Vol. 793
No. 191

Wednesday
17 October 2018

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
https://hansard.parliament.uk/lords/2018-10-17

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 17 October 2018

3 pm

Prayers—read by the Lord Bishop of Leeds.

Education: GCSE Music

Question

3.07 pm

Asked by ***Lord Black of Brentwood***

To ask Her Majesty's Government whether they have made an assessment of the number of pupils who took GCSE Music in the last academic year.

Lord Black of Brentwood (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper, and I declare an interest in the subject as chairman of the Royal College of Music.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, there were 31,000 entries to music GCSE in England this year, and the proportion of pupils taking music GCSE between 2010 and 2018 has remained broadly stable. Music is compulsory in the curriculum for local authority maintained schools for key stages 1 to 3, and pupils have an entitlement to study an arts subject, including music, at key stage 4 if they wish. We are investing more than £300 million up to 2020 in music education.

Lord Black of Brentwood: I thank my noble friend for that Answer, but he should be in no doubt that the situation of GCSE music in schools is very grave. The number of pupils completing it fell by 7% last year, which means a fall of 23% since 2010, with one in five schools not offering it at all last year. This is undoubtedly the fault of the EBacc, which punishes arts subjects at the expense of sciences. Does my noble friend appreciate that this merciless decline is the start of a destructive downward spiral? As fewer pupils take GCSE even fewer then take A-level, and fewer still will go on to study music at a university or conservatoire, thereby threatening the long-term sustainability of music in our country. Is it not time thoroughly to overhaul the EBacc before irreparable damage is done to music education and it has become the privilege of the children of the rich rather than the fundamental right of all pupils?

Lord Agnew of Oulton: My Lords, there is no evidence that arts subjects have declined as a result of the introduction of the EBacc. Since the EBacc was announced in 2010 the proportion of young people taking at least one arts GCSE has fluctuated across the years, but has remained broadly stable. The best schools in the country combine a high-quality cultural education with excellence in core academic subjects. I reassure my noble friend of the importance, to my mind, of music to brain development, and I shall quote from a study on this; the education system needs to become more aware of it.

"Music's pitch, rhythm, metre and timbre are processed in … the brain … Rhythm and pitch are primarily left brain hemisphere functions, while timbre and melody are processed primarily in the right hemisphere".

Music is an integral part of our education, and so is EBacc.

Baroness McIntosh of Hudnall (Lab): My Lords, I am not sure where the noble Lord gets his evidence from. I wonder whether he is aware of research, published just this week and launched in this House, jointly commissioned by the Royal Shakespeare Company and Tate, from Nottingham University. The unique feature of this research is that it talks to young people about their experience of arts and cultural education. One of the things that emerges from it is that they are clearly getting a strong message that, important as this is to them, it is not valued in the curriculum: consequently they are often discouraged from taking it up. He might, if he has time, listen to the recent appearance of the noble Lord, Lord Bird, on "Private Passions" to hear first-hand testimony of what an impact music can make on one person's education, particularly someone who did not have a very good start in life. How much more evidence do the Government need before recognising that this is a serious issue not just for future professionals but for all students?

Lord Agnew of Oulton: To answer the noble Baroness's first question, about where the research I am using comes from, an initial five-year study by the University of South Carolina showed that music instruction appears to accelerate brain development in young children. I entirely accept that, but let us also talk about the amount of time that is being devoted to the teaching of music in schools. Music as a percentage of teaching time in secondary schools has remained broadly stable since 2010: 2.4% in 2010 and 2.3% in 2017. I get that data—I am conscious of noble Lords saying that we are loose with our data—from the school workforce census, a survey of 76% of secondary teachers and 85% of secondary schools.

Lord Wallace of Saltaire (LD): My Lords, I declare my interest as a trustee of a musical education charity which is overwhelmed by requests from schools and music hubs for us to collaborate with them because the number of teachers with training in music teaching is declining and is expected to decline further in the next two or three years. Do the Government accept that music is going to be pushed aside as an extra subject and is likely, in state schools, to be provided increasingly by volunteers and charitable bodies?

Lord Agnew of Oulton: My Lords, the vacancy rate for music teachers in schools is currently 0.6%, so I do not believe that there is a crisis. I am glad that the noble Lord raised music education hubs, which are supporting more than 650,000 children learning to play an instrument. More than 340,000 pupils took part regularly in area-based ensembles and choirs, of

[Lord Agnew of Oulton]
which more than 8% were eligible for pupil premium. Music is an important part of our system and the Government are supporting it.

The Earl of Clancarty (CB): My Lords, despite what the Minister is saying and the replies he is giving, it is now very clear from a huge amount of evidence that the EBacc is harming not just music but all the arts, and design as well. Do the Government not think it time, if we are to retain some form of baccalaureate, to look at other models such as the Edge Foundation to enable the rounded and forward-looking education the Government say they believe in?

Lord Agnew of Oulton: My Lords, the EBacc was designed to get a good general education to as large a part of the population as possible, in particular those from disadvantaged areas. We all know that the cultural capital from those areas is much less than in people coming from the backgrounds of most in this Chamber. That is why we did it. There is room in the key stage 4 curriculum to add music if that is what schools decide to do. The average number of EBacc exams is seven—eight if you go to triple maths, but seven would be standard—and that leaves one slot for music if that is what a child decides to do.

Viscount Bridgeman (Con): My Lords, does the Minister recognise the important contribution that cathedral choir schools play in the musical education of this country? They are the envy of many European musical countries, such as Germany and the Netherlands.

Lord Agnew of Oulton: My noble friend is absolutely right. To link this for a moment to EBacc, I believe that a sense of history and music come together. Many noble Lords who have listened to the "Miserere" will know that Mozart went to hear that in the Vatican aged 14, memorised it and took it back and published it for the outside world because the Vatican had chosen to keep it to itself. Beethoven wrote five piano concertos, the "Missa Solemnis" and his ninth symphony when he was totally deaf. That gives a very different understanding of music when you listen to it, so history and music stand together.

Lord West of Spithead (Lab): My Lords, I declare an interest as a patron of the Docklands Sinfonia. I support what the noble Lord, Lord Wallace, said. This sinfonia, which is based in the East End, very often goes out to schools in the Tower Hamlets area because there are insufficient music teachers. This is wonderful and important to do because it stops people in gangs killing each other with knives. There is clearly something wrong. There is not enough chance to learn music at school if they are having to do this.

Lord Agnew of Oulton: I referred earlier to the percentage of teacher time allocated to music, so I do not think this is the problem. I accept there are challenges in areas of disadvantage, which is why we have launched the In Harmony programme. This is working in six of our most disadvantaged areas. We are already seeing quantitative and qualitative evidence to suggest that children's musical enjoyment has improved through the involvement of In Harmony. It is popular among its participants and we will be carrying out a further evaluation next September to see if we can widen its scope.

General Practitioners

Question

3.15 pm

Asked by ***Baroness Kennedy of Cradley***

To ask Her Majesty's Government what progress they are making in increasing the number of general practitioners in England.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, the Government still intend to increase the number of doctors in general practice by 5,000, but we recognise that this will take longer than hoped. Last year we recruited the highest number of doctors into GP speciality training. There is also a broad offer for GPs to stay in the NHS, including a £10 million retention fund. Furthermore, since 2015, more than 3,000 other clinical staff are working in general practice.

Baroness Kennedy of Cradley (Lab): My Lords, properly resourced, general practice is key to keeping people well and relieving wider pressures on the NHS, yet the Government's target of 5,000 more GPs by 2020—or whatever date they are now going to set—is in tatters. Workload pressures, oversubscribed patient lists and funding shortfalls are driving down GP numbers. Statistics published this month show that the number of GPs has fallen by 6% since 2015, with the June 2018 figure 1,400 below the target set. Is there a plan to adjust the recruitment target to account for the year-on-year loss? Can the Minister confirm the actual delivery date for the target?

Lord O'Shaughnessy: The noble Baroness is correct, unfortunately: she is using accurate figures. We have not achieved the GPs numbers that we wanted but we still intend and need to recruit those other 5,000 GPs. It is worth pointing out that the funding for general practice will have increased by around £2.5 billion over the five years between 2015 and 2020, so I do not accept her point about funding shortfalls. The money is there, but we need to recruit more GPs and keep them in the service.

Lord Forsyth of Drumlean (Con): Is my noble friend aware that one of the reasons that the numbers of GPs are falling is because, when they get to age 55, they find that their pension contributions are taxed at 55% due to the Government's decision to lower the threshold for their pension funds? They then rejoin the health service as locum doctors, thus costing it more. Is it not time that the Treasury learned the unintended consequences of interfering with pension rules?

Lord O'Shaughnessy: My noble friend will know that pension policy is not one of my areas. There are early retirements from general practice but, as he pointed out, a number of those GPs come back either as locums or as part-time doctors. It is important to entice more of them back. That is why we aim to have 500 people going through our refresher scheme to bring GPs back into the service.

Baroness Walmsley (LD): My Lords, I was rather surprised to learn that the Government were trying to recruit more doctors from Australia, the very country to which a great many of our newly qualified doctors go for better pay and conditions. What are the Government doing to try to recoup the taxpayers' money spent on their training? It is surprising that they go to developed countries such as Australia, and that we get no benefit from the cost of their training.

Lord O'Shaughnessy: Some people will inevitably travel abroad after their training, but the vast majority of doctors who train in this country stay here. We have more GPs than ever in training. That is obviously the way to solve the long-term challenges of having the right workforce. However, the noble Baroness is absolutely right that we need to recruit from abroad in the short-to-medium term. The NHS has a recruitment target of 2,000 doctors via that route.

Lord Patel (CB): My Lords, one of the key recommendations made in the House of Lords report *The Long-term Sustainability of the NHS and Adult Social Care* related to training of health professionals. It was based on the evidence that we received of the very thing we are discussing today, which is poor recruitment, not only in general practice but in other areas in healthcare. The key recommendation was that NHS England be asked to review and come forward with a paper that will change the way we train health professionals, so that training is more flexible and integrated and encourages people to go into specialties that are currently in shortage. Does the Minister agree?

Lord O'Shaughnessy: I agree with that recommendation. It is certainly being considered as part of the long-term plan, for which workforce is clearly critical. That is one reason why it is significant that there are 3,000 more clinical staff in general practice who are not doctors—nurses, pharmacists and others. Clearly the nature of general practice is changing. Doctors do not have to do everything, and other well-qualified professionals can carry out essential roles.

Baroness Pitkeathley (Lab): My Lords, when the Government launched their loneliness strategy last week, we learned that one in five people at GP surgeries is there for reasons caused by loneliness. Can the Minister expand on what is being done to change GPs' training so that they can deal with such problems, or—following his answer to the previous question—on what other clinicians and associated professionals will be brought into the mix to help solve the loneliness issue?

Lord O'Shaughnessy: The noble Baroness raises what is unfortunately a sad fact. One of the areas I highlight is the increasing use of social prescribing, which uses means such as joining clubs and taking part in activities that often have a social dimension to alleviate the problems associated with loneliness. Our new Secretary of State has made social prescribing a priority, because clearly it enables us to change people's lives for the better without resorting to appointments and medicines.

Baroness McIntosh of Pickering (Con): My Lords, I declare an interest as an adviser to the board of the Dispensing Doctors' Association. Will my noble friend address the very real issue of recruiting and retaining GPs in rural areas? I declare an interest in that both my father and brother have been dispensing doctors. It is not just an issue of 55 year-old doctors' pension contributions; increasingly there is a problem of attracting young doctors in their 30s and 40s and retaining them, because of the poorer pension provisions we have now.

Lord O'Shaughnessy: My noble friend makes an important point, and obviously she has first-hand experience of that. I am pleased to tell her that there is a targeted recruitment scheme that offers a £20,000 salary supplement for those who serve in hard-to-reach areas. In 2016, 122 places were offered on that scheme, and that number has now more than doubled in 2018, so we are putting more and more emphasis on that.

Children: Gender Dysphoria

Question

3.22 pm

Asked by ***Lord Lucas***

To ask Her Majesty's Government what is their assessment of whether treatments for gender dysphoria currently offered to children by the National Health Service are evidence-based, and do no long-term harm if the diagnosis turns out to be mistaken.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, clinical practice for those with gender dysphoria is informed by a series of guidelines outlined in both NHS England's service specification and the clinical commissioning policy on the use of cross-sex hormones: for example, guidelines produced by the Endocrine Society on the use of puberty blockers. Research into the long-term impact of such interventions is in its infancy, with further studies required.

Lord Lucas (Con): My Lords, I am grateful to my noble friend for that reply. However, would he not agree that when clinicians are faced with a choice between whether to leave the child in a state of psychological distress due to gender dysphoria or to set them on a course of treatment which, most of the time, will end in sterilisation, we need to put a lot more effort into and emphasis on research so that we understand this condition better?

