land, with all our woe and loss of Europe. We are now left on the brink of uncertainty about how the future will play out, and there seems no point in hoping that one greater man, or woman, will restore us, or regain our blissful seat.

The report, truncated as it is, highlights two areas of concern echoed widely in so many of the briefing materials I have seen and in so many of the speeches made, as well as voiced passionately by various individuals I have been speaking to. I shall limit my remarks to just two of the concerns raised.

The first repeats material that has been said. I always wonder, when I make speeches and bring in points that have been made, whether to omit my mention of them because they have been made or to increase the passion levels—the Welsh hwyl—in making them to emphasise their importance. The Government's stated target of entering at least 90% of pupils in mainstream education for the English baccalaureate

[Lord Griffiths of Burry Port]
by 2025 will pose problems for the "pipeline of talent", the success of which we desire. The emphasis placed in schools on a narrowly defined set of core academic subjects will leave little room in the curriculum for pupils to study creative, artistic and musical subjects. They will remain "cabined, cribbed, confined" in the STEM thicket.

Indeed, the danger is being run of a situation foreseen by CP Snow all those years ago—he called it the two cultures—of recreating the dynamic we all regretted then and have been seeking to put right ever since. The Guildhall School of Music and Drama and the Barbican, which have been my neighbours for many years, fear that this will lead to the marginalisation of music and arts, including drama, in schools, despite the fundamental importance of those subjects. At this point, it is not a question of money. I chair the trustees of the Central Foundation Schools of London—a boys' school in Islington and a girls' school in Tower Hamlets. The boys' school is situated just up the road from the Barbican. Even when we make decent grants out of our endowment—and they are decent grants—to help our schools with creative subjects, we know that we will find ourselves up against the curriculum constraints that will inevitably come our way.

Some 85% of the pupils at our girls' school wear the hijab in class. It was with some apprehension that I went to see them perform Shakespeare's "Macbeth" in a school competition. It is a very macho play, and I feared that Muslim sensitivities would make it difficult for them. I could not have been more mistaken. The porter, the courtiers, Macbeth and Banquo, as well as the witches and Lady Macbeth, were all played with energy and commitment. I was sitting among the performers' parents and I enjoyed the whooping and the laughter, the enthusiasm and the pride of those Muslim parents all around me. I learned how theatre can make its own contribution to community cohesion and the breaking down of cultural barriers. Will the Minister give us an assurance—no, a passionate assurance—that his colleagues in the Department for Education will take this important lesson on board? The education we offer in our schools will be deficient without due attention paid to the proper space needed on the curriculum for the fostering of the creative arts in general and drama in particular.

The second concern we should all concentrate on—the great albatross around our necks just now—is, of course, Brexit, shrouded as it is in uncertainty and sounding a note of potential doom from the wings. The Corporation of the City of London believes that Brexit poses considerable potential challenges to the continued recruitment of talented EU nationals to the creative sector, including to higher education institutions. Twenty per cent of the students at the Guildhall School of Music & Drama are recruited from the EU. They bring around £2 million of income annually and, well beyond mere finance, help to create a culturally diverse, international and outward-facing student body of great benefit to its members. It is vital that we make every effort to continue this.

Unless alternative agreements are negotiated, it is possible that all non-UK students will be charged the same full-cost fees and will be subject to the same visa requirements after Brexit. These measures will inevitably present significant new barriers to EU nationals on grounds of cost and immigration status. The reputational consequences will be alarming, and the world-class standing of our institutions, as well as the supply of skilled students from other traditions and cultural backgrounds, will be diminished. There is already a perceptible lessening of demand from EU countries for places in our drama schools.

People of my generation have been fortunate to have known the flourishing of provincial theatres in many parts of the country. I courted a girl from Newcastle-under-Lyme and was introduced to the work of Peter Cheeseman at the Victoria Hall theatre in Stoke-on-Trent. Not everybody had that pleasure—I mean the pleasure of the theatre, not of courting my wife. At the annual conferences that I went to in Scarborough, which were inevitably filled with duller moments, there was also the opportunity to slip off and celebrate and Alan Ayckbourn's links with that city. The former chairman of the committee has mentioned his links with York. So we are fortunate to have had, but the "having had" is threatened by the "will it happen any longer?", or at least with the same quality and the same levels of creativity. We must give this our closest attention.

I have fostered a number of young people from ethnic minority backgrounds with aspirations to enter the pipeline that figures in today's debate. One of them comes to mind now, as I conclude these remarks. A graduate of the Mountview Academy of Theatre Arts, he joined a community group that toured schools in south London to engage in a discussion with sixth-formers about the big questions they were faced with on the street. Drugs, knives, gangs, relationships and guns all figured in these exchanges. The company then went back and wrote these concerns into bespoke pieces of theatre, which they then took back to the very schools whose views they had canvassed. Once again, in interactive settings, the players allowed their young audiences to objectify the questions they had posed and consider various ways of dealing with the problems they faced in their daily lives on the streets of inner London. More policemen on the beat may be one way of addressing the problem of knife-crime and gang-warfare; more and better theatre is, from what I have seen, certainly another.

We need a copper-bottomed assurance from the noble Lord that he will engage passionately on our behalf in a discussion with the Schools Minister about easing up the curriculum to allow more space for the creative arts, and that he will do so too with the likes of David Davis and Jacob Rees-Mogg about a Brexit agreement that will allow the world of theatre to face the future not only with equanimity but with rabid optimism. We count on him for no less; otherwise, our tale today will have been told by idiots full of sound and fury, signifying pretty much next to nothing.

5.58 pm

Viscount Younger of Leckie (Con): My Lords, I am delighted to understudy my noble friend Lord Ashton, who cannot be here. I am particularly grateful to the noble Lord, Lord Best, for initiating this debate. I have appreciated reading his Select Committee report *Skills*

for Theatre: Developing the Pipeline of Talent and have noted in particular five areas of concern which I would like to address.

Before I go further, I should declare a conflict of interest of sorts. To misquote Noel Coward, while my daughter is not quite "on the stage, Mrs Worthington", she does work for the business subsidiary of RADA.

I shall start with some background. As has been said, the UK is a world leader in theatre and the performing arts. It is perhaps an understatement to say that British theatre is respected across the world for its high-quality productions, and skilled professionals both on and off the stage. The noble Lord, Lord Best, expressed its standing particularly well, as did the noble Baroness, Lady Kidron, who did so very eloquently and rather emotionally.

Theatre in England remains vibrant and thriving, with outstanding examples around the country, ranging from the Crucible Theatre in Sheffield, the Chichester Festival Theatre and the Royal Court Theatre in Liverpool to Aylesbury Waterside Theatre, Milton Keynes Theatre and—I am not sure whether they have been mentioned this afternoon—some travelling theatre companies. I was privileged to attend only last night a fabulous and funny production of the "Fingask Follies", a theatrical review. Theatres are also important to local economies, attracting tourists from around the world and providing entertainment to thousands of people. The arts and culture are a great contributor to the economy, generating £26.8 billion in 2016—those are the latest figures we have. The theatre is a vital component of this contribution.

Theatre can also have a significant impact. The Graeae Theatre Company puts deaf and disabled actors centre stage, challenging preconceptions of disability. I remind the committee that this is Mental Health Awareness Week. I took note of the remarks of my noble friend Lord Grade, who quite rightly mentioned the importance of the theatre in allowing people to express themselves. It is a factor that helps people to improve their health. Altogether, an additional £1.4 billion has been set aside to improve children's health.

The Arts Council funds a number of organisations working within the criminal justice sector—including Clean Break, which helps to rehabilitate women who have been in prison—or through the wider criminal justice system. I believe the noble Baroness, Lady Kidron, mentioned a similar example and the Geese Theatre Company also presents interactive theatre and drama group work with justice organisations. As the noble Viscount, Lord Chandos, said, it is imperative to engage the young in theatre and the arts. He was right, and this is why we are committed to an ambitious programme of arts and cultural education programmes in our schools.

In April 2018, the right honourable Nick Gibb MP, Minister for School Standards, announced £96 million of funding to give pupils the opportunity to attend top music, dance and drama schools, taking government funding for music and arts programmes between 2016 and 2020 to almost £500 million. I will write to the noble Earl, Lord Clancarty, who raised an interesting question about audition fees. It may be that some of this money could be included, but I am not entirely sure; I would like to write to him about that.

As part of this, the Department for Education is investing in the creative industries and supporting exceptionally talented pupils to attend specialist music, dance and drama institutions. In 2018-20, the music and dance scheme will receive over £60 million; dance and drama awards will receive £27 million and cultural education programmes, including the British film academy, the National Youth Dance Company and national art and design Saturday clubs will receive over £8 million.

I will now address the five concerns raised in the report. I turn first, with some trepidation, to the subject of the EBacc. I can reassure noble Lords that I have listened to the concerns raised today; perhaps I can also reassure the noble Lord, Lord Griffiths, who wanted to be sure that I had listened.

Music, art and design, drama and dance are included in the national curriculum and are compulsory in all maintained schools from the age of five to 14, and pupils then have an entitlement to study an arts subject in key stage 4. Ensuring that children have the opportunity to study core academic subjects at GCSE—English, maths, sciences, history or geography and a language; that is, the English Baccalaureate—remains of key importance to this Government.

The Ebacc subjects are those which, at A-level, open more doors to degrees, according to the Russell group. The noble Baroness, Lady McIntosh, asked a question about the education system, saying that it focuses too much on exams; this is something about which we read quite a bit. We have reformed the curriculum to make it more rigorous and inspiring; this is the case across all curriculum subjects. For example, the curriculum ensures that pupils have opportunities to devise and script drama, as well as rehearse and respond to theatre performances. The new drama GCSE specifies that pupils have an entitlement to experience live theatre.

The EBacc is also important for social mobility. In 2017, only 25% of disadvantaged pupils entered the EBacc compared to 43% of their non-disadvantaged peers. In looking at 300 schools that had rapidly increased EBacc uptake, the Sutton Trust found that pupil premium students benefited most from the changes.

The noble Lord, Lord Best, the noble Baroness, Lady Bonham-Carter, and, indeed the noble Lord, Lord Griffiths, asked a question about pupils from poorer backgrounds being compromised by the EBacc. Again, as part of my listening, I wanted to respond to this. UCL research found that students studying an EBacc curriculum had a greater chance of progressing to all post-16 educational outcomes. However, having said this, I am aware that noble Lords, particularly during this debate, take a different view—that the EBacc may be sidelining the arts. Over many years, I have been aware of the views of the noble Earl, Lord Clancarty, and the noble Baroness, Lady Bonham-Carter, since I was first at DCMS, which goes back about six or seven years ago, I think. I know that they have not changed their views, but I can reassure noble Lords about this. Since the EBacc was announced, the proportion of pupils in state-funded schools taking at least one arts subject has remained broadly stable, and DfE research found that that was the case both for schools whose EBacc entry has seen a large increase

[Viscount Younger of Leckie]
and for other schools. The EBacc is designed to enable pupils to study other subjects in which they have an aptitude and interest, including arts and drama. The noble Earl, Lord Clancarty, spoke about teaching hours, and stated that hours for the arts are decreasing. I can tell him that the percentage of time spent by secondary school teachers teaching music, arts and drama has remained stable between 2010 and 2016—and those are the latest figures that we have available.

I turn to the important subject of apprenticeships. High-quality apprenticeships are key to growing the skills that our businesses and economy needs. The foundation of our hugely respected theatre industry is the talented individuals working on and off the stage. I am sure that noble Lords will agree with me that we must invest in nurturing this talent and give people the best start in their careers. In the 2016-17 academic year, 870 apprenticeships were started in the arts, media and publishing sector subject area, under which this industry falls. Of course, there are apprentices in other occupations working in the industry, such as digital, business administration or management. While 870 apprenticeship starts is a beginning, I would like to see that number grow—and I am sure that this Committee would like to see that too.

Employers from all sectors are coming together to design and develop new, high-quality apprenticeship standards in the occupations that they need. This will ensure that their workforce has the specific skills, knowledge and behaviours required. I am pleased that the number of theatre-related standards either approved or in development is growing. I doubt that there are any coracle-making standards, but they include assistant technical director, community arts co-ordinator, creative venue technician, props technician, and puppet making. The noble Baroness, Lady McIntosh, made an important point about the high level of specific skills that are essential to maintain the high-quality nature of our theatre—and she made some very good points on that. I would very much like to see this continue to expand, and for employers in the industry to make use of these standards to train more of their workforce. I can tell that the noble Baroness is well up to date. She was concerned in her remarks in looking ahead to the type of skills and training required for the future.

As well as reforming the quality of apprenticeships, this Government are committed to increasing their number and putting them on a financially sustainable footing. We have introduced the apprenticeship levy for large employers with a pay bill of over £3 million. For non-levied employers, which applies to many of the employers in this sector, the Government pay 90% of the cost of training and assessment. The noble Lord, Lord Best, asked about flexibility of apprenticeships for theatres, particularly as they are in effect small, niche employers, akin to SMEs. The changes that we have made to the apprenticeship system are transforming lives, we believe; we are helping employers to create high-quality apprenticeships at all levels, giving people of all ages and backgrounds the skills that they need. The quality of apprenticeships is our top priority and we must ensure that high quality is a consistent feature across all occupations. The 20% off-the-job training rule, the shift to higher quality standards with a longer average duration and the drop-off in frameworks are likely to mean that, on average, apprentices will get more training throughout their apprenticeship. We want this to be the case for the theatre industry, so we cannot compromise on those quality reforms.

The noble Lord, Lord Gilbert, asked about the apprenticeships policy in addressing the needs of SMEs and the creative industries. I assure him that we will continue to work closely with employers to help them to take advantage of the levy. The Government will invite an employer representative of the creative industries to the Apprenticeship Stakeholder Board to help to shape the future of the programme.

By 2020, we will be investing £2.5 billion in apprenticeships, double what was spent in 2010. As well as apprenticeships, we are developing our new flagship T-level programmes, which will offer another route into skilled employment for young people. There will be T-levels in a creative and design route, including a media broadcast and production pathway, which is planned to go live in 2022. My noble friend Lord Gilbert expressed some concern about apprenticeships in the sector. To give him an example, the National College for the Creative and Cultural Industries at Purfleet opened to its first students in September 2016. It is an employer-led college, providing high-level technical theatre production and live event skills. The founding employers include Live Nation, the Royal Opera House, the BBC, the National Theatre, the Royal Liverpool Philharmonic, Manchester's Royal Exchange Theatre, White Light and the Association of British Theatre Technicians.