Lord O'Shaughnessy: I absolutely agree with my noble friend that more research is required. Clearly, long-term research is also required here to track people throughout their lifetime and to understand the physical and psychological outcomes. The NHS England service was developed on the basis of peer-reviewed research—the best research available. However, it is still in its infancy, and we need more research to make sure that the correct services are being given to children and young people who, in many cases, are in quite significant distress.

Baroness Barker (LD): My Lords, will the Minister confirm that surgery for gender dysphoria is never carried out before the age of 18, and that young people receive hormone treatment only after extensive periods of assessment, not just by psychologists and psychiatrists but also by endocrinologists, all of whom have to work to clinical guidelines?

Lord O'Shaughnessy: Yes, I am happy to confirm to the noble Baroness that no surgery should be offered to under-18 year-olds; no cross-sex hormones, which change biological gender, should be available to under-16 year-olds and even the use of hormone blockers is highly unusual for those under the age of 15. That is set out in the guidance and adhered to by the Tavistock and Portman trust, which delivers the service for children.

Baroness Thornton (Lab): My Lords, gender dysphoria is described by the NHS as the discomfort or distress caused by a mismatch between a person's gender identity and their biological sex assignment at birth. This is not a new condition, but we must be grateful that it is recognised today as a real issue and a real cause of harm to those children and young people affected. I declare an interest as a health commissioner in the area of the Tavistock Institute.

Does the Minister agree that we need not only more research on the medical, psychological and emotional solutions for this cohort of children and young people, but also resources to be made available? The Tavistock, with its excellent work, is currently the only institute in the UK providing this support.

Lord O'Shaughnessy: I agree with the noble Baroness that this is a very real condition; it is rare, particularly in children, but nevertheless it is real. Therefore it is appropriate that those who have it should get the right support. As the noble Baroness, Lady Barker, pointed out, that support may be psychological or endocrinological —whatever is required, multidisciplinary teams will provide it. There has been an increase in the number of resources available as well as a cultural change towards greater acceptance. Ultimately, what this comes down to, and what people worry about, is that children are pressured into being one thing or another when they should be allowed to be themselves.

Baroness Nicholson of Winterbourne (Con): The Minister has mentioned the GRA consultation document already, which is on the web. Would he consider reviewing, withdrawing and reissuing that document? I have known a number of people try to fill it in and it is a little difficult; the language is complex, opaque and many of the linguistic terms are not readily used. I am not certain whether the general public, with whom we are consulting, are normally ready to read 100 pages of explanation before finding a small number of questions in the middle. It is a monumentally complicated paper, which has had little academic consultation, and people with less than a higher level of education have told me they simply cannot understand it. Will the Minister consider reviewing that document?

Lord O'Shaughnessy: It is important to distinguish the provisions of the Gender Recognition Act from the health services provided for people with gender dysphoria. Nevertheless I take the noble Baroness's comments on board; I know some concerns over the document have been raised with the Government Equalities Office, which has responsibility for it; the Department of Health does not have direct responsibility.

Baroness Symons of Vernham Dean (Lab): My Lords, this is an issue not only for children in this country but in many countries throughout Europe and, particularly, in the United States. Will the Minister tell us what mechanisms exist for exchanging information between the countries that recognise this problem, which is a genuine problem in many families? What mechanisms are there for exchange of information on how best to deal with it?

Lord O'Shaughnessy: The noble Baroness is right that this is an international trend; we see in many countries similar figures for people coming forward, although, frankly, some cultures deal with the issue better than others. I am sure there are international health forums—indeed, I know there are—that deal with trans health issues and I can write to her with specific details

Baroness Brinton (LD): My Lords, following the comments of the noble Baroness, Lady Nicholson, will the Minister take back also the alternative view: this is an extremely complex issue—on the current consultation on gender recognition, the survey is complex, the information provided by the Government is extremely helpful and, as a result, it has informed a lot of people as well as enabling them to answer questions properly.

Lord O'Shaughnessy: I am happy to do so.

Yorkshire: Devolution

Question

3.29 pm

Asked by ***Lord Wallace of Saltaire***

To ask Her Majesty's Government whether they will respond to the One Yorkshire proposals for devolution to a Combined Yorkshire Authority.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the Government have always been clear that we will carefully consider any devolution proposals we

receive. Eighteen Yorkshire councils continue to work on the devolution proposal and, on 10 October, provided updates to my right honourable friend the Secretary of State comprising an economic study and further developed governance proposals, which he will consider. However, our priority remains completing the Sheffield city region deal, which would bring £900 million in investment to that region.

Lord Wallace of Saltaire (LD): My Lords, can we be assured that the Government are not using the reiteration of "completing the Sheffield deal" as a means of putting off coping with the proposal that we should move on from there to a One Yorkshire solution, which the elected mayor for Sheffield strongly supports? Three years ago, the previous Prime Minister complained that people in Yorkshire did not seem able to agree on this. All parties—business leaders in the region, trade union leaders in the region and leaders of local councils from all parties—have now agreed. The alternative of three city regions and the rest of north Yorkshire left out on its own as the residue, which the Government still seem to prefer, is more expensive and much less efficient.

Lord Bourne of Aberystwyth: My Lords, to reiterate, there is no change in the policy on the Sheffield city region. We have always regarded it as something that should be carried forward. We have legislation on this and we have had elections on this. Whatever his views on the broader Yorkshire deal, the elected mayor is seeking to ensure that the Sheffield city deal proceeds. As I said, detailed information has been sent to the Secretary of State. He will respond to that documentation and it would be wrong for me to do so, even if I were in a position to, which I am not.

Lord Blunkett (Lab): My Lords, I declare an interest as chairman of the Sheffield City Partnership board. Does the Minister agree that, to move on from the Sheffield city regional deal, it is important to establish that deal and provide money for both the elected mayor's office and for the regional policy to move forward? Does he agree that any future incremental move from the Sheffield city regional deal is highly dependent on people getting their act together now and putting the people of the region first, rather than their political predilections?

Lord Bourne of Aberystwyth: My Lords, I substantially agree with what the noble Lord said. However, let me reassure him that £1 million has been given to the mayor for mayoral capacity-building—there is money for the mayor's function. He is seeking to ensure that there is proper consultation in line with the legal advice that the Sheffield city region has had, so that we can move this forward as the noble Lord suggests.

Baroness Eaton (Con): My Lords, can we be assured that, whether or not the Government support the One Yorkshire proposal, they will continue to work with businesses in the region to develop a model of devolution that will ensure the Yorkshire economy will survive and thrive?

Lord Bourne of Aberystwyth: My Lords, without prejudging the Secretary of State's response to the documentation he has received—just a week ago—we are of course wedded to ensuring that the economy of Yorkshire and the whole region thrives. There is, if not a proposal, documentation, to which the Secretary of State will respond. I come back to the point that, as has always been the policy, it is important that we all get behind the Sheffield city deal and it is executed in line with processes in this House and the other place, and with the election that has been held.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I draw the attention of the House to my relevant interest as a vice-president of the Local Government Association. Does the Minister agree that, whatever is finally agreed, it should be locally led? Will he confirm that nothing will be imposed by the Government?

Lord Bourne of Aberystwyth: My Lords, there certainly has to be a proposal. As the noble Lord will be aware, the process is that we respond to proposals made on devolution. There has been no formal proposal for the One Yorkshire deal, although documentation has been sent forward. However, it is clearly important that this is locally led, as we can only respond to proposals. I can confirm that the Sheffield city deal was locally led and, as I said, everyone should get behind it, because it is a sine qua non to moving on in the region generally—but I make no prejudgment of what the response will be.

The Lord Bishop of Leeds: My Lords, we take the point about the Sheffield city region, but it leaves the rest of Yorkshire wondering where it fits in, and when this will improve for it. We have failing rail infrastructure. In Yorkshire, we have almost total, widespread support for the One Yorkshire devolution deal. A report produced by the Institute for Government has referred to Yorkshire as,

"the hole in the northern powerhouse".

Although delighted that Sheffield might thrive, the rest of Yorkshire wonders what will happen to it. We are falling behind Manchester and Liverpool in our ability to flex in the economics of the country.

Lord Bourne of Aberystwyth: My Lords, I thank the right reverend Prelate. I agree that it is important that the experience of mayoral city regions, of Manchester and elsewhere, is learned by the whole country. We respond to proposals, not just from Yorkshire, but from elsewhere—but that has not yet happened. I welcome what the right reverend Prelate said regarding Sheffield. That is certainly true; it must proceed. That is in accordance with what we have done as a Government, what this House and the other place have done as a Parliament, and what the electorate have done in electing Dan Jarvis as mayor.

Baroness Pinnock (LD): My Lords, there is amazing unity in Yorkshire—a bit of a historic moment, that. A great campaign run by the regional newspaper the *Yorkshire Post* has gathered support for the One Yorkshire devolution deal. If the Government are not prepared to consider a One Yorkshire solution—perhaps they

[Baroness Pinnock]
are a bit frightened of the size of Yorkshire and the power it would then have—would it not be worth them getting a polling company to find out what the people of Yorkshire think? I know what the answer would be, and maybe that is the best way to tell the Government. Does the Minister agree that that is a good idea?

Lord Bourne of Aberystwyth: I listened very carefully to the noble Baroness and I usually I agree with her, but we should not get ahead of ourselves by involving polling companies when we do not yet have a proposal. As I say, the policy is absolutely clear and it has not faltered. On devolution, we must first get a proposal; there has not been one. I come back to the point that this cannot happen until the Sheffield city deal has been executed. This has not happened yet because of the lack of consultation; it has been held up, and I understand the frustrations there. But for us to react and consider polling or anything else, I am afraid we must first have proposals.

European Union Committee

Membership Motion

3.37 pm

Moved by ***The Senior Deputy Speaker***

That Lord Polak be appointed a member of the Select Committee in place of Baroness Browning, resigned.

Motion agreed.

Brexit: Dispute Resolution and Enforcement (European Union Committee Report)

Motion to Take Note

3.37 pm

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

That this House takes note of the Report from the European Union Committee *Dispute resolution and enforcement after Brexit* (15th Report, HL Paper 130).

Baroness Kennedy of The Shaws (Lab): My Lords, this report was prepared by the Justice Sub-Committee of the European Union Committee, which I chair. I should like to start by thanking the members of this committee, who have been conscientious at all times, the staff, who have been exceptional in their dedication to this work, and all those who gave evidence to us.

Our report was published on 3 May this year. It focused on four distinct matters: first, enforcement of any withdrawal agreement concluded under Article 50 of the Treaty on European Union; secondly, arrangements during the proposed transition period; thirdly, the dispute resolution system that will be implemented under any agreement on future relations between the European Union and the UK; and, fourthly, the related question of how to deal with justice co-operation issues in civil, family and criminal law.

The Government's position has always been that they would seek to end the jurisdiction of the Court of Justice of the European Union. Whether this is a "blood-red line" or is cast in a rather pinker hue, the Government have been consistent in saying that in leaving the European Union we will bring about an end to the direct jurisdiction of the Court of Justice of the European Union. As we reach the sharp end of the negotiations with the European Union, the question arises as to what this means in practice for individuals, businesses and the enforcement of rights and obligations.

The potential for this issue to cause disagreement between the United Kingdom and the European Union is sometimes underestimated, particularly in the press, due to the current focus on the Irish border. However, during the European Union Committee's most recent visit to Brussels, which took place following the publication of the Government's Brexit White Paper in July, Michel Barnier described the question of dispute resolution as "the second most difficult point after Ireland", so it should concern us here in this House.

We received the Government's response to our report on 5 July 2018, and I was glad to see it describe the committee's analysis as a "welcome contribution". Unfortunately, it was really little more than warm words. The Government recognised that,

"there needs to be a clear mechanism for governing and enforcing our Withdrawal Agreement with the EU – as there is in any international agreement",

and that they would,

"continue to engage constructively … in the negotiations".

Their response reiterated the fact that the UK had,

"no plans to dock to the EFTA Court"—

that is, to access it by a side door, although not being part of EFTA—and that that mechanism for settling disputes would not be appropriate for us. It concluded that,

"Using the EFTA Court … for this purpose would not be a simple or straightforward solution".

However, on the specific issues that we raised, the response contained little new information and did not address my committee's conclusions comprehensively. The response was published before the White Paper and so much of its content has been superseded by that document. Therefore, I shall concentrate on the White Paper.

Notably, the White Paper contains a chapter on institutional arrangements. This suggests that in circumstances where a dispute could not be resolved politically by the United Kingdom and the European Union in the proposed joint committee,

"it would make sense in some cases for either party to have the option of referring the issue to an independent arbitration panel"—

hold that thought—

"which would include members from both parties".

Although this demonstrates some progress since the future partnership paper published last August, which merely set out a range of options, it still falls some way short of offering precise governance arrangements to cover both the withdrawal agreement and our future relationship.