I know there have been concerns expressed that there remains an under-representation of BAME practitioners as performers, directors and writers. To address this, the subsidised arts sector has been making iterative improvements in these areas, but progress is not as quick as we would like. The Arts Council's Creative Case for Diversity has been a step change in the way that we expect funded organisations to diversify and reflect the wider population. Funded organisations are expected to show that they contribute to the creative case for diversity through the work that they produce and present. The noble Baroness, Lady Quin, raised the subject of diversity in her speech and stated that further work is important. However, Arts Council England now places responsibility on all funded organisations to make their programmes reflect the community. In December 2015, the council announced new funds for diversity totalling £8.5 million. On 13 October, the council announced a further £4.6 million, which will be a considerable further help.

The Arts Council provides targeted support to increase representation, such as Change Makers, a £2.6 million fund to develop black and minority ethnic and disabled leaders through leadership training. It has also allocated just over £2 million into Sustained Theatre, a fund established to support the development of established and emerging black and minority ethnic theatre makers, and to increase the representation of black and minority ethnic theatre makers across the wider theatre sector in England.

My noble friend Lord Gilbert and the noble Baroness, Lady Quin, asked how we were encouraging greater diversity. The *Culture White Paper* sets out a range of

commitments aimed at increasing diversity in arts participation, for example the cultural citizens programme, which I might have mentioned earlier. As part of their existing investment, the Arts Councils already support organisations aimed at reaching out to diverse audiences. I would like to assure the noble Baroness, Lady Quin, that I will pass on her remarks and others made today to the Culture Secretary to be sure that as much as can be is being done in this area.

The important subject of funding always comes up in this sort of debate. It was raised not least by the noble Baroness, Lady Kidron, the noble Viscount, Lord Chandos, and several other Peers. Noble Lords will know that a large part of funding for the arts comes from the taxpayer, whether from the Government via Arts Council England or from local authority support. My noble friend Lord Grade mentioned that such money can stretch a long way. Yes, he is right, but there never seems to be enough. That is a remark that might come from successive Governments.

Between 2010 and 2017, the Arts Council invested over £1 billion in theatre through grant in aid and lottery funding. The Government's theatre tax relief has supported new work and touring up and down the country, and we have invested £78 million in a new theatre and arts complex in Manchester, which many noble Peers will know of, called the Factory. It will support the local creative economy, including developing the technical skills of young people in the north-west and beyond—an important area to develop. However, the Government cannot do it all, and in 2016-17 theatres in the Arts Council's portfolio raised £51 million from philanthropic and contributed income, a point raised by the noble Viscount, Lord Chandos. That is 24% of their overall income. It is important that we continue to encourage philanthropists to see the theatre as a sector worthy of their investment.

Many local authorities have continued to invest in arts and culture and have developed new models and ways of working. Local authorities need to recognise the huge benefits that investing in arts and culture can bring. Many already do, building successful partnerships to deliver arts and culture to their communities. We believe that funding decisions should be made at a local level and that local authorities are best placed to decide how to prioritise spending. The Arts Council works with more than 250 local authorities to promote the impact that culture can have.

We are clear that the right balance of funding between London and the regions is important. Some 75% of the Arts Council's lottery funding is spent outside London. In its current funding round, the Arts Council has increased its portfolio investment outside London by an additional 4%. It has increased the amount of funding available through its national portfolio by a further £37 million per annum.

As the noble Baroness, Lady McIntosh, mentioned, digital distribution is another way to achieve wider access. She is right. The National Theatre Live programme beams theatre performances across the country to the nation's cinemas, as well as into schools.

Several of your Lordships and the report from the noble Lord, Lord Best, raised the importance of and need for careers guidance. Let me now touch on this. We are aware that young people need information on the range of jobs and careers, and encounters with employers for engagement and inspiration about what they can achieve. Employers and professional bodies in the theatre industry can sign up to "Inspiring the Future", run by the Education and Employers charity. This free programme allows volunteers to visit state schools and talk to pupils about their jobs in theatre. I am delighted that UK Theatre and the Society of London Theatre are working with "Inspiring the Future" to showcase the range of careers available in theatre to young people.

I am aware that time is slightly short. I know that my noble friend Lord Gilbert mentioned the industrial strategy. I shall skip over that and attempt to answer a few questions, starting with that on lighting, raised by the noble Baroness, Lady McIntosh, and my noble friend Lord Grade, who was supposed to mention it, then did not and then did after the noble Lord, Lord Willoughby de Broke. I read about this last week in my papers and there was certainly concern about it. Perhaps I may provide some initial reassurance to say it is crucial that we protect the rich atmosphere of our theatres. That is why we are seeking to find a solution on lighting that works for everyone. I pledge to write to all noble Lords who have taken part in the debate to give further information, should I have it. It is not quite clear where we are with that, but rest assured that it is very much on the agenda.

Lord Grade of Yarmouth: Shed some light on it.

Viscount Younger of Leckie: Shedding further light, exactly.

The noble Baroness, Lady Bonham-Carter, asked about accountability measures in schools, saying that they do not cover the arts. This is not the case. The Progress 8 performance measure recognises pupils' progress across all GCSE subjects. Progress 8 is one of the headline performance measures and reported first in the performance tables. She also asked a question about Ofsted, saying that we should include arts in a broad and balanced curriculum. We agree with Amanda Spielman and Ofsted on this. The school timetable allows time for pupils to study core academic subjects, as well as others, for those who are interested in and have an aptitude for the arts.

The noble Baroness, Lady Kidron, asked about VAT from London theatres subsidising regional theatres. That is an interesting one. As noble Lords know, tax policy is a matter for HMRC—that is the message that comes for me. However, the Government have in recent years introduced a theatres tax relief to encourage new and touring productions around the country, which has been welcomed by the theatre sector.

The noble Baroness, Lady Quin, asked about Brexit. In fact, there have been quite a few questions about Brexit. The best thing to do—this is not a cop-out—is to write to answer the questions raised by the noble Lord, Lord Griffiths, and others on Brexit matters, including Erasmus, to aim to give as many reassurances as I can.

With that, I ought to conclude by saying that I have thoroughly enjoyed this debate. The arts and theatre scene in this country is a great success and we must continue to ensure that young people, who are the

[Viscount Younger of Leckie]
theatre's future workforce and audience, have the opportunity to experience the magic of theatre and performance and, if they wish, to have a career in the theatre themselves. I hope the Committee will agree that the education and skills measures I have set out will contribute to a broad and balanced education, empowering young people from all backgrounds to look to the future with confidence.

The Earl of Clancarty: Can I quickly ask the Minister to write to me about the matter of the drama teachers? I am a bit confused. The figures that I have came from the DfE, so I wonder whether there is a distinction between specialist and non-specialist drama teachers.

Viscount Younger of Leckie: Indeed. I will endeavour to write to the noble Earl. I want to understand what his questions are and give him the figures that we believe are correct on this point.

6.30 pm

Lord Best: My Lords, I thank everybody for participating. This debate unfortunately brings home to me the sad loss of my not being on the committee any longer. It was wonderful to hear my former colleagues, my successor as chair and the quartet of noble Baronesses who spoke, and indeed the contributions from those who were not part of the committee. I think that everybody endorsed the conclusions that we came to in our report. Perhaps the things that we said nothing about but which, a year on, we might have done, are the EU subjects—from the lighting issues to the loss of freedom of movement. The Minister is going to include that and tell us more about it in writing round to everybody.

It is not very often that debates in your Lordships' House feature such notable things as Gollum from "The Lord of the Rings", the "Fingask Follies", "Babes in the Wood" and even bras, coracle makers and of course wig makers—we must not forget them. It was a very wide-ranging debate. All human life is here and it was well worth us rehearsing these issues. The Minister's response attempted to provide reassurance on all the headings under which we expressed considerable concern in our report: the EBacc, apprenticeships, diversity of representation in the industry and funding, along with careers guidance. I am grateful to the Minister for those reassurances. I think we will need to look in detail at those responses and ensure that we are entirely satisfied.

I could not help but notice that today's *Times*, in an article entitled "Children are being turned into mini robots", noted:

> "As millions of children begin GCSEs and A levels this week it has become clear that the number of pupils studying music, art, design, media and drama has plummeted".

It said that entries have fallen 28% since 2010 and that,

> "the number of hours arts subjects are taught has gone down by 17 per cent and the number of arts teachers has dropped by 16 per cent".

So there are some statistics knocking about and it would be most helpful if we could study the detail of what the Minister said later.

Perhaps I may summarise everything that has been said today with two references to the debate. First, on the positive side, the noble Baroness, Lady Kidron, told us that we are in a golden age for this country's theatre. I am sure that she is right and it is wonderful to be living in that age and enjoying it. However, as the noble Lord, Lord Grade, said, this debate is a unanimous declaration of fear for the future. We want to keep it the way that it is; that is what our report was about and I am deeply grateful to all those who have contributed to the debate today.

Motion agreed.

Cash Ratio Deposits (Value Bands and Ratios) Order 2018

Considered in Grand Committee

6.25 pm

Moved by ***Lord Bates***

That the Grand Committee do consider the Cash Ratio Deposits (Value Bands and Ratios) Order 2018.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, I beg to move that the Committee has considered the draft Cash Ratio Deposits (Value Bands and Ratios) Order 2018, which was laid before the House on 16 April this year. The draft order makes changes to the cash ratio deposits scheme, which is the way by which the Bank of England funds certain functions. Under the Bank of England Act 1998, banks and building societies of a certain size are required to place a proportion of eligible deposits in an account with the Bank of England. In turn, the Bank invests these deposits in interest-bearing assets, namely, gilts. The return on those investments is channelled into the funding of the Bank's monetary policy and financial stability functions. There is a resultant systemic benefit to the whole banking sector from the sustained and stable operation of these functions, as well as for the wider public. For these reasons, the Government are confident that the cash ratio deposits scheme is and remains the most appropriate means of funding the Bank's important policy work.

The operation of the scheme means that the Bank's income generated by the scheme is driven by two factors: first, the yield on gilts; and secondly, the size of deposits eligible for the scheme, which is largely driven by the overall performance of the banking sector. Over the last five-year period, gilt yields and to a lesser extent the growth in deposits have been lower than expected. On average, annual yields were 2.7% versus the 3% expected in 2013. This has caused income to be £70 million lower than was forecast at the last review. A similar shortfall arose in the five-year period leading up to the last review of the scheme that was carried out by the Government in 2013. The Government are seeking to address this problem by recalibrating the parameters of the scheme over the forthcoming review period.

In particular, the Government are seeking to move from a scheme that currently uses a fixed ratio as the measure by which institutions calculate the proportion of their deposits to be placed at the Bank and will instead move to one where the ratio will be indexed to actual gilt yields. Under an indexation approach, the ratio will be calculated once every six months to align closely with prevailing gilt yields. Such an approach should lead to a smoother income profile for the Bank as it will dynamically adjust to the investment environment. It will reduce the risk of a shortfall in income if yields do not perform as expected and reduce the likelihood of future funding deficits for the Bank. The indexation model also has potential benefits to payers themselves. For example, if gilt yields were to increase, institutions would not then be required to place as much on deposit at the Bank.

The Government have consulted on the changes to the parameters of the scheme before us and the majority of respondents have acknowledged and accepted the increased costs associated with the Bank's functions. Alongside the Bank's efficiency savings, the changes proposed by the order will ensure that the income generated by the scheme covers the costs of the Bank's policy functions over the next five years. As the Bank's costs have increased since Parliament last agreed to this scheme, it has committed to maintaining its costs at 2018-19 levels over the next five years and that any subsequent enhancements will be funded from efficiency savings generated elsewhere. These cost-saving measures include a comprehensive programme of cost-containment and reprioritisation. The Bank will also continue to increase transparency around its income sources and the use of income generated under the scheme.

The proposed changes to the cash ratio deposit scheme are expected to increase the Bank's income over the next five years and generate income that is closely aligned to the Bank's forecast costs. It is worth noting that the amount that most institutions are required to deposit at the Bank under the scheme is relatively small. In December 2017, 81% of deposits made were by just 20 institutions, with 14 of those contributing more than £50 million. The majority of the contributions are sourced from larger banks and building societies.

The Bank of England Act 1998 sets out that the cash ratio deposit rate can change once every six months and the deadline for amending the rate ahead of every six-month period is 1 June 2018. If the scheme is not amended by this date, the shortfall in the Bank's funding will continue. The changes proposed by the order before us are sensible and proportionate measures in the light of the issues identified in the 2018 review. The order will ensure that the Bank's important monetary and financial stability functions are fully funded, and for that reason I commend it to the Committee.

6.30 pm

Baroness Kramer (LD): My Lords, I noticed that when the Bank of England consulted on this scheme it received only three responses. That highly recommends that I be brief in my response. Obviously, we as a party very much value the independence of the Bank of England. I am reminded that Vince Cable spoke of it in his maiden speech in 1997, so we have a long history of wanting to see that independence firm and strong. Obviously, that means that the Bank of England needs the required resources to be able to function.

That is provided for under this statutory instrument, which permits both increases in the amount and indexation, which means that the amount can be reset according to shifts in the gilts on a six-monthly basis. That presumably reduces both volatility and risk to the Bank. The amount of money we are talking about is not particularly large. In most banking institutions it is somewhere lost well to the right-hand side of the decimal point.

As one of those who made the effort to respond noted, there is no assurance in any of the paperwork that we have seen that this is genuinely value for money and that the Bank has looked carefully at its expenditure. There appears to be no particular accountability for the way the money is spent. Will the Minister comment on that?

This also gives me the opportunity to raise a second level. Most of us here would agree that we are not really ready to see banks being let off the hook in terms of their contribution to the public purse. One could call this deposit scheme, in a strange way, a version of a hypothecated tax since it is a mechanism for providing funding to the Bank of England. I wonder whether the Government could provide clarity on their policy, because they are cutting the bank levy—a very significant amount of money—and raising this. Is there any relationship between the two? I hope that the Government will never pray in aid this particular increase as an argument that they are continuing to be tough on the banks.

I will make one last comment. This is exactly the kind of measure that should be dealt with through statutory instruments. It is exemplary. It is a relatively technical issue and relatively non-controversial. I hope that the Government will take on board that this is the kind of purpose for statutory instruments. They are not a mechanism for driving through policy, which we have seen in so many other areas.