The chapter on institutional arrangements also seeks to address how disputes over the proposed common rule book for goods might be determined. It says:

"The UK recognises that only the CJEU can bind the EU on the interpretation of EU law, and therefore in these instances, there should be the option for a referral to the CJEU for an interpretation, either by mutual consent from the Joint Committee"—

of the European Union and the UK—

"or from the arbitration panel".

This concession appears to be very similar to what is called the Ukraine model. A lot of people do not view a reference to a Ukraine model as one that we would be very charmed by, but that model of dispute resolution under an association agreement is mainly an arbitration process, with a reference mechanism to the European Court of Justice to rule on technical issues of European Union law and a final determination going back to the arbitration panel.

That pragmatic model has the benefit of being supported by some precedent, as it is used not just in Ukraine but in Moldova and, I think, somewhere else, but it may be seen as further blurring the Government's red line on the role of the European Court of Justice. We understand that such an arbitration model is also under discussion with the Swiss authorities, which are having similar discussions about the governance of their treaties with the European Union. Perhaps, going forward, it might sound more appealing if we were to refer to such a proposal as the Swiss model.

However, my first question is: will this model of arbitration, with a reference procedure, be utilised as a governance mechanism for the withdrawal agreement and for other aspects of dispute resolution after Brexit? The method at the moment is being put forward as dealing with disputes that might arise out of the common rulebook, so my question is: would it also be used for the withdrawal agreement and other aspects of dispute resolution once we have left?

In response to the committee's recommendation that any future,

"enforcement and dispute resolution system established under the future relationship should be accessible to citizens and businesses",

the Government agreed that,

"it is in the interests of both the UK and the EU that the rights and obligations agreed between us can be relied upon and enforced by individuals and businesses",

yet the Government's response provides no information about how this might be facilitated. Should the Government settle upon arbitration as the main mechanism for dispute resolution, we assume that this would therefore exclude participation by individual litigants and businesses—it would be Government to Government. In circumstances where there are disputes about any future common rulebook, particularly between parties based in the UK, we ask the Government to explain how individuals and businesses would be able to seek a judicial remedy in circumstances where there was no ability for the individual or the business to request a reference to the European Court of Justice. The evidence we received during the course of our inquiry was that state-to-state models of dispute resolution does not tend to favour small businesses since, as the Institute for Government has pointed out in its evidence to us,

"as far as government is concerned it is worth kicking up a fuss only when quite a lot of money is at stake".

What will this mean for small businesses?

On the issue of participation in the European Union agencies, the White Paper acknowledges that if the United Kingdom wishes to participate, for example, in the European Medicines Agency or the aviation agency, it would,

"respect the remit of the CJEU such that if there was a challenge to a decision made by an agency that affected the UK, this could be resolved by the CJEU, noting that this would not involve giving the CJEU jurisdiction over the UK".

In the light of this clear concession from the UK Government, I ask for an update on the negotiations with the European Union on the question of participation in the agencies: how far are we getting with that and other relevant mechanisms? As a criminal lawyer, I am particularly concerned about the European arrest warrant, which concerns criminal justice, and what happens on Brexit day in our arrangements and relationships with Interpol and Eurojust—our relationships that enable the arrest of people involved in cross-border crime using the European arrest warrant. There is a need for a court that deals with that; it is not a process that is appropriately dealt with by arbitration.

On the question of cases before the CJEU, I note that, while the Government have proposed that pending UK cases before that court at the end of the transition period should continue through to a binding judgment, the Government agree with the committee that there needs to be a "longstop"—a limitation period—for cases based on facts arising before the end of the transition period. Given that we are rapidly approaching the date by which these issues should be agreed in the withdrawal agreement, I wonder what guidance the Government can offer potential litigants on that question.

Finally, our report also touched on the significant ramifications of Brexit for the UK's continued participation in the so-called Brussels suite of EU regulations facilitating judicial co-operation in civil and family law matters. My committee has taken a keen interest in this subject matter since the result of the referendum, and we published a report in March 2017 entitled *Brexit: Justice for Families, Individuals and Businesses?* Earlier this year, as promised in our dispute resolution report, we followed up that work. We did so because this is the stuff that is about the human condition—the relationships between people and how they are affected in terms of their livelihoods, relationships and children. We took evidence from highly regarded civil and family law practitioners and we also had a session with the Government. Yesterday, my committee agreed a lengthy letter to the Lord Chancellor setting out our deep concerns about the current state of the negotiations on this important aspect of Brexit and the Government's plans for a no-deal scenario. Law is about more than mere technicalities and the black letter; it is about blood, sweat and tears and all those things that are part of our humanity. I invite interested parties to read the letter we have sent to the Lord Chancellor, a copy of which is on the sub-committee's web page. We are looking forward to his response. I beg to move.

3.50 pm

Lord Thomas of Gresford (LD): My Lords, it is always a great pleasure to follow the noble Baroness, Lady Kennedy, and I congratulate her and the staff of her distinguished sub-committee for their immense labours in producing a report on this highly complex and intractable issue. I was interested to hear that it is regarded as being the second largest stumbling block to the withdrawal agreement which is in the process of being negotiated.

[Lord Thomas of Gresford]

We are looking at a number of agreements, the first of which is the withdrawal agreement, which will cover a number of components: the question of finance—how much to pay—citizens' rights and the protocol on Ireland and Northern Ireland. We expect future agreements to cover the relationship between the UK and the EU in a number of areas, principally trade and security, and there will be other agreements to cover ongoing participation in the EU programmes to which the noble Baroness referred. The governance of each of these agreements contains three elements or components. The first is management of the agreement, the second is dispute settlement, and the third is enforcement after dispute settlement.

The withdrawal agreement has been published in draft form with the areas of agreement coloured in green. From this it appears that agreement has been reached under draft Article 157 for the establishment of a joint committee responsible for the supervision and implementation of the agreement. That covers the first management component of the agreement. The joint committee is to be a political committee, but one of its functions under draft paragraph 4(c) is to,

"seek appropriate ways and methods of preventing problems that might arise in areas covered by this Agreement or of resolving disputes that may arise regarding the interpretation and application of this Agreement".

That is intended to be the first stage, the political stage, in the settlement of disputes, but what about the second or appeal stage of dispute resolution? There is still substantial disagreement between the United Kingdom and the European Union over how to deal with this and how a dispute settlement should be enforced. On the one hand, the EU has proposed that the European Court of Justice should be the final arbiter because it says that the draft withdrawal agreement still embodies many provisions of EU law and the CJEU has declared itself to be the only binding interpretative authority of EU law. On the other hand, the United Kingdom has argued that it is unacceptable that the appeal body, the final resolution body, in a dispute over the withdrawal agreement or indeed any agreement it concludes with the EU, should be a court whose judges are drawn only from the continuing EU member states. That is the nub of the matter.

Of course, the issue is bedevilled by the irrational demonisation of the European Court of Justice, first by those who campaigned to leave the EU and later by the Prime Minister, who has lost no opportunity to declare that leaving the jurisdiction of the CJEU is one of her red lines. I have never understood how that court could have been painted in such scarlet colours. In the first place, its function has never been to lay down draconian law which binds us all in servitude, but to interpret law which, even if it starts with the Council of Ministers or the Commission, has been subjected to a democratic process in the European Parliament. The United Kingdom has, since joining the EU, had full representation in these three bodies.

Secondly, we have always provided a distinguished judge to sit on the court. Sir Konrad Schiemann, the former United Kingdom-nominated judge of the court between 2004 and 2012, said in evidence to the Committee that,

"in the Luxembourg court the tradition is that you lose your nationality the moment you join the court, which makes no distinction between judges of one nationality and another. … The tradition was that you were not there to plug the point of view of your national Government. That was not your job. Your job was to try to decide the law in the light of the general European interest".

That, indeed, is the way in which the Court of Justice has operated: it is not a court of competing national judges.

Thirdly, the United Kingdom has, through the power of its legal advisers and advocates, been very successful in the European Court of Justice. The European Commission does not bring cases that it does not expect to win. Of the 63 cases the Commission brought against the United Kingdom that resulted in rulings between 2012 and 2016, the UK submitted a defence in only 30 of those 68 and conceded the rest. In the cases the United Kingdom defended, its success rate was 53%. Its overall success rate of all cases in the period 2003-16 was 25%, the highest of any of the 28 member states. Penalties have never been imposed on the United Kingdom by the Court of Justice for failing to abide by its judgments. In other words, our Governments have always accepted its judgments, even in the cases that we have lost.

The Government's response to the Committee's report of 5 July says that they will "respect the role" of the European Court of Justice in the interpretation of EU law in disputes between member states. They expect the EU in return to "respect the role" of our Supreme Court. That is a gnomic utterance: what does it mean? I hope the Minister will enlighten us. It certainly does not help to resolve the current dispute on the appropriate legal body or arbitration process to resolve disputes.

The Committee explored the idea of locking on to the EFTA Court as an independent judicial body, but is rightly not enthusiastic about it because it would require the agreement of Norway, Liechtenstein and Iceland radically to revise the purpose and structure of that court to accommodate a far greater caseload than it was designed to carry and to extend its jurisdiction in economic matters into areas of justice, security and family law. It is clearly not appropriate.

Is there not room for more creative thinking? The institution of the European Court of Justice exists. Its physical building and its administration exist. The United Kingdom has played its full part in its procedures, has been part of its development and has been successful both in the judicial sphere and in advocacy before it. Would it not be sensible to create a special chamber of the European Court of Justice for dealing with disputes arising out of the special circumstances of our leaving the EU? We are not leaving Europe. The judges of that special chamber could comprise an equal number of members of the continuing court and members or former members of our Supreme Court, together with an eminent president from a neutral jurisdiction. This is the important point: since it would be a part of the Court of Justice, it could meet the European Union's requirement that only that court can interpret provisions of EU law where that this necessary. At the same time, there would be participation from the United Kingdom.

That special chamber would be of particular advantage if disputes arose in respect of the future agreements: the elusive trade deal, agreements concerning our participation in existing EU programmes, the security stuff, the European arrest warrant, Interpol, data protection, family matters and in those areas where the Government wish to continue to participate and co-operate in other fields. It could also be a forum for pursuing individual rights, those of European Union citizens in the United Kingdom and United Kingdom citizens in the European state. We would not want European citizens in the United Kingdom to have remedies solely in the courts of this country if that meant that our citizens abroad in Europe would have remedies only from a European court.

I cannot help comparing the present impasse to the successful negotiations over Hong Kong, where the innovative principle of "one nation, two systems" was developed, and the Court of Final Appeal, which replaced the Privy Council, introduced non-permanent judges to supplement its Bench—I see one of them here today. Judges from the United Kingdom, Canada, Australia and New Zealand play a part in assisting the Bench in the Hong Kong court.

Incidentally, I believe that the answer to the Northern Ireland impasse would be to declare Northern Ireland a special administrative region. With direct access to both the EU and the UK, it would be highly attractive as a centre for financial and other services—legal, accountancy and banking. I am sure that Wales would jump at the chance of becoming a second Hong Kong.

Would the Government's aversion to the European Court of Justice, fuelled by the empty and ill-informed rhetoric of the Brexiters, stand in the way of such a solution? Surely it would be more acceptable to the public of this country to know that if enforcement proceedings in the nature of fines or the withdrawal or suspension of concessions were imposed on us, it would be as a result of an order of an established and transparent court, whose proceedings were open and readily accessible, rather than some obscure, supranational arbitration body such as that outlined in the Government's response to this excellent report.

4.02 pm

Lord Hope of Craighead (CB): My Lords, it is a pleasure, as always, to follow the noble Lord, Lord Thomas of Gresford. Like him, I want to pay to tribute to the work of the sub-committee and to its thoughtful and well-researched report. I think it right to say that, when it was preparing its report, the situation it was contemplating was very troublesome; it is certainly no less troublesome now, as the noble Lord, Lord Thomas, pointed out. As the noble Baroness said, the report was published on 3 May. Here we are, some five months later, seemingly no nearer than we were then to finding solutions to the many problems that it raises. If solutions are being found, we are not being told about them. This lack of information is unsettling. It makes one doubt whether anything that will measure up to what we really need is being achieved.

The Prime Minister has made it clear from time to time that she understands very well that we must have a means of resolving disputes if our future relationship with the EU is to work. In her Florence speech in September 2017, she said that to make the principle of co-operation work we will need a strong and appropriate dispute resolution mechanism. Reporting to Parliament a few days later, in October, she said that the Government were preparing a bold, new strategic agreement to provide a comprehensive framework for future security and law enforcement. She referred to the idea of a treaty, which would exist between the UK and the EU. However, whatever was in her mind at that time does not appear to have surfaced in the form that she was describing. She came back to the subject in Munich in February 2018 and again at the Mansion House on 2 March, talking then about the arbitration mechanism that we would need to ensure that disagreements about the purpose or scope of the agreement could be resolved fairly and promptly.

I think we can all agree with these aspirations, but the real question is: how near are we to achieving them? Are they capable of being achieved at all given the red lines set at the outset of these discussions? A framework for EU-UK partnership in civil judicial co-operation was published in June, but I come immediately to the White Paper from July on legislating for the withdrawal agreement to which the noble Baroness referred. It is 38 pages long and contains 157 paragraphs, but of these only one page and only four paragraphs deal with justice, home affairs, security and defence during the implementation period. It is said that the UK and the EU have agreed distinct provisions in the withdrawal agreement, but it does not say anything about what has not yet been agreed. Surely, now that we are so close to Brexit, we need to be told where the discussions are going, where the areas of agreement are and what is yet to be agreed.

It seems inevitable that some aspects of our future relationship in these areas will have to be left over for discussion during the implementation period. But, as paragraph 122 of the report points out, if we do not "bring forward pragmatic proposals" soon,

"it will be too late".

That is certainly the case in the sphere of judicial and security co-operation. Furthermore, as Judge Ian Forrester, our judge on the General Court of the European Court of Justice, warned us last week, there needs to be a legal framework when you talk about criminal enforcement and criminal investigation. It simply cannot be done on the basis of a cordial, friendly understanding. That is the way the EU works, and it is not alone. That is the way that any agreement between states in this area has to be. To bind them together, they require a legal framework.

The Lord Chancellor said in a Written Statement published last week that the UK values the EU's tools for judicial co-operation in criminal justice. He highlighted,

"the importance of close operational working between member states to ensure that they function efficiently".—[*Official Report*, Commons, 10/10/18; col. 17WS.]

But, unless we do something about this before exit day, these tools will not be available to us. We will fall over the cliff edge. Yet this is the position into which we seem to be drifting, with no solution in sight, and time is running out.

[Lord Hope of Craighead]

There is much in this report to discuss, but the future of the European arrest warrant really needs to be sorted out now, and I will say a little bit about that. The way it works illustrates Judge Forrester's point. It was the product of an agreement reached at the Tampere European Council in 1999 that an area of freedom, security and justice should be created in the EU. Extradition between member states was to be abolished and replaced by the mechanism, established by a 2002 Council framework decision, of a system of surrender between judicial authorities. The aim was to remove the complexity and delay that extradition involves. Everything that binds the member states together has to have a treaty base, and the treaty base for the Council decision is to be found in Article 34 of the Treaty on European Union. It says that the Council's framework decisions shall be binding on member states as to the result to be achieved, but it leaves to the national authorities the choice of form and methods. That is the system to which we are a party in our capacity as a member state.

Our choice of form and method is set out in Part 1 of the Extradition Act 2003. The result, as regards the relationship with other member states, is achieved through the legal framework which the Council decision has set out. I use the word "achieved" because we need to appreciate that to get all the members states to agree to this system was a real achievement, as several of them object to the surrender of their own citizens to other states. This is particularly so in the case of Germany, which has a firm constitutional bar on the extradition of German citizens to a foreign country. Nevertheless, Germany was willing to agree to their surrender to another member state. That system has been working to our great advantage for the past 15 years.

The potential loss of the EAW will be very damaging. It is difficult to see how we can get round constitutional objections to extradition, such as that of Germany, without it. It is one of the most serious security-related issues for Northern Ireland, as the EU Committee pointed out in paragraph 165 of its report *Brexit: The Proposed UK-EU Security Treaty*, which was issued in July. It has been described as a vital tool for the Police Service of Northern Ireland for the extradition of suspects from the Republic of Ireland—because it gets round the political objections which used to be voiced before the system came into place—and its loss as the "biggest practical vulnerability" in Northern Ireland arising from Brexit. So more time to work out a permanent solution is a high priority, and in the meantime we need to ensure that it or something very similar is available during the transitional period.

There is a very simple solution, if only the Government would accept it. The framework decision of 2002—the document the noble Lord, Lord Thomas, described, with its colourings of green and yellow and no colouring at all—will of course remain in place in the EU. So we should seek to participate in it for all of its purposes in the same way, during the implementation period, as if we were still a member state. You can find the precise formula needed to address this problem in paragraph 1(b) of Article 58 of the draft withdrawal agreement. It provides that the 2002 framework decision shall continue to apply between the UK and the EU,

"where the requested person was arrested before the end of the transition period".

One could regard this as rather a generous offer, particularly as it binds other member states, including Germany, if we agree to it. But the website shows that this has still not been agreed. I wonder why. The reason, I suspect—and as the noble Lord, Lord Thomas, indicated—is that there is an elephant in the room: the European Court of Justice, which is there to resolve disputes about the meaning of the Council decision and how the result is to be achieved. So it is an essential part of the mechanism. We seem to have determined that, as we can have nothing to do with it, we cannot make use of the framework decision after exit day. But it is a very small elephant. Decisions of the CJEU in this field have been very few, and none has challenged the way we do things under Part 1 of our own Extradition Act. As the system is well settled, disputes of that kind are likely to be very few. It is not really much of an obstacle to the agreement if we are prepared to face up to it.

As the report notes and the response accepts, it has been agreed that:

"During the transition, the UK will continue to be bound by the jurisdiction of the CJEU".

At the very least, we should be seeking to be a party to the framework decision while that period lasts. That is what we should be aiming at as a matter of urgency, if no other solution can be found in the meantime. It surely is plain that if we are to secure agreement we will have to compromise, and this ought to be within our grasp given the position we are now in concerning the role of the CJEU during the implementation period.

The Prime Minister said on Monday that "real progress" has been made in recent weeks on the withdrawal agreement. I hope that the Minister can give us an assurance that progress is being made on this issue. As for the future, overcoming Germany's constitutional objection will be far more difficult unless we continue to be part of that system. But if we can find a way past that, I very much hope that the Government will recognise that the continued jurisdiction of the CJEU in this limited area would be a very small price to pay for all the benefits that continued participation in the framework decision will bring. There would be a bump in the arbitrary red line which totally rejects its jurisdiction, but it would be a tiny bump in comparison with the huge risks to national security if we do not take that step.

In closing, I mention one further point, on the opening paragraphs of the Government's response. What are we to do if disputes about the withdrawal agreement cannot be sorted out by the proposed Joint Committee for its implementation and application? Various possible solutions are examined in chapter 3 of the report, none of which—including the arbitration panel—provides a complete answer to this problem. There is, therefore, more work to be done here. Can we not accept that, if disputes of this kind arise during the implementation period, they should be settled by the CJEU, as the Commission proposes? That would at least give us more time to find a solution for the future. Is that, too, not a sensible compromise?

4.15 pm

Lord Anderson of Swansea (Lab): My Lords, I am the first member of the sub-committee to speak—a sub-committee very ably chaired by the noble Baroness, Lady Kennedy, who opened this debate. It is an honour to be with such congenial colleagues and very professional staff.

We began our enquiry on 21 November with a high-powered seminar—or "scoping session"—with four eminent retired judges. I recommend that all noble Lords read the transcript of that session. One of those committee members has just spoken and given us of his wisdom. The other members were the noble and learned Lord, Lord Thomas of Cwmgiedd, the noble Lord, Lord Neuberger, and Sir Konrad Schiemann, all of whom are very senior legal figures and all of whom stressed that it was difficult to see how the courts would co-operate with EU judges and legal systems after Brexit. They were concerned about government plans to give judges a wide discretion in deciding what weight to attach to decisions of the Court of Justice of the European Union. They also feared that the implications of leaving the EU had not been thought through, could overwhelm the caseload of the Supreme Court and even endanger the independence of the British judiciary. When we met the two Ministers more recently, it was clear that these basic concerns remained largely unanswered: there was much whistling in the dark and hoping that all would turn out all right in the end.

In this debate I will offer various random reflections on our work on dispute resolution. I note what the noble Baroness said about Monsieur Barnier's comment during the EU Committee's Brussels visit, when he described the issue of dispute resolution as "the second most difficult point after Ireland". Yet all the attention in the current crisis—particularly of late—is on the Irish border question, an issue in respect of which many of us consider the DUP has vastly overplayed its hand and been a sort of perverse recruiting sergeant for a united Ireland.

Again, the legal implications for us and our citizens after Brexit played no—or virtually no—role in the referendum debate, save in the platform rhetoric of "taking back our laws", in spite of being, in the words of Michel Barnier, the second most important question. However, these legal matters, which were covered by the sub-committee and were so neglected in the referendum, impact considerably on the generality of our citizens, particularly in the area of family law, as my noble friend has said. Hard questions arise as we move beyond the rhetoric. The evidence given to us by practitioners and academics revealed the complexities involved. These complexities may well deter other countries—I think of Hungary, which, however Eurosceptic it may be, is very much in favour of retaining its membership. There is, too, a list of countries queuing to join the EU, particularly in the western Balkans.

The Government therefore appear to have very limited views on the way forward and on the appropriate forum, or forums, to resolve disputes. They have ruled out certain options, such as docking with the EFTA court, but have not indicated their favoured option. Paragraph 43 and the following paragraphs of the report provide a helpful summary of the alternatives, all of which have serious drawbacks.

The problem is, in part, that the Government appear to act on the basis that the EU is leaving the UK rather than the UK leaving the EU. They fail to appreciate that when we leave our own legal clout will be reduced because of our size, compared with the United States and the European Union—a fact that appeared to be clear from the evidence given to us. It has all the elements of a Greek tragedy. Perhaps the origin of many of the problems is the Government's initial thick red line concerning the Court of Justice of the European Union which, as the noble Lord said, has been much demonised by Brexiteers and in our press—and even, alas, by the Prime Minister. Indeed, I think it was the noble and learned Lord, Lord Kerr, who pointed out in an earlier debate that in the debate in another place, there was much confusion between the Court of Justice of the European Union and the European Court of Human Rights at Strasbourg, which was in bad odour because of the then dispute over the Hirst case.

The White Paper of August 2017 states:

"In leaving the European Union we will bring about an end to the direct jurisdiction of the Court of Justice of the European Union".

That begs the question: how direct is direct?

Did the majority in the referendum seriously want a total and clean break with the European Union and all its works? That thick line has become thinner as the Government make concessions in areas such as our relationship with the European Union agencies—aviation, medicines, and so on. There have been more concessions on the European arrest warrant, which is so much in our interests, as the noble and learned Lord, Lord Hope, has indicated, and on security policy—a debate that has yet to come.

There will, no doubt, be artificial devices proposed to circumvent the wrath of the Brexiteers, and there will be many semantic sleights of hand. For example, I note that the Government have said in the White Paper that,

"the UK would respect the remit of the CJEU such that if there was a challenge to a decision made by an agency that affected the UK, this could be resolved by the CJEU"—

I underline this—

"noting that this would not involve giving the CJEU jurisdiction over the UK".

Now you see it, now you don't.

On the European arrest warrant, which is so important to us, it is unlikely that the more pragmatic current move of the Government will satisfy the European Union. Donald Tusk, giving a degree of help to us, I think said, "If you think you can eat your cake and keep it, I suggest a simple experiment: buy a cake, eat it and then see what you have left". Overall, the impression given by the Government is that of seeking damage limitation, having impaled themselves initially on the position of the CJEU. As we saw in our report on consumer protection, even if it is not perfect, it best serves our national interests, and our citizens have learned to rely so much on the work of the court.

[Lord Anderson of Swansea]

I end with a few questions. Of course, our common-law system is deeply entrenched and well respected globally, but do the Government accept the validity of the concern expressed by the four senior judges and the General Council of the Bar about the likely reduction of our legal standing overseas, set out in paragraphs 186 and 188 of our report? The Government's response thus far, of noting various missionary visits to Kazakhstan and to China, is hardly convincing. How concerned are the Government about the potential loss of law firms and the movement of practitioners to the continent and to Ireland? Is there any evidence that is of concern to the Government on this? Do they accept that arbitration would not be appropriate in respect of many areas of UK-EU co-operation, including judicial and security co-operation? If so, what is their alternative?

The real nub question is: can the Government tell us today—can they make it any clearer—what their preferred model or models are for future dispute resolution after Brexit? Perhaps more importantly, what are the prospects of our partners in the European Union accepting that model?

4.25 pm

Lord Hannay of Chiswick (CB): My Lords, it is of course pure coincidence that we should be debating the excellent report by the sub-committee of the noble Baroness, Lady Kennedy, on the first day of what is likely to prove a complex and protracted endgame in the Brexit negotiations. But it is, I would suggest, entirely appropriate because, as other speakers have said, this is a crucial issue and is seen by all those concerned as unresolved as yet.

We have to look at both the implications of dispute settlement procedures for the transitional period, if we do leave the EU next March, and their implications for any UK-EU relationship in the longer term—a new relationship thereafter. I congratulate the noble Baroness on a report that sheds a good deal of light on this issue—which, I have to say, is more than the Government's contributions so far have done, since they have consisted mostly of obfuscation and evasion. I congratulate her, too, on the clear and forceful way in which she introduced the report.