Lord Tunnicliffe (Lab): My Lords, I agree that this is clearly a measure that is appropriate for statutory instruments, but I wish that it had not landed on my desk. Of course, we will not oppose this. This will not be the one in 1,000 occasion this afternoon, I am sure the Minister will be pleased to hear. However, after I had taken the trouble to half understand the scheme, I could not believe its bizarre nature. I could not for the life of me see why there was not a straightforward fee-based scheme. The scheme is planned to raise £169 million per annum. Why does the Bank not simply send the banks a bill and raise the money directly? My real fear—which is rather the opposite of that expressed by the noble Baroness, Lady Kramer—is: what if this formula is wrong?

The functions covered by this income are absolutely vital. The austerity programme that this Government continue to pursue would be even more disastrous for the economy if it were not for the monetary measures taken by the Bank of England. This funding supports the MPC and the FPC, which are effectively seeking, through quantitative easing, the bank rate and the

[Lord Tunnicliffe]
controls it puts on the banks, to control monetary policy and create an appropriate stimulus over this period of austerity. I see that the Bank has said that if the money is insufficient, it will reprioritise efficiency savings. I have worked long enough in the public sector to know what an efficiency saving is—it is called a cut in normal language. I cannot think of any area of the Bank's activity, together with the resolution and recovery regime, that is more important. It is essential that it is properly funded.

The formula set out on page 5 of the Explanatory Memorandum has a number of components which I am afraid I do not understand. The first thing that it assumes is that the income required is fixed at £169 million for five years. Once again, I ask: what if that is wrong? The next factor in the formula is the aggregate eligible liabilities, which are fixed at £2.8 trillion—I hope that I have counted the number of noughts properly—yet the impact assessment assumes, from the various analyses that have been produced, that this figure will go up by 2.9% per annum. Why is it fixed if in fact the Government, in analysing the scheme, assume that it will increase?

In fact, the only real variable in the scheme is what is called on page 5 of the Explanatory Memorandum the "portfolio yield"—that is, the estimate of the yield from investments. It is made up of three parts: 55%, 42% and 3%. The 55%, labelled "a", seems to be the only seriously variable one. It is a 13-year moving average. Why 55% and why 13 years? The second element, labelled "b" in the formula in paragraph 7.17(c), is calculated on a six-month average, but it is calculated only twice and is then fixed for the rest of the period of this notice. The 3% at the end of the formula is a six-month average calculated every six months. This is a ridiculously complex way to collect a modest amount of money. I believe that the whole system by which this money is collected needs to be reviewed. The fee-based approach would be simple to introduce. You could apportion the burden on eligible liabilities, which have to be calculated with this scheme. My biggest fear would then be coped with. A simple system could guarantee sufficient funds for this vital area.

Lord Bates: I am grateful to the noble Lord for delving into the algebra in the formula of "i" over "el" times "py", which we all know arrives at the answer of the funding that is required. Before dealing with the explanation for that, I will deal with some of the points raised by the noble Baroness, Lady Kramer. She mentioned the consultation. The Treasury ran an informal consultation between 20 December and 15 January, contacting all the eligible institutions. A relatively small number of institutions contributed; 19 responses were received on that part. When it went into the public realm, between 8 and 9 March, three responses were received. One should not be surprised; it is a highly technical measure, as the noble Lord, Lord Tunnicliffe, said. Those were the points raised.

There was a point about what was being done to improve efficiency. There were changes to the way the Bank was to work. Cost-savings measures include a comprehensive programme of cost-containment and reprioritisation, coupled with an increasing amount of transparency, so we can track what is being spent at the Bank. Those elements are commendable.

The total tax burden on banks and building societies from the bank levy is significant. In 2016-17, £3 billion was raised from the Government bank levy above the £1.6 billion from the bank corporation tax surcharge. Those are significant sums contributing to the Exchequer.

The noble Lord, Lord Tunnicliffe, has been, as always, assiduous in the way he has delved into the detail of the Explanatory Memorandum and the order, and raised a number of pertinent points. He says: why not just have a levy, rather than an alternative means of funding that involves this level of complexity? The review considered a range of mechanisms by which the Bank's monetary policy and financial stability functions could be funded, in particular whether a move to a fee-based model or levy would be appropriate. The review concluded that:

> "Such a proposal was not possible within the scope of the existing legislation and in the current CRD review period. A fee-based model would require more in-depth analysis, starting from first-principles in terms of how costs could be apportioned in a fair and efficient way".

The noble Lord also asked about the formula: what drives the variables and the weightings attached to them? There are different weightings in the order, which reflect the Bank's long-term gilt holdings and investments over time. The long-term gilt holdings make up 55% of the total pool, hence the weighting of 55% is applied in the formula. Gilts that would be purchased in the coming months make up to 42% of the pool. Additional gilts that would be purchased over the remainder of the scheme to replace those that have matured amount to 3% of the portfolio.

He then asked: what happens if the Bank's costs are below those expected? Do banks and building societies get their money back? That is a good question. The budget to be recovered by the scheme over the next five years is fixed and reflected in the order. Any surplus generated by the scheme as a result of underspend by the Bank will be retained by the Bank and will build up its capital base. This will in turn support the Bank's monetary policy operations. Proposed amendments to the scheme seek to ensure that the Bank's income profile is smoother over the next five-year period. That should ensure that a surplus or deficit does not arise under the scheme. Once again, I thank noble Lords for their questions and support on this. I commend this order to the Committee.

Motion agreed.

Package Travel and Linked Travel Arrangements Regulations 2018

Considered in Grand Committee

6.45 pm

Moved by ***Lord Henley***

That the Grand Committee do consider the Package Travel and Linked Travel Arrangements Regulations 2018.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, I beg to move that the Committee considers the draft Package Travel and Linked Travel Arrangements Regulations 2018, which were laid before the House on 16 April. The purpose of the draft regulations is to update and replace existing legislation by implementing the requirements set out by the 2015 European package travel directive. It may be helpful to give some background on consumer protection and the importance of consumer rights before I explain the changes in detail.

In this country, we have a long history of delivering high standards and strong protection for consumers. That history extends into our time as a member of the EU, where we have been influential in developing the EU's consumer protections. Indeed, the current framework reflects UK priorities. But in some areas, the UK has chosen to go further, providing additional protection for British consumers. For instance, through the Consumer Rights Act, we regulated for the supply of digital content, ensuring that there are clear rights for people buying things such as movies and music online. As e-commerce continues to grow, those protections give shoppers the peace of mind that they need to make a purchase, which is crucial to our prosperity. Household expenditure accounts for around 60% of the UK's economy, more than a trillion pounds a year. Package holidays form an important part of households' expenditure. Each household spends an average of £1,200 a year on package holidays, around one-third of their total spending on recreation and culture.

Our recently published impact assessment shows that the new rules we are proposing will protect an extra 10 million UK package holiday trips, bringing those who mix and match their holidays in line with those who opt for traditional prearranged combinations. Last summer we consulted on the idea of a light-touch approach to implementation of these proposals. We published the Government's response to the consultation and the impact assessment last month. The EU's deadline for transposing the requirements of the EU package travel directive into UK law was this January, with a further six months for these requirements to be brought into force. The travel industry is aware that we are copying out the directive, which has been in the public domain since 2015. We recognise the concerns raised that the Government are late in implementing the regulations. Therefore, we have engaged intensively in advance of laying the regulations to help the industry adjust, and will continue to work with businesses on implementation after the regulations come into force.