The Government contribution has been not only been evasive but downright misleading. As recently as a month ago, the Prime Minister was still saying flatly that the European Court of Justice's role in the UK would cease on 29 March 2019—although she must be perfectly well aware that she has been negotiating agreements that do not bear out that statement. After all, the deal struck on withdrawal last December and what was said then about the European Court of Justice's role in dealing with the case of European citizens, and the transitional period arrangement reached in March, both contain clear provisions for the ECJ to have a continuing role in the UK beyond exit date. I hope, therefore, that we shall have a little more candour from the Minister when he replies to the debate. I also hope that he will not retire behind a smokescreen in which the word "direct" is continually attached to jurisdiction, as if that were somehow an excuse for not saying anything about what is really going to happen.

I would like the Minister, if he can, to clear up the facts by dealing with the following three questions. First, is it not the case that the European Court of Justice will continue to have a role in this country on resolving disputes over EU citizens living and working here, beyond the exit date and beyond the date of the end of the transitional period? Eight years takes us a long way beyond that.

Secondly, is it not also the case that the European Court of Justice will continue to operate in this country, as now, on disputes right across the board for the duration of that transitional period, however long it may prove to be? That will be in a period when we no longer have any representation on any of the EU courts, but my understanding is that that point has been conceded.

Thirdly, is it not therefore inevitable that, if a deal is struck, the EU withdrawal implementation Bill will have to amend the provisions of the European Union (Withdrawal) Act 2018 terminating the ECJ's jurisdiction on exit day? The only circumstances in which that amendment will not be needed, as far as I can see, is if there is no deal, which the Government say is not their preferred option. Have I got those three points right? It would be helpful to know.

So much for the past. As for the future relationship, no one who has mastered the complexities of the Chequers plan—not the most popular of documents, I know, but I have attempted to do so—and not just its provisions on trade but those on internal security and other matters can doubt that some elaborate and fireproof dispute settlement procedures will be required as an integral part of any such plan. No one who has anything to do with the European Union can doubt that it will insist on the European Court of Justice having a clear and important role in any such procedures.

If we accept the inevitability of those two points, I really do not see how the Government are right to avoid describing in more detail how those can be reconciled. I think I know why they do not do it, and I can answer the question—a little unfairly, perhaps—on behalf of the Minister: it is because they do not want to admit to their own supporters that the European Court of Justice will have a dispute settlement role here far into the foreseeable future. It would surely make more sense if the Government were to think a little more constructively about ways of handling this problem and the sensitive issues it raises, rather than pretending that the problem does not exist, which is very much their approach.

I regret that the Government took such a negative view about the idea of using the precedent of the EFTA court in some way or another. I notice that the noble Lord, Lord Thomas, did not much like it either. I do not think that anybody is suggesting that it should be applied precisely, but the point about the EFTA court is that it meets three criteria. One is that Britain would be represented on it. The second is that the European Court of Justice's role is assured. The third is that its rulings are not directly applicable, although of course any party that rejected one would see serious negative consequences on the overall relationship. I think that they were a bit rapid in dismissing that. Even if it is probably unwise to talk

about the EFTA court as if it itself was the answer, does it not provide a framework which is much closer to being the answer than the rather complex arbitration procedures put forward by the Government, which I frankly do not believe that the European Union will ever accept? I would like the Minister to address that, and not just in the terms in which the Government have addressed it in their response to the report.

When the history of the Brexit negotiations comes to be written, I do not believe that commentators will be particularly kind about the Prime Minister's red line on the European Court of Justice. I think they are likely to regard it as totally unrealistic and incompatible with the wider objectives for a new relationship which the Government are in fact pursuing, a fact that I welcome. Moreover, they could well marvel at how much effort is being put into assailing the jurisdiction of a court whose rulings, over the 45 years of our membership, as the noble Lord, Lord Thomas, made clear, have far more often been beneficial to the UK than detrimental to it. However, it is not too late to change track. That red line about the European Court of Justice has been driven across multiple times, as I have tried to suggest, so why not now start to think constructively about dispute settlement, recognise a role for the ECJ in any such procedures, get to the negotiating table and get that settled?

4.35 pm

Lord Anderson of Ipswich (CB): My Lords, I declare an interest. I am a member of the Bar Council Brexit working group, though I do not speak on its behalf. I have also been a barrister for 30 years, appearing regularly for individuals, businesses and the Government before the European Court of Justice in Luxembourg.

The grand chamber of the Court of Justice, with its elevated and distant bench, gold cloth hangings and majestic proportions, comes from a different forensic tradition from our own Supreme Court, where judges look advocates in the eye and engage them in dialogue at short range. However, in ways that matter, the Court of Justice has evolved—under the influence of its British and Irish members—in a direction that is both familiar and welcome to common lawyers. It treats its own judgments not as mere illustrations of principle on the continental model but as precedents, applied, distinguished and only occasionally departed from—much as we do in the common law. Though formulaic in style, those judgments are illuminated by opinions of the advocates-general, often as thoughtful and discursive as the best judgments of our own courts. Its judges have taken to questioning the advocates—or at least those who have the skills to make that exercise worthwhile—in a way that would be unusual, even improper, in some of the national courts in which they previously sat. The British Government have long been among the most influential interveners. As the noble Lord, Lord Thomas of Gresford, said, of all who come regularly before that court, they have also been the most successful in their own defence.

The relationship between national courts and the European Court, as expressed through the preliminary reference procedure, is co-operative, rather than hierarchical— based on the recognition that each court has a different function and on mutual good will and respect. Our courts have been adept in their use of that procedure, often pushing the Court of Justice to clarify the law and to define the remedies available to individuals who have suffered from administrative overreach or abusive market conduct.

What lessons for the future can we draw from that experience? I will mention first the transitional period, and then the future relationship. During the transitional period—during which we will remain subject to the full panoply of EU law—Articles 82 and 162 of the draft withdrawal agreement provide for the Court of Justice to rule on disputes arising under EU law or the withdrawal agreement itself. Perhaps that is inevitable. Can the Minister confirm whether those Articles have now been agreed? If they have, is it certain that the Court of Justice will lose its British members, familiar as they are with our legal systems, but appointed as they were by common accord of the member states? I understand that not everybody considers Article 6 of the withdrawal agreement— conclusive as it may be in relation, for example, to the Council—to be wholly clear in its application to members of the Court of Justice.

Even if the Government consider it necessary to submit during the transitional period to the authority of a Court of Justice without its British members—which seems rather a one-sided way of doing things—would they be equally sanguine if, as reported this morning, the transition period is substantially extended, say, to the end of 2021? Or might the exclusion of British members be revisited in the event of such an extension?

As for the future relationship, the plan, as I understand it from the White Paper, is to provide for a common rulebook for goods, supplemented by common rules on state aid, and a range of reciprocal commitments—from environmental requirements to labour standards, going well beyond those normally found in free trade areas. Our existing common EU rulebook is enforceable by any individual or company with an interest in doing so, before any national court and then, if necessary, before the Court of Justice. This highly developed and highly accessible system is needed, given the extensive integration required by the single market in goods. This integration is intended to continue. Yet we are proposing not a system of justice built around the individual, but one that is intergovernmental or statist in nature. As has been said, this is a joint committee of officials, backed by an independent arbitration panel which only it could invoke.

At present—I will not weary your Lordships with detailed examples, although my own case of ABNA illustrates the point—a business that falls victim to an ill-considered EU rule can go to court, whether in the UK or in another country where it does business. It can seek to have the operation of the rule suspended in those countries. Preliminary references can be made, and the Court of Justice may in the end declare the rule invalid. However, under the proposed future arrangement, it seems that it would depend on officialdom, in the UK and in the EU, to appreciate the urgent threats to its businesses and to take the necessary action. Whether UK officials would take up their cause would no doubt depend, as the noble Baroness, Lady Kennedy of The Shaws, has indicated, on many

[Lord Anderson of Ipswich]
factors remote from the legal merits: its size; competing policy priorities within government; the wish not to pick too many fights in the joint committee; or the wish to avoid the public perception that the Government are relaxed about the policy that the rule is supposed to implement.

The only forum in which the validity of the rule could be challenged—assuming irreparable damage had not been done by then—would be under the Ukraine model, via the joint committee or arbitration panel to the Court of Justice. Could the companies that had brought the complaint be represented there, by the advocate of their choice, or would proceedings become a matter to be resolved on the basis of arguments between officials?

Each of the possible options looks less satisfactory than what we currently enjoy. But may I encourage the Minister to set his sights high and press for a system of remedies that fully supports the heartening emphasis of the committee on individual access to justice? Having declared my interest at the start, I hope I may count on him to make full use of the Bar Council and other sources of independent legal expertise to help design such a system.

4.42 pm

Lord Judd (Lab): My Lords, it is a great joy to follow the noble Lord, because, as with so much of the work that the sub-committee has been doing, the input of experience and analysis from the legal profession has been consistently of the highest order. I add my thanks, as a member of the Justice Sub-Committee, to those of noble Lords who have already expressed appreciation of the firm, instructive and helpful leadership of that committee by my noble friend Lady Kennedy. It would also have been impossible for the committee to have done its work or to have produced a report of this order without the invaluable support of its staff and legal advisers—of course, in that I include all the support staff as well. Warm appreciation is due to all of them.

During the time the committee was doing its work I was constantly amazed at the extraordinary situation in which we find ourselves. I have never heard, from any of the distinguished witnesses we have been able to cross-examine, a shred of belief, conviction or evidence that there is any rational or logical reason for rejecting the European Court of Justice. In the nature of Europe as it is, the court is absolutely indispensable and has proved itself as such. All those who have been involved in its work constantly observe that the quality of law has been steadily improving all the time. The contribution by the British legal profession to this has been of a very high order indeed.

We are dealing with a situation based upon an emotional judgment when, with all the complexity and hard reality of the world that confronts us, what we need above all is rational, careful analysis and thinking. However, we are where we are, and it is a very sad situation indeed.

As the committee has done its work, I have grown increasingly concerned that we are moving into a situation with so much at stake and so many implications for the British people, without any clear indication yet of what will replace the court. Something must replace it. The life of Europe crosses frontiers, industry, commerce, security—in all these areas, the life of Europe is a European matter and not simply an insular matter. We must therefore have arrangements to adjudicate and supervise the process.

There is no indication of what we will be able to rely on for the future. This is what concerns me about the whole process of Brexit. Last week we debated the Good Friday agreement and its implications for the people of Ireland. This is a matter not of law and lawyers—I am not a lawyer—but of people, whose families, businesses and professional work are at stake. There is always a human dimension—that should be in big letters in front of everyone involved in the process. How will we sustain—let alone improve—the quality of life for ordinary people as a result of what we are doing?

I am finding a mixture of arrogance, prejudice and emotion which, at my age, seems altogether alien to the traditions of the Britain in which I have been formed, grown up and tried to live my life. Time is getting very short indeed. I hope that, in the remaining weeks that lie ahead—we can no longer really speak of months—all those involved, in the Civil Service, in government and in opposition, at every level, will keep in front of themselves a picture of ordinary people. They should consider ordinary professional and business people, people trying to get on with life with their families, and say to themselves, "Look at the immense responsibility we are now carrying".

It is not a matter of which solutions we may find, we have to find them. I share with noble Lords a conviction that has grown within me throughout my years in politics; it is that, in principle and morality, what really matters is the ability to compromise in the interests of what we all want to achieve—a better society and the well-being of people. Morality comes into it when deciding on a good, constructive compromise that can help create a dynamic that leads things forward. A bad compromise would be to not allow that to happen.

There is a huge challenge for all involved. If our report has done anything, it has helped to underline that we must get some clear indications, very quickly, on what the Government propose to do.

4.50 pm

Lord Bilimoria (CB): My Lords, I thank the noble Baroness, Lady Kennedy, for leading this debate and her committee for its excellent report. This debate is full of noble Lords and noble and learned Lords from the UK legal profession, which is respected around the world as the finest, fairest and most just. I am humbled to be in this company, having read law merely as part of my commerce degree in India, as part of my chartered accountancy qualification, and at Cambridge. In 2016, when I took part in the debate led by the noble Lord, Lord Boswell, chair of the European Committee—what was possibly the last debate in our House before the referendum—I realised, from my humble position, how complicated and almost impossible it would be to implement Brexit should the country decide to leave. How prescient that debate was.

Over the past two and a half years, we have seen that a free trade agreement with the EU is far from "the easiest in human history" to negotiate, as was claimed by our illustrious International Trade Secretary, Liam Fox. Not only was he talking nonsense—here I would add: as usual—but the negotiation has been incredibly difficult, and extricating ourselves from the EU has proved hugely complicated from a legal point of view. It has turned out to be not as simple as passing a withdrawal Bill, deciding to take on all sorts of EU law and regulations, and then changing it whenever we want to in the future. We have been legally attached to the EU in every area in which we operate, whether it is medicine, space or security.