Package travel regulations have provided protection to travellers for many years, but they were introduced in 1992, and much has changed since then. Technical innovations have opened up new ways of buying and selling holidays. This has provided increased choice and flexibility in the travel market, allowing consumers to mix and match components of a holiday to suit their particular needs However, such rapid change has left new methods of packaging holidays outside the scope of the current regulations. The 2018 package travel regulations will address this gap. We are ensuring that people who book package holidays through travel sites online enjoy the same rights as those who book with a traditional travel agent. The draft regulations will introduce a broader definition of package holidays to capture modern booking models.

The regulations will also introduce a new concept of linked travel arrangements, or LTAs. These provide some level of protection for looser combinations of travel services than exist in a package holiday, so they have fewer requirements. We are also making it a requirement that package travellers are given clearer information on what they are agreeing to and what their rights are. In addition, we have strengthened the insolvency protection so that consumers can get their money back or be returned home if the company that arranged a package goes bust.

The United Kingdom is required to designate central contact points to supervise UK-established package organisers that are selling into other EU member states. After careful consideration, we have agreed that from July, the Civil Aviation Authority will take on that role. With regard to the enforcement of the regulations, the arrangements will be as before, with the responsibilities being taken on by either the Civil Aviation Authority or trading standards.

The department's impact assessment, which was published alongside the regulations, estimates a net cost to business of around £100 million a year. However, these changes will level the regulatory environment for all businesses selling travel packages. Businesses which have been providing packages not previously covered will now be subject to the full range of protections under the 2018 package travel regulations, including the organiser taking on liability for all the services provided under the contract and providing cover against insolvency.

All these measures will help to ensure that on the day we leave the EU, we will maintain our high standards of consumer protection, delivering the stability and continuity that consumers need. It is also our objective to have effective protection in place for consumers purchasing goods and services cross-border in the future. The way that consumer protection will apply when buying across borders is still a matter for negotiation, but we are determined to co-operate closely with our EU partners on matters of consumer protection.

The regulations will enhance protections for consumers when buying package holidays either through the traditional method or online, and they have been welcomed as a positive step by the travel industry. Throughout the consultation process and the development of policy, we have sought to strike a balance between increased protection for consumers and minimised burdens on businesses. I commend the regulations to the Committee.

Baroness Randerson (LD): My Lords, this updating of the 1992 legislation is welcome, as things have undoubtedly moved on a great deal since then. We now use computers and we travel a great deal more, particularly taking short breaks. The Minister has outlined how important holidays are to the UK public, so I welcome the fact that the definition of a package is to be expanded. Of course, we were prompted to do this by an EU directive, and we have only until 1 July to deal with it. The impact assessment makes it clear

[Baroness Randerson]
that these regulations—and the Minister said as much just now—do not go beyond EU requirements; rather, the EU directive has in effect been simply copied over.

When we discussed this issue last year, in the wake of the Monarch Airlines insolvency, the Minister at the time, the noble Lord, Lord Callanan, made it a point of great pride that we in the UK had the first laws to protect the purchasers of package holidays and that our laws go beyond the protections available in other countries. Given that, my first question is whether this a conscious change of policy by the Government in terms of consumer law. The Monarch situation revealed again the differing levels of protection available to travellers, depending on how they purchase their holiday and the unfairness that existed between different sorts of purchase. It demonstrated that nowadays, relatively few people buy traditional packages for their holidays, although I read recently that declining public economic confidence has started to reverse that trend. People are now looking for more security and are therefore more likely to buy a package. So it is to be welcomed that these regulations are specifically designed to cover other sorts of arrangements.

Just when I thought I had got my head around linked travel arrangements and what they mean, I find that there are two other categories as well. When we discussed this last year, the noble Lord, Lord Callanan, made it clear that the idea of a linked travel arrangement was still in the process of being divined. Looking at the categories, I see that there are prearranged packages, which is the traditional arrangement we are all used to, and dynamic packages, which have the features of a package but allow the consumer to pick and mix, to customise the content of their package, buying from one trader. As a further option, travellers can put together the components of a package themselves—one assumes online—based on specific offers from more than one trader. The Explanatory Memorandum says that, although this has elements of from more than one trader, it comes from a single point of sale. My second question to the Minister is this: what does a "single point of sale" mean?

Last night, I happened to be organising a weekend away. I booked my flight on a holiday package website and then up popped the offer of a car hire. But as I dealt with the car hire, I found myself on a separate website, although it had come to me via the first one. I am interested in how this option differs from other options. I quite understand that, if you walk into Trailfinders, you can buy a variety of things from one point of sale. But what is a "single point of sale" when you are dealing with this on the computer?

Apparently, in addition and separate to the two forms of dynamic package and the simple prearranged package, there are also linked travel arrangements. These are the combination of at least two different travel services for the same holiday but, unlike packages, they involve separate selection and payment for each services and separate contracts. Those are created with a trader and, according to the explanation, a linked travel arrangement is created where the,

"trader facilitates either … the selection and payment of two or more services for the same trip, under separate contracts with individual providers, upon a single contact with a point of sale, or … the separate selection and payment of two or more travel services for the same trip through targeted linked booking processes within 24 hours without transferring the travellers' payment details. Conversely, if the traveller's payment details, name and email address are transferred then this would count as a package".

I understand the last sentence, but I got lost halfway through the rest of it.

The point I am making is that this is hugely complex. How is a person purchasing their holiday to know that it is linked by a trader rather than a link inspired by Google? I get extremely worried when I visit a restaurant, for example, and am then asked to rate it. I have not told anyone I am going there—I have simply carried my phone there—yet, somehow, Big Brother knows I have been there. We are all susceptible to having things promoted to us as a result of our choices, using the computer or simply carrying around a phone. This is so complex that publicity will be essential. It will affect a whole new cohort of traders—the Explanatory Memorandum estimates a one-off cost of £620 million to the industry and an annual cost of £48 million. This is a significant new thing for the industry. So my question is: how are the Government planning to raise awareness within the travel industry?

7 pm

Secondly, the phrase "ATOL-protected" is publicly well understood. It might sometimes be slightly misunderstood, but the public understand that the phrase "ATOL-protected" is going to give them some level of financial protection. It is a sort of gold star insurance for the more cautious traveller. How are the Government planning to explain these more complex regulations to the general public? The Minister talked about levels of compensation, but how will it be clear to members of the public that they have gone into one form of dynamic package rather than a linked travel arrangement, or vice versa? It is so complicated. It is ironic that we are planning to introduce this now, as we are about to leave the EU. It involves a big benefit for the travel industry, as it involves mutual recognition of insolvency rules. Traders have only to comply with the insolvency regime in the member state where they are established, instead of a multiplicity of regimes.

Finally, I ask the Minister an associated question. When you cancel a flight, very often you have to stand the loss—you might be lucky enough to have insurance; you might have bought a flexible enough flight at a greater price, whatever. But I understand that, when you cancel that flight, part of what you paid is taxation. Whatever the circumstances of your cancellation, you are entitled to a refund of that taxation. It is often a relatively small amount of money in relation to the flight, but this is not always the case. Am I right about that? If so, what has been done, and what are the Government planning to do, in relation to general consumer law—in relation to travel, and to air travel in particular—to make travellers more aware of that right?

I conclude by saying that this is good for consumers—it will encourage travel and will, therefore, be good for the travel industry—but it introduces complex new definitions. If consumers are to benefit, rather than to be hoodwinked, or lulled into a false sense of security, we need a big government information campaign.

Lord Snape (Lab): My Lords, I have no personal interest to declare on this matter though, as a fellow of the Institute of Travel and Tourism, I have some degree of affection for the subject before the committee today. Having been appointed way back in 1992 as a transport spokesman in the other place, I think it was the first directive I actually dealt with from the then Opposition Front Bench. As far as I remember, it amounted to about five pages in those days. It included the Explanatory Memorandum. It is a measure of how far we have come—whether forwards or backwards I leave to the Committee to judge—that the legislation before us is 41 pages with a 47-page impact assessment. As the noble Baroness, Lady Randerson, said, things are a lot different these days compared with 1992. In a way, the Minister was being too modest when he talked about the Government's involvement in this package. I do not often find myself in a position of praising Ministers and accusing them of undue modesty, but it is true to say that the British Government have led the field, as far as the EU is concerned, on consumer protection in this area. The Government should be commended for that.

There are three main advantages to the instrument: as has been said, it widens the definition of a package holiday; it will enable British companies to sell across the EEA; and it guarantees repayment if any aspect of a holiday package fails. Will the Minister confirm that the implementation date is July this year? He might have said that in his speech. If he did I beg his pardon, I missed it.

Although the industry feels that there could and should have been a little more time for consultation, it appreciates the consultation that has already taken place. Indeed, I spoke to Mr Steven Freudmann, the chairman of the Institute of Travel & Tourism, about this legislation a few days ago. He expressed his view on behalf of a substantial chunk of the travel industry that this legislation goes a long way to increase consumer protection and is to be widely welcomed.

As far as the linked travel arrangements are concerned, praise ceases there. Indeed, when I read and reread the linked travel arrangements I was, like the noble Baroness, completely baffled as to what it meant. Indeed, I was so baffled that I got the ITT to pass me the name and telephone number of a lawyer who specialises in these things. I rang him with some trepidation. Noble Lords will be aware that ringing lawyers is never a very wise thing to do. It is inevitably followed by a whacking great bill that makes the bank manager blanch, but on this occasion the information I requested came gratis.

I hope I can go some way to address the noble Baroness on the situation she outlined. Having booked one aspect of a package holiday, namely the flight, she asked whether other aspects booked separately were covered under the legislation. My point to the Minister and the noble Baroness is that as far as I can see, and as far as the legal advice I have had is concerned, no part of the package is, in fact, covered other than the first part. If she makes a mistake, if that is the right term, in booking the flight and then returning to book a hotel, hire a car or whatever subsequently, that aspect of her package will not be covered under the legislation. I am sure the Minister will be able to tell me whether I have that right or wrong, but it indicates a weakness in the legislation. If we are to have these welcome packages that assist holidaymakers and package bookers, it is of some concern that the difference in treatment is not immediately apparent between those booking their package straight off and those booking parts of the package, albeit at the same time.

I repeat that there appear to be no benefits as far as the second service is concerned. I would be grateful if the noble Lord will tell us whether we have it right. If we have, what is the department prepared to do about it? The travel industry generally welcomes the legislation and the proposed consultation. I ask the Minister to see that the travel industry is properly consulted if any difficulties arise and that its views are heard following the implementation of the directive. It is welcome, with a caveat about the weakness of the linked packages and the baffling nature of the legislation which, quite frankly, I did not understand. I am sure that the Committee, like the travel industry, will give a cautious welcome to this legislation.

Lord Stevenson of Balmacara (Lab): My Lords, I thank the noble Baroness, Lady Randerson, and my noble friend Lord Snape for their comments. They have eased the amount of ground I have to cover because they have raised issues that I would otherwise have dealt with.

Although I welcome the regulations, I join the noble Baroness, Lady Randerson, in saying how confusing they are—certainly the latter part on travel arrangements. However, I am comforted by what my noble friend Lord Snape said, not least because he is on my side for a change. Normally when he speaks in debates, he attacks me from the Benches behind, but this time we are on the same page and singing from the same hymn sheet. We think that these regulations will do a lot for consumers and we are grateful for that.

Lord Snape: I apologise for interrupting my noble friend but I have never actually attacked him; I have merely tried to give him some helpful guidance.

Lord Stevenson of Balmacara: That is what I meant. Perhaps I may deal, first, with the date of implementation, which I am sure will be entirely in line with the Minister's expectations. This measure has been in genesis for a number of years. We knew that it was coming from about 2015, so waiting until 1 July 2018 to implement it seems rather like an overabundance of time, and I wonder whether the Minister will comment on that.

Secondly, why implement this measure in the middle of the holiday season? Changing the regulatory structure and the information for consumers bang in the middle of when they will be taking their holidays is an extraordinary thing to do and does not seem very sensible. It is certainly odd that the expectation was that the regulations would be implemented no later than 1 January 2018, although a six-month extension was allowed. However, we have managed to do it on the very last day possible, which, as I said, is not at a very convenient time, and I would be grateful for the Minister's comments. I point out to him that, having heard his exhortations to himself to try to do better, we are now in a situation where only one of the last

[Lord Stevenson of Balmacara]

10 SIs has been implemented on the common commencement date, and even for that one it was the wrong common commencement date. I look forward to a positive response on how performance will improve.

Having said all that, I thought that the Explanatory Memorandum was terrific and I congratulate the civil servants on what they have done. I read it with great interest right the way through. It was convincing and covered all the points that I had in mind. They did a very difficult job very well. It is a very complicated area. I am not complaining about the complications; nevertheless, work was done to try to come up with figures reflective of the changes, and I thought it was very good.

However, what I missed in the regulations was the complementarity of the effect that they will have on consumers. These are the Package Travel and Linked Travel Arrangements Regulations 2018, but they are not to be taken separately from the negative instrument. That instrument will be brought forward by the DfT but I am afraid I could find nothing about it. That may be my fault but I understand that there is to be another regulation which is not under the control of BEIS and therefore BEIS will not be answerable for it. However, as someone who is interested in this area, I, and certainly consumers, would have found it very helpful to have both measures together. I do not know whether the Minister can comment on that but perhaps he can arrange for me either to be informed or to be sent a copy of the negative instrument so that we can see both sides of the story.

The negative instrument, which is coming from the Department for Transport, provides the answer to a number of questions around whether flights booked separately form part of a package. The regulations that the CAA is responsible for come into force because of that instrument and not this one. I think that this is covered in detail in paragraph 4.6 on page 2 of the Explanatory Memorandum. The Air Travel Organisers' Licensing Act 2017, which was given Royal Assent in November 2017, is the founding legislative form for that.

The other thing that I wanted to pick up was the question of guidance. There are two aspects to that. First, there is the question of how consumers will work out how this is. I would be interested to hear more comments from the Minister on that. Secondly, there will clearly need to be guidance for those in the business who actually operate this stuff. On page 5 of the Explanatory Memorandum, paragraph 9.1 says that BEIS,

"will issue non-statutory guidance for business on their responsibilities under the new Regulations at the same time this instrument is laid".

As we heard, it was laid on 16 April so presumably that guidance is available. I would be grateful if the Minister could make sure that we get a copy of that as well. I would like to read what is being said by the department to businesses.

7.15 pm

Finally, the worry I have about this in practice is that while the regulations for those who take flight bookings, which stem from the DfT, are being organised by one body—the CAA—the actual body that is charged with sorting this out for the package end in the regulations, as I understand it, is trading standards. Trading standards is under considerable pressure for all sorts of reasons, not least the fact that the pressure on local authorities is reducing the amount of money available. I would be grateful if the Minister could comment on that and whether additional resources will be available for those who will have to implement any complaints that may come forward.