The irony is that we are meant to be leaving the EU to free ourselves, to regain the sovereignty we have supposedly lost and to take back control. Yet at every stage we seem to be trying to get a deal that is equivalent—a word so regularly used—to what we have at the moment. As an entrepreneur and a businessman, when I want to change something, it is to improve things; I do not change things to make things equivalent and keep them the same. Why would I bother? What is the point? If we have equivalence, and have the same regulations as the EU, who will be in charge of it? Who will be in charge of the disputes? That is what the report talks about.

Most importantly, the law is not static; it is dynamic. Look at our tax laws. We have the Office of Tax Simplification—an oxymoron, because our tax system grows and becomes more complicated by the year, and the relevant legislation grows by thousands of pages. Equivalence with Europe does not mean that regulations will stand still. At the moment, the ECJ is the ultimate arbiter. As we have already heard in this debate, implementing this will involve huge complications.

The report is very clear and I commend it. It says:

"Outside the CJEU, no 'one size fits all' dispute resolution model could deal with these issues. The Government will have to agree multiple dispute resolution procedures post-Brexit".

It goes on to suggest, as noble Lords have mentioned, that the EFTA Court could be applied. Although not ideal, this is a possible solution that the Government should not discount. The report then says:

"Liabilities and obligations under the Withdrawal Agreement may arise for many years after the UK has left the EU".

The Government's proposed solution appears to be that any disputes relating to the withdrawal agreement should be settled in the political sphere by a joint EU-UK committee. The noble Baroness, Lady Kennedy, has said very clearly that if it is a state-to-state dispute, that could apply. But what pragmatic model will exist? Of course, as the noble and learned Lord, Lord Hope, has said, during the transition period we will continue to be bound by the ECJ. The Government want to pursue a deep and special partnership, which involves participating in EU agencies; if we do that, we have to respect that the CJEU will have the final say in those areas, whether that is medicines or European arrest warrants, which the noble and learned Lord, Lord Hope, and others have mentioned. Rejecting the remit of the European Court of Justice entirely will limit our access to the agencies upon which we rely: aviation, medicine, chemicals. As the report says, any enforcement and dispute resolution established under the future relationship has to be accessible to citizens and businesses. I started as a micro-business, then a small business, then a medium business, and then a large business; SMEs are the engine of this country and they are being ignored completely.

What about the important point regarding mutual recognition of civil, family and commercial judgments? The report concludes by saying that UK lawyers and judges have played an important role in the evolution of EU law, but after Brexit the UK's ability to affect the development of case law in the EU is likely to diminish significantly. Let us just think about that: taking back control and sovereignty is likely to diminish our ability to do that.

In the report, I saw a table of potential jurisdictional gaps post Brexit. It has been accepted that, during the transition period, it will be the CJEU. However, dispute resolution relating to the withdrawal agreement has not been agreed; trade, not agreed; regulatory agencies, not agreed; security and justice, not agreed; mutual recognition of civil, family and commercial judgments, not agreed. Could the Minister please explain all of these "not agreeds"?

Here is another factor: the UK ends up in court far less often than many other member states. If you look at a table of actions brought before the European Court of Justice against member states, the UK has 63, compared to Italy, with 191. When the UK takes matters before the ECJ, it wins more often than other member states. That is another fact. Then, on the proportion of favourable ECJ judgments by country, the UK is top of the list. We have not done so badly out of this. We talk about crashing out into WTO rules. The EU is a huge participant in the WTO and is the second most prolific initiator of WTO complaints after the United States of America. We use the WTO very effectively already.

Fear has been put into the minds of people and, I am sorry to say this, but our public have been conned left, right and centre. To be told, in the words of the former Foreign Secretary, that we are a "colony of the EU" is nonsense. To be given the impression that all our laws are controlled by the EU is nonsense. People have been so badly fooled. I have been privileged to be in this House for 12 years, and I have seen, and been privileged to take part in, the making of legislation that affects our day-to-day lives. The laws— whether they relate to our universities, our National Health Service, or our taxes—are made here, in this House, and in the other place.

There is a suggestion that, if we leave the EU, we can become like Singapore, or a low-tax economy such as Switzerland. What is stopping us doing that now? Ireland is part of the EU and has a corporation tax of 12.5%. There is nothing to stop us doing that right now; why do we have to leave the EU to do it? Comparing ourselves with Singapore? Get real. It is a city state of 5.5 million people. I am a great admirer of Singapore and its economy—it has done brilliantly—but to compare us, a country of 65 million people, with Singapore is, again, nonsense.

[Lord Bilimoria]

Here is the other fact. People are under the impression that the ECJ or the CJEU are the same as the European Court of Human Rights. They do not realise that, if we leave the European Union, we will still be subject to the ECHR and the International Criminal Court. Are we going to leave the global economy? In terms of taking back sovereignty and taking back control, we are giving up our seats in the European Parliament, our seat on the Commission and our seat on the ECJ. We are losing sovereignty and losing control. The worst part of all is that the world does not want us to leave the EU. I have hosted here in this Parliament delegation after delegation of senior Indian civil servants and I always ask: "Looking at us from India, do you think that we should leave the European Union?" One hundred per cent of them put up their hands and say, "You should be remaining in the European Union". At one meeting, one said, "We feel sorry for you as a country".

We are becoming a laughing stock. I did not approve of Donald Tusk posting that Instagram picture of the cake and the cherries. That was not right. I do not necessarily approve of Jean-Claude Juncker dancing and mimicking our "Dancing Queen" Prime Minister—I am sorry; I shall be ticked off for dancing while making a speech. There is no question but that we have lost respect and are losing our standing in the world. London has already lost its position as the No. 1 global financial centre thanks to Brexit and nothing else. We had beaten New York but have now gone into second place. In reality, how are we going to come to a solution for Northern Ireland—the Achilles heel of Brexit? How will we get out of the backstop and then the backstop to the backstop? How will we prevent our union breaking up?

I have always maintained and been very open about the fact that I am a Eurosceptic. I do not particularly like the way that the European Parliament works, and I am delighted that we did not join the euro, which has been a disaster. It has been kept together only because it would be too difficult to break it up. From a security point of view, we are lucky not to be in Schengen, and I am not for any further unification of the European Union. Yet we have done so well out of it. We have the highest cumulative growth rate of the original EU countries since the beginning.

Therefore, this is about the law, and the law is about the scales of justice and about balance. No case is ever cut and dried; it is always a matter of weighing up the pros and cons, and about judging what, on balance, is the right decision. In spite of my Euroscepticism, on balance by far the best option for this country would be to remain in the European Union. In order to extricate ourselves, the best solution now, based on this report and everything else, would be to allow the people to have a say on "deal", which will probably be a bad deal, "no deal" or "remain".

5.03 pm

The Earl of Kinnoull (CB): My Lords, it is a great pleasure to follow the noble Lord, Lord Bilimoria, who has made a typically ebullient and thought-provoking contribution. I remind the House that I am a member of the European Union Select Committee and the Justice Sub-Committee that wrote this report.

I begin by adding my tribute to our staff. The EU Committee staff have worked consistently at an increased load level for more than two years, and the staff on the Justice Sub-Committee are especially hard worked, because they are the legal resource for the main Select Committee and every other sub-committee as well. We have now published 36 unanimous Brexit reports and the very high quality has been maintained. In my view, this report is no exception.

I also add my warm congratulations to our wonderful chair, the noble Baroness, Lady Kennedy of The Shaws, on her excellent and very clear speech. It is a very wide-ranging report and it takes some skill to summarise it in a very pleasing and quite short address. I will confine myself to underlining three areas on which I would ask the Minister for an update.

My first concern, shared by other noble Lords have, is on disputes between the EU and the UK arising out of the withdrawal agreement. This was an area that took up quite a bit of time during our inquiry and we devoted the whole of chapter 3 of our report to it. Our report was published on 3 May and the British position at that stage was substantially that of the August 2017 future partnership paper *Enforcement and Dispute Resolution*. In paragraph 121 of the report we stated:

"We are unconvinced by the Government's suggestion that all disputes relating to the withdrawal agreement can simply be settled politically by the joint committee".

The Government's response on 5 July was not that helpful and ended on this issue by saying:

"We recognise that there needs to be a clear mechanism for governing and enforcing our withdrawal agreement with the EU—as there is in any international agreement—and we will continue to engage constructively on this in the negotiations".

On 12 July, just a week later, the Government published their White Paper, which, for the first time, saw a limited role for the CJEU, as described by noble Lords. Essentially, it was advancing the same structure that we felt in these circumstances was simply not robust enough. In any event, more than three months have gone by since the Government's response. Accordingly, I and many other noble Lords would be very grateful if the Minister updated us on the vital issue of disputes between the EU and the UK arising out of the withdrawal agreement.

My second concern is slightly smaller; it is about the pipeline of cases and claims that arise during the intermediate period. The draft withdrawal agreement foresees, as we stated in paragraph 132 of our report that,

"the UK would continue to be subject to the jurisdiction of the CJEU for the duration of the transition period".

We were concerned by the open-ended nature of the withdrawal agreement drafting and paragraph 147 concluded:

"It is important that this continued jurisdiction of the CJEU should only be for a reasonable, time limited, period: we urge the Government to ensure that there is a longstop for any claims that arise during the transition, so that cases relating to acts occurring during transition cannot be brought indefinitely".

The 5 July government response on this issue ended encouragingly. It said:

"We expect to reach agreement in negotiations soon on this remaining issue".

We are three and a half months further on, so could the Minister update us?

My final area of concern is mutual recognition of judgments and civil justice co-operation. In many ways this is the most important area; naturally, it is incredibly important for individuals and businesses throughout the European Union today. A particular issue that we looked at was family law. We have the benefit on our committee of much direct experience and expertise. I am looking at the noble Baroness, Lady Shackleton, who is extremely interesting on this point. I am sure many other noble Lords are hoping, as I am, that she might rise in the gap and talk briefly about family law provisions.

I cannot emphasise enough how strongly every member of our committee feels that this area must be addressed successfully. It would be a major failure on the part of all sides if politics got in the way of preserving things of such great value to our fellow citizens. The Government published their framework proposal on this area on 13 June and presented it to the EU negotiating team. The 19-slide pack contains just one slide summarising what the Government are seeking. It is very clear but, naturally, it is at a very high level and contains no real detail. Very slightly more detail is contained in the 12 July White Paper, which states:

"The UK is therefore keen to explore a new bilateral agreement with the EU, which would cover a coherent package of rules on jurisdiction, choice of jurisdiction, applicable law, and recognition and enforcement of judgments in civil, commercial, insolvency and family matters".

It also states:

"The UK will therefore seek to participate in the Lugano Convention after exit".

The Lugano convention would certainly, in my view and I think in that of the whole committee, form part of the "coherent package of rules" mentioned in the White Paper, but importantly our accession to it would need the consent not just of the EU but of Switzerland, Norway and Iceland. Accordingly, making progress on acceding to it is a separate strand of work that is urgent. On 17 July, Lucy Frazer QC MP, Parliamentary Under-Secretary of State at the Ministry of Justice, told us in evidence:

"We have made it very clear in our White Paper that we want to re-join Lugano. It is no secret and we are taking steps to ensure that that happens".

I therefore close by asking the Minister to update us on progress in the area of mutual recognition of judgments and civil justice co-operation, and in particular on what steps the Government have taken since 17 July on acceding to the Lugano convention.

5.11 pm

Baroness Shackleton of Belgravia (Con): My Lords, thank you for allowing me to add a bit about matrimonial law post Brexit. We are being deafened by the Government's silence in relation to many areas, in particular to the area of divorce itself. At the moment, the clutch of Brussels II legislation that deals with a variety of things, including the enforcement of maintenance and children's matters, also deals with divorce. The rules are simple: the first seized court has jurisdiction if the competing court has signed up to Brussels II. We do not know what is going to happen post Brexit.

Let us take the situation of two people living in England who are both French nationals and file for divorce. We do not know the position, if those two French nationals who have jurisdiction in France then file in France, whether we should apply for an anti-suit injunction, whether the French court will recognise the English court as the first court or whether the English court should recognise the French court because they are French nationals. This will lead to an unholy mess and, with no legal aid, the courts are not equipped to deal with it. It will affect children, individuals and the profession. Judges are not trained in this sort of jurisdiction because for the past 20-odd years we have applied under Brussels II. Foreign court venue arguments are rare and non-existent in Brussels II countries. We need certainty; there is no knowledge of what is going to happen. This is a small area of uncertainty that needs to be addressed and I hope that the Minister will look at it, because those who practise in this area, of whom I am one, are nervous and worried about what is going to happen and how we can best serve the human beings who come to us for advice.

I conclude by saying that the noble Baroness, Lady Kennedy, has done an amazing job keeping us, the evidence and all the witnesses in order, and for producing this excellent and succinct report with the aid of the committee's staff, one of whom is in the Chamber today. We are deeply grateful to them all.

5.13 pm

Baroness Ludford (LD): My Lords, I, too, was delighted to serve under the splendid chairmanship of the noble Baroness, Lady Kennedy, who has introduced our report so comprehensively and indeed does a very good job of keeping us in order. It is also a pleasure to participate in a debate with colleagues from the sub-committee. I note that we now have two Lord Andersons. We have the noble Lord, Lord Anderson of Swansea, of that ilk, who is a valued colleague on the sub-committee, and we have the noble Lord, Lord Anderson of Ipswich. I am particularly pleased to take part for the first time in a debate with him because our paths crossed when he was the Independent Reviewer of Terrorism Legislation and I focused on EU justice and security matters as an MEP. His interest in the EU dimension set an example that was not always followed by British officials and institutions.

During the debate, we have noted various features common to Brexit negotiations as a whole that pop up in this area. I should just like to enumerate them. The first—the big elephant in the room—is, of course, the red line against the jurisdiction of the ECJ. It has bedevilled the whole of the negotiations, but particularly in this area, where its impact is greatest and most damaging. As my noble friend Lord Thomas of Gresford said, such prejudice against the court is fuelled by empty and ill-informed rhetoric of the Brexiters. The noble Lord, Lord Anderson of Swansea, rightly described it as a "thick red line": given the Brexiter confusion between the ECJ and the ECHR, perhaps it is "thick" in more ways than one.

[Baroness Ludford]

The noble Lord, Lord Hannay, noted that the Prime Minister still said a few weeks ago that the role of the ECJ in the UK would cease. He rightly described that as misleading. I would go further: it is totally wrong in the light of the Government's own contributions. Again, as the noble Lord, Lord Anderson of Swansea, said, "Now you see it, now you don't". The second common feature of the whole sorry saga of the Brexit negotiations is dishonesty and unreliability. What can we trust that we hear from the Government? Is it still going to be true tomorrow? "Will you still love me tomorrow?"

The third feature is that all of the alternatives to EU membership are more messy, more complicated, more difficult to follow and less transparent and accessible for citizens and businesses. As the noble Lord, Lord Bilimoria, said, we will have multiple systems of dispute resolution and enforcement. Some of those are the special regime for citizens' rights, the withdrawal agreement, the transition and the future relationship. Then we have the dispute resolution between the parties and the attempt at private enforcement by citizens and businesses.

The fourth feature is a belief that everything is political, with a disdain for a so-called legalistic approach. This apparently applies to the debate on the Irish backstop. This pejorative term—it is used pejoratively—fails to recognise that the EU has a legal and constitutional order. It cannot just throw this over. I think that many Brexiters do not like courts and judges, full stop. We are undermining our negotiating ability by failing to recognise the fundamentals about the EU legal order. Linked to that is the complacent idea that the UK can expect a bespoke arrangement just to suit us because we are big, important and we are—well, us.

The fifth feature is the failure to put forward credible and workable proposals. As the noble and learned Lord, Lord Hope of Craighead, said, they have not surfaced. As the noble Earl, Lord Kinnoull, reminded us and as my noble friend Lord Newby mentioned on Monday, proposals always seem to be happening "soon", "in due course" or "when the time is right". That time is now. As the noble Baroness, Lady Shackleton, just said, we are deafened by the silence. This is creating enormous uncertainty and anxiety out there in the real world because the enforcement and dispute resolution options for the future relationship will be shaped by the closeness of the partnership. We are in that cart-before-horse situation where the Government's failure after two years to decide precisely what model they seriously want to pursue has held back sensible discussion on mechanisms.

The July White Paper clarified what the Government meant by the term the Prime Minister had used in two speeches that the UK would "respect the remit" of the CJEU when participating in agencies and programmes. The White Paper explained that this meant respecting court's ability to adjudicate in cases of disputes about decisions made by those agencies "that affected the UK". There was then rowing-back, a phrase used by the noble Lord, Lord Anderson of Swansea. He pointed out the words at the end of—I shall be precise—paragraph 38 in chapter 4.4.3, which added,

"noting that this would not involve giving the CJEU jurisdiction over the UK".

We know, as the noble Lord, Lord Hannay, pointed out, that we have had lots of smoke and mirrors about direct and indirect jurisdiction, but how can the Government say that respecting the "remit" of the ECJ does not mean its jurisdiction? Please can the Minister precisely explain the distinction between those two terms?

Interestingly, the Government's response to the report that we are now debating came just a week before the White Paper. It said that,

"if we agree the UK should continue to participate in an EU agency this would mean abiding by the rules",

including that,

"the UK would have to respect the remit of the CJEU".

But it added another rider:

"our Parliament would remain ultimately sovereign. It could decide not to accept these rules".

It then had the grace to acknowledge that there would be consequences for our membership of the relevant agency; that is, Europol. It seems telling that, just a few months ago, the Government should say, "We're going to respect the remit, but of course, at any time, our Parliament might decide in its sovereignty that it's going to throw over those rules". What is Mr Barnier meant to work on when he has this chopping and changing all the time?

Two areas have been cited in the debate where there will in any case be an element of jurisdiction of the court, direct or indirect: obviously, on the European arrest warrant, assuming that the problems about non-surrender of nationals do not bedevil our participation—a problem solved within the context of the EAW. But if, for instance, a UK surrender request to a French court is contested by the wanted person, the French court could refer that case to Luxembourg. To use a phrase of the noble and learned Lord, Lord Hope, we could not rely just on a "cordial, friendly understanding"; there would be legal norms to be enforced. The second area is seeking a data adequacy assessment, which will be made in the light of EU law.

The noble Lord, Lord Anderson of Ipswich, said that the EU and UK legal systems would be diminished by our non-participation in the EU's legal order. UK lawyers have made a big and positive contribution to developing EU law, and its ending is much to be regretted. It was such an element of strength for us. In the whole justice and security area, we kept wanting opt-outs and so on; we have never played to our profound strengths in the legal area. Nowhere was that more obvious than in Luxembourg.

Unfortunately, the Government do not seem terribly interested in the loss of access to justice and enforcement of rights for citizens and businesses, which will be difficult particularly for small businesses. I, too, will be interested in the answers to the questions raised in our report, and expertly put by the noble Lord, Lord Anderson of Ipswich, about how that is supposed to work for citizens and individuals. That the Government seem so uninterested in that topic tells us all we need to know about "taking back control". It actually means robbing people of their rights.

5.24 pm

Baroness Hayter of Kentish Town (Lab): It is always a pleasure to follow the noble Baroness, Lady Ludford. I am afraid we are becoming a bit of a double act. I am not sure it is one the Minister always appreciates, but there you are—it is his penalty in life.

I also thank my noble friend Lady Kennedy of The Shaws, and her committee, for yet another insightful, clear and informative report. Like the noble Lord, Lord Hannay, I only wish that the Government could be as clear and incisive—and also, perhaps, speedy, as the noble and learned Lord, Lord Hope, so politely put it—on how they propose to deal with the issues raised in the report.

Perhaps the most urgent issue raised in the paper—although there is competition for urgency—is the one on which the Government have said the least, which considers any disputes arising from the withdrawal agreement. Both my noble friends Lady Kennedy and Lord Anderson of Swansea have quoted Michel Barnier as calling this the second most difficult issue after Ireland.

I remind the Minister that, on Monday, the Prime Minister claimed that real progress had been made on the withdrawal agreement, with,

"the shape of the deal across the vast majority … now clear".—[*Official Report*, Commons, 15/10/18; col. 409.]

Yet the response to this report from the Government states that the dispute resolution mechanism "is a matter for negotiation".

So I ask the question, along with that posed by the noble Earl, Lord Kinnoull: if it is subject to negotiation, how is that going? Has it been negotiated and, if so, what is it? Is there to be an arbitration panel, or is the ECJ itself to do the dispute resolution during transition? As my noble friend Lord Judd said, in case anyone has forgotten, time is getting very short. We should by now have rather more detail than we have been given, both about the withdrawal Joint Committee and also about any arbitration panel being discussed. Who will be the members, particularly on the Joint Committee? What will be its terms of reference? Will it be a transparent body? Will its meetings be open? Will its decisions, and the reasoning behind them, be made public?

The Joint Committee, as we know, has the,

"power to adopt decisions and to make recommendations",

and that power is to be reached "by mutual consent". But what if such an accord cannot be reached?

Anyway, one must assume that the committee—which, I assume, will be made up of political persons appointed by the two sides—will not actually be independent, but will be a purely political negotiating entity. The question arises: who could take issues to that Joint Committee? Given that businesses, and indeed citizens, may want to challenge both the interpretation and the implementation of the withdrawal agreement, will they have access to that Joint Committee, or to any arbitration panel that is established, should the implementation disadvantage them? If they do not have that direct access, will our Government have a mechanism for referring any business disputes to an arbitration panel, or some other way of enabling those issues to be raised? As my noble friend Lady Kennedy said, while the Government seem to accept that dispute resolution should be accessible, they have given no information on how this might be achieved.

Turning to the Joint Committee itself, which—if we have read it correctly—might only meet once a year, does the Minister actually think that this is going to be adequate to deal with all the queries that could arise? Will the Minister also say something about the enforcement mechanism for any finding from the Joint Committee or, indeed, from any arbitration panel?

The EU agencies of which we are currently members have been mentioned. When is it envisaged that we would leave these, assuming that there is a deal? Alternatively, if, in transition, we remain members and the Government accept that we would abide by the rules and "respect the remit" of the CJEU in that regard, would that also entail businesses being able to take relevant issues to the CJEU if they were party to any of the cases being held there? As with the withdrawal agreement query, would businesses and citizens have the same rights as now, not only for their disputes to be heard but to any remedy should a case be found in their favour?

The EU Committee noted that the Government seemed rather sanguine about being subject to the CJEU in certain circumstances while having no UK judges there. Whether or not the Government think it would be helpful to maintain a UK presence there, has the issue even been raised in negotiations? I have heard suggestions that this would not be completely unthinkable. As raised by the noble Lord, Lord Anderson of Ipswich, should a longer transition now be envisaged, that matter might become even more pertinent. It would therefore be helpful to know whether such discussions have taken place with the EU. Will the Minister also give some thought to the interesting proposal from the noble Lord, Lord Thomas of Gresford, for a special committee in the CJEU? It is beyond my remit to comment on the legality of such a proposal.

Turning to the civil, family and commercial issues—including insolvency, as stressed by the noble Earl, Lord Kinnoull—will the Minister update the House on negotiations relating to the recognition and enforcement of judgments across the EU after exit day, with particular reference to divorce, maintenance, adoption and child custody, in the way described by the noble Baroness, Lady Shackleton? There is real urgency in this—the committee said it had "significant concerns" in its recent letter to the Lord Chancellor—because families form or change according to timetables completely unrelated to the Government's priorities. As we have heard, lawyers in this field worry that children will be badly affected if there is any uncertainty at the time we leave.

Regarding lawyers themselves, the Government's response to the report states that during the transition,

"our lawyers will maintain their rights of audience",

at the CJEU. Can the Minister confirm that this has been agreed by the court and the Commission and that it applies to all cases, not just those to which the Government are a party? Will he also inform the House what discussions have taken place regarding the ability of UK lawyers to retain rights of audience

[Baroness Hayter of Kentish Town]
at courts within member states, on the same sort of fly-in, fly-out basis as now, during the transition period, where a UK national or business is party to a case in one of those domestic tribunals?

There are big issues facing our country and our negotiators, both today, as we have heard, and in the days and weeks ahead. There are political challenges within the Prime Minister's own party and there has been a failure—so far—to agree a deal likely to win support among the EU 27 and, indeed, in the House of Commons. It would be unpardonable to complete a deal without having in place robust, open and transparent mechanisms for ironing out future difficulties and disagreements, and even more so to leave our citizens—such as families dealing with adoption, maintenance or divorce—or businesses without clear, reciprocal, fair and transparent legal processes to replace those now in operation, as described by the noble Lord, Lord Bilimoria.

This report covers some of these issues, as have others by the same committee. Answers from the Government are needed in order to offer certainty to everyone likely to face difficulties as a result of our withdrawal, even assuming that we have a deal. Needless to say, however, the no deal scenario is even more worrying, with very little comfort coming from the Government's technical notices—as I think they are called—on handling civil legal cases involving EU countries, in that situation. As we have heard, tried-and-tested EU rules currently determine which country's court will hear cross-border civil, commercial or family law cases, and how judgments in one member state are recognised and enforced in another, mainly on the basis of reciprocity. Without a deal, such co-operation will fall away, possibly on 1 April.