Lord Henley: I thank all three noble Lords for their comments on these regulations. In summary, I think all three were saying that they welcomed them but that the regulations were somewhat on the complex side and they needed some explanation and guidance. The noble Lord, Lord Snape, gave from his own history the example of the first SI that he dealt with in opposition, many years ago back in 1992. He and I do not have to remember it but that legislation was only five pages long and these regulations are somewhat longer. The first thing to say is that things have got more complicated. As the noble Lord knows, the way we buy things has got much more complicated than it was some years ago. The old, simple package holiday is no longer there; we all buy things in a completely different way.

The noble Baroness, Lady Randerson, gave an example of the way that, as families, we sit down in front of the computer and say, "Right, let's get a flight". We take many more short holidays and may suddenly think, "We've got a long weekend—let's get a flight", then up jumps the offer of car hire, hotels and other things. In a sense, we create a package. For that reason, things will obviously be more complicated when putting together the regulations. It is therefore quite likely that they will have to contain more than the five pages that the noble Lord, Lord Snape, remembers so well.

Lord Stevenson of Balmacara: I am sorry to interrupt the Minister but is not one of the Government's aims here to make sure that people who buy things digitally have the same rights and experiences as those who might walk into a shop and buy them on the ground? I think the point that the noble Baroness, Lady Randerson, was making is that it is actually not being replicated here. There is not quite the same sense of buying, in a shop at a particular time, the package—even though it comes in slightly different forms. That is the issue which is causing concern.

Lord Henley: The noble Lord is quite right to highlight that as an issue. The point to make is that when you are buying something slightly different, as a package, it will be quite difficult to put together exactly the same regulations as those remembered so fondly by the noble Lord, Lord Snape, which covered only five pages. To try to give the same sort of coverage when something so completely different, which did not exist in the past, is being bought necessarily makes for more complicated regulations. It is not that we have become more verbose since 1992. It is just harder to do these things.

I was going to offer some thanks to the noble Lord, Lord Stevenson, for his thanks for the Explanatory Memorandum. It is very rare that we get praise of that sort but we are grateful for it.

Lord Snape: I am sorry to interrupt the Minister again but, regarding the question of what constitutes a package, set against linkage, it is not just about going on to a computer and booking a flight. What would happen if I went into a travel agent and said I wanted a weekend in Marbella, they had the perfect flight for me from Birmingham, my local airport, at 6 o'clock on a Friday evening, I booked it and paid for it there and then, but then said, "What about car hire at the other end?" Is that covered by the package, or is that regarded as a linked package and therefore not covered, in the way that getting the whole thing together and paying for it all at once would be? I am sorry if that is a bit complex, but I hope the Minister understands what I am getting at.

Lord Henley: I will deal with these points when I get on to the different sorts of coverage. I was broadly trying to get across that we were trying to give coverage where there was not coverage in the past. I believe it was the noble Lord who congratulated the Government on being the first to offer these protections, helping to get these regulations and trying to get a degree of protection for the consumer in them.

I will deal with some of the points raised, starting with the common commencement date. My advice is generally that common commencement dates do not apply to the implementation of EU legislation and, in this case, there was no compelling reason to diverge from that position. What we did—I appreciate that we have taken some time over it—was to give a degree of time. I think that has been useful for the industry and this is why we have gone up to the wire, going up to 1 July rather than doing it on 1 January.

The noble Lord, Lord Stevenson, also asked about the other regulations coming from the Department for Transport, which will be negative regulations. I remind noble Lords of how seamless the Government are in the way they operate, with no silos between departments. My advice is that the Department for Transport expects to publish its final ATOL regulations and the formal government response to the ATOL conversation in the coming weeks. At the same time, they will be laid before Parliament and come into force in line with the implementation deadline of 1 July, so the noble Lord has time and we will try to make sure that we can meet this.

I return to the questions, largely led by the noble Baroness, Lady Randerson, on the single point of sale and the complication of the LTAs. Put simply, it is when the same retail premises, the same website or the same telephone service is used to put those together. I appreciate there is a degree of complexity; that is why we hope to provide guidance that will help to explain the concept as far as possible, making it easy for the consumer so they know that they are buying an LTA. Although LTAs do not offer the same level of protection as a package, traders who facilitate putting together an LTA will be required to inform the traveller that they are not buying a package and therefore will not benefit from the protections associated with that package.

We want to make sure that there is appropriate guidance to assist the industry with that concept and, as a result, to assist the consumer and make sure that they are aware that they are buying an ATOL-protected product. The noble Baroness was correct to stress the importance of the initials ATOL.

Baroness Randerson: I am grateful to the Minister for his attempts at explanation. He clearly understands the subject a lot more deeply than I do. The problem with ATOL-protected packages is that they are something that the trader put together. All these other variations, whether it is either sort of dynamic package or a linked travel arrangement, are things you create for yourself. If you choose this car hire rather than that one, you may choose this car hire from the website, but that car hire would be from a different website. Given the average person's knowledge and understanding of computers and sources of information—most of us are fairly hazy about where we get a lot of information and there will be no label saying, "This is protected"—my concern is how people will know that they are protected and what is the level of protection.

Briefly, because there are so many variations, we are talking about shades of grey. It is now difficult to justify having different levels of compensation depending on whether you create your own package or are given one by a tourism operator.

Lord Henley: The noble Baroness is stressing the complexity of what has come into existence over the years. Earlier, she stressed the need to ensure that the industry was properly informed, but she went on to say that it was important that we ensure that the consumer—I always stressed the importance of the consumer—is also protected. What it makes even clearer is that we in the department must ensure that we provide the appropriate protection and compliance. That is why we want to work with the industry and regulators to help them understand all the changes being introduced, develop some guidance and ensure compliance. We will also be working with Citizens Advice to ensure that the guidance helps. I hope that, as a result, we can ensure that consumers are fully aware of what protection they have.

I appreciate that I probably have not got this out as clearly as I should like to all three noble Lords who have spoken, and I will probably end up writing a letter setting it out in some detail—I see from nods that that would be popular and appreciated.

I end by dealing with the noble Baroness's final point. She asked about the policy change and why, having been the leader in this, we were going only as far as the current directive suggests. We have always been the leader when it comes to the protection of holidaymakers. I was grateful for what the noble Lord, Lord Snape, said at the beginning. Obviously, we will continue to do that whether we are inside or outside the EU but, at the moment, it is vital that we bring the directive into force. That is what we are obliged to do by 1 July.

As the noble Baroness is fully aware, thereafter, it will be open for us to go further, should we wish. The United Kingdom recognises that there is a need at this stage to introduce that stronger consumer protection to address the gap that has been identified and it is important that we implement those changes at this stage irrespective of where we are with our exit from the EU.

[Lord Henley]

The directive is the maximum harmonisation, so there is limited scope at this stage to go beyond it. As I said, I hope to write to noble Lords to set out some of this with slightly greater clarity to make clear what we are doing. I accept that the arrangements are complex, but life is more complex than it used to be and how we buy holiday packages certainly is. I think it is a great deal more convenient and a great improvement, but it means that protections have to be devised in a different way.

I again thank the noble Lord for his welcome for our Explanatory Memorandum—it is very rare that we get such praise, so when we get it, I always like to thank people for it. I commend the regulations to the Committee.

Motion agreed.

Committee adjourned at 7.30 pm.