This paper—the so-called advice from the Government—states only that any party to such a cross-border dispute would need to consider the effect of these changes on any existing or future cases, or seek professional advice. It is, however, precisely the professionals who need to hear what the Government intend, because they will be unable to advise their clients without that clarity. Family lawyers are highly alarmed about the implications of the sudden withdrawal of co-operation, recognition of judgments and lack of enforcement. We are talking about families—families who are divorcing, dividing assets or arguing over custody of their children.

Some Brexiteers may say that no deal is perfectly bearable, probably because they will not suffer the costs. It will be families that take the hit if the negotiators fail in their task, or give in to extreme Brexiteers who seem to think that no deal is acceptable to the UK. Will the Minister, therefore, take these concerns back to those of his friends who are in that group? Will he make sure that we do not face that outcome?

However, assuming for the moment that there is a deal—let us be positive—we, and indeed the businesses or individuals who may be affected by it, still need far more clarity on the issues raised today about disputes over either the interpretation or the implementation of the withdrawal deal. We look forward to the Minister's response.

5.37 pm

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, on behalf of the Government I very much welcome the EU Justice Sub-Committee's report *Dispute Resolution and Enforcement After Brexit*. The detailed analysis and consideration of the areas covered by the report is a welcome contribution to the wider discussions on how disputes between the UK and EU should be resolved after we leave in March 2019. The report was ably introduced by the noble Baroness, Lady Kennedy, and we are fortunate to have the benefit of her vast experience of these matters. I also thank noble Lords from all sides of the House for their constructive and insightful speeches during the debate.

I will say as much as I can on these matters and respond to as many questions as possible, but I ask noble Lords to accept that this is a live negotiation. Many of these matters are being discussed and negotiated on at the moment. Some parts are agreed; others are not. Some parts are agreed at technical level; others are outstanding and waiting for related parts to be agreed. In some respects, therefore, it would not be helpful to go into too much detail on some aspects of the negotiations. Nevertheless, I will try to respond to as many of the points raised as possible.

Noble Lords have expressed concerns about how disputes will be resolved after the UK leaves the EU, in particular—this was referred to by many noble Lords—the proposal that the jurisdiction of the CJEU would be replaced by a judicial or quasi-judicial body to oversee disputes between the UK and EU. I assure noble Lords that, since the EU Justice Sub-Committee published its report in May, we have made significant progress in the negotiations on establishing appropriate and workable dispute resolution mechanisms. I would like to update noble Lords on these negotiations and note that the UK and the EU are close to concluding a withdrawal agreement that sets out the terms of the UK's orderly exit from the European Union. The withdrawal agreement will provide important certainty to individuals and businesses, setting out the deal on citizens' rights, on the financial settlement and on the implementation period. We are close to reaching agreement on a number of other separation issues, which will provide for winding-down provisions across a number of areas as we leave—for instance, cases pending at the CJEU and ongoing customs processes.

The noble Baroness, Lady Kennedy, asked specifically for an update on these ongoing judicial proceedings. I can assure her that the relevant provisions will set out the process winding down UK involvement in legal proceedings before the CJEU in an orderly manner. These will support the legitimate expectations of, and efficient access to justice for, those who have spent time and money progressing cases through the UK and the European court systems, allowing all cases in train at the end of the implementation period to continue to their natural conclusions. Once the final areas of the withdrawal agreement have been settled, we will consider the necessary legislative requirements for those areas. I realise that this will be a disappointment to the noble Lord, Lord Thomas, in particular, but it

remains the Government's position that, in leaving the European Union, we will bring about an end to the jurisdiction of the CJEU in the United Kingdom.

A number of noble Lords asked me about judicial co-operation and the European arrest warrant. We are pleased that we have reached agreement with the EU on the content of Part Three, Title V, of the withdrawal agreement on ongoing police and judicial co-operation in criminal matters. Title V provides clarity and legal certainty for individuals, for law enforcement stakeholders and the judiciary in the unlikely event that we do not reach agreement on future police and criminal justice co-operation as part of our future security partnership with the EU. We want to continue to play a leading role in Europol and Eurojust, and we will continue to do so during the implementation period.

Baroness Ludford: I am sorry to interrupt the Minister—he might be going on to answer this question—but he has just repeated the mantra about ending the jurisdiction of the court, and he has cited the fact that we want to stay part of agencies such as Europol and Eurojust. How is the remit of the court, in respect of enforcing the rules regarding the UK, going to work if we do not recognise the jurisdiction of the court?

Lord Callanan: If the noble Baroness will have a little patience, I will come on to talk about the agencies and the remit of the ECJ.

Withdrawal from the EU will mean a return to the situation where the UK and the EU have their own autonomous legal orders. The Government agree with the committee's observation that the withdrawal agreement and the future partnership must respect the autonomy and integrity of both legal orders.

On the points made by the noble Lords, Lord Thomas and Lord Anderson, this is not about demonising the CJEU in any way. Our position has always been that we respect the role of the CJEU as the ultimate arbiter of the meaning of EU law, and we respect the autonomy of the EU legal order, as indeed we expect it to respect ours. However, it would be wholly unprecedented for a non-member state to be subject to the jurisdiction of the CJEU, and we do not believe that it would be appropriate for the court of one party to resolve disputes between the two.

There are, of course, limitations under EU law on the extent to which the EU can be bound by an international judicial body other than the CJEU. Therefore, we will also need to find a principled and pragmatic solution to respecting our unique status as a third country with our own sovereign legal order. For these reasons, the EU and the UK need to agree on how both the provisions of the withdrawal agreement and our new deep and special partnership can be monitored and implemented to the satisfaction of both sides, and how any disputes that arise can be resolved.

As the committee acknowledged in its report, there is not a one-size-fits-all solution for dispute resolution after our exit. Despite the fact that dispute resolution mechanisms are common within international agreements, the form these mechanisms take varies considerably across the spectrum of agreements, given the different areas of international co-operation, and consequently the varied nature of potential disputes that could arise. That is why we are negotiating bespoke mechanisms across the different areas where we need a dispute resolution mechanism.

The sub-committee and noble Lords have raised concerns on the rights of EU citizens. Let me assure the House that, in setting out governance principles, we will ensure that the rights of EU citizens living in the UK, and of course UK nationals living in the EU, are safeguarded. This reflects the fact that the Prime Minister made it clear that that was her first priority for negotiations. The agreement reached in December and set out in our joint report with the Commission, alongside Part Two of the withdrawal agreement, will provide these citizens with certainty about their rights going forward.

In the UK, EU citizens' rights will be upheld by incorporating Part Two of the withdrawal agreement into our law. As the noble Lord, Lord Hannay of Chiswick, noted, there will be a time-limited period when our courts may choose to refer questions on specific points of law concerning citizens' rights to the CJEU for a decision, having had regard to whether relevant case law exists, but it will be up to our courts to decide whether do so. Let me reassure the noble Lord that it will be for our courts to make final judgments, not the CJEU. Any continuing CJEU role in our legal system will be temporary and narrowly defined. The ability of UK courts to make voluntary references to the CJEU will, as the noble Lord is aware, be time-limited to eight years. These short-term limited arrangements have been agreed to help ensure consistency and certainty for citizens over these new rights as they are implemented.

For the implementation period to operate effectively, the UK will need to remain in step with the EU. The withdrawal agreement will be underpinned by a duty of good faith, with a joint committee in place enabling either side to raise issues or concerns. These arrangements will help ensure the implementation period works properly for both sides. We have agreed that, for the implementation period, the existing EU mechanisms for supervision and enforcement will apply, including continued CJEU jurisdiction. This is necessary so that there will be one set of changes for businesses and people. I hope that that reassures the noble and learned Lord, Lord Hope of Craighead, and the noble Lord, Lord Hannay of Chiswick, who raised their concerns about the need for certainty during the transition period. This does not change the fact that in the long term, after the end of the implementation period, the UK will no longer be under the jurisdiction of the CJEU.

Let me answer the point raised by the noble Lord, Lord Anderson of Swansea, by making it clear that the implementation period will not be extended. I thank him for the offer of co-operation from the Bar Council; we continue to have regular consultations with lawyers in practice, as well as the judiciary, on all aspects of the complicated legal mechanisms in both the withdrawal Act and the future partnership.

Lord Anderson of Swansea: That is the definitive response? Have the Government told Monsieur Barnier that there will be no extension at all of the withdrawal period?

Lord Callanan: Indeed, and it is the EU position as well that there will be no extension of the implementation period. The terms of it are agreed. That is the position of the Government, and as far as I am aware that is also the position of the EU.

The noble Lord, Lord Hannay, asked me about the forthcoming withdrawal Bill. It used to be called the withdrawal agreement and implementation Bill, but to confuse matters further it is now called the withdrawal Bill—to add on to the withdrawal Act that we already have. Yes, the noble Lord is correct in his interpretation that to legislate for the implementation period, depending on the final agreement, we will need to modify parts of the withdrawal Act.

Moving on to the longer term, our White Paper on the future partnership published a detailed vision for the future security and economic partnership—a framework which we believe will deliver the unprecedented partnership all our leaders are committed to. The proposal advanced in the White Paper builds on the vision set out by the Prime Minister at Lancaster House, in Florence, at Mansion House and in Munich. As we leave the EU, we want to build a new deep and special partnership based on mutual trust and reliability, with a transparent way of ensuring that each side is acting in accordance with the final agreement.

To ensure that that new relationship stands the test of time, we will need to have the right structures in place for co-operation, decision-making and the prevention and resolution of disputes. We are proposing a system that provides institutional governance over the future relationship, including the areas where the UK and the EU agree to apply the same rules, and over our participation in certain EU bodies. We hope to achieve an arrangement that recognises the unique starting point of having the same rules and regulations. We have set out a clear structure to underpin the deep and special relationship we are seeking. The future relationship should be based on an overarching institutional framework which will encompass most of the individual agreements that make up the partnership and set out any common governance arrangements. These should include political oversight and a joint committee.

This framework draws on precedents from other international agreements, including those that the EU has entered into, which all have some form of institutional architecture. In general, the broader and deeper the relationship, the more important it is that there is a strong institutional architecture in place to govern it. We are seeking an ambitious deal, one that recognises the deep and special partnership that we have with the EU and its member states. This institutional framework, carefully designed to respect the autonomous legal orders of the UK and the EU, has the strength and flexibility to support the depth of the relationship we wish to create. In line with that principle of respecting our autonomous legal order, we have been clear that in leaving the EU we will bring an end to the jurisdiction of the CJEU. The proposal delivers on that commitment. No longer will courts in the UK be able to refer cases to the CJEU, or the CJEU arbitrate disputes between the UK and the EU.

We are proposing that, in some areas, the UK will make a choice to retain a common rulebook with the same rules as the EU. Where we have a common rulebook, it is possible that a dispute could relate to whether these rules have been interpreted correctly. The UK recognises that only the CJEU can bind the EU on the interpretation of EU law and therefore, in these instances there should be an option for a referral to the CJEU for an interpretation, either by mutual consent from the joint committee or from an independent arbitration panel. The joint committee or arbitration panel would have to resolve the dispute in a way that is consistent with this interpretation. This would respect the principle that the court of one party cannot resolve disputes between the two. In those areas where we have a common rulebook, it will be important for businesses and citizens here and in the EU that these rules are interpreted and applied consistently.

The noble Lord, Lord Anderson of Ipswich, asked about individuals' access to dispute resolution mechanisms such as arbitration. While they will not have access to these mechanisms as they are at present for state-to-state disputes, we are committed to ensuring the consistent interpretation and application of the rules that we agree with the EU. The UK would also, therefore, commit by treaty that its courts will pay due regard to the relevant CJEU case law, in so far as this is relevant to the matter before them. As the White Paper makes clear, UK courts will not, however, be able to make preliminary references to the CJEU. This will not affect consistent interpretation of a common rulebook, which will be delivered through the commitment to pay due regard to existing case law. In other areas there will be a recognition that rules are equivalent. We will need to agree governance arrangements that, first, oversee the application of regulatory commitments, secondly, ensure that the common rulebook is interpreted consistently and, thirdly, enable the UK to participate in EU bodies and agencies where needed for co-operation to take place.

We believe that it is in the national interest and in the interests of certain sectors of our economy to maintain a smooth trading relationship by having rules similar to the EU's, and to continue UK involvement in certain EU bodies. This is all aimed at enhancing our wider economic and security partnership with the EU, providing effective structures to oversee the process and providing certainty to businesses and citizens, so that their rights and obligations will be applied consistently in both the UK and the EU. The noble Baroness, Lady Kennedy of The Shaws, asked whether this model, set out in the White Paper, would also serve for governing the withdrawal agreement, while the noble and learned Lord, Lord Hope of Craighead, asked for an update on progress in negotiations. I would like to acknowledge that a great deal of progress has been made over the past couple of weeks in negotiations concerning the withdrawal agreement; however, there are still a number of areas that are subject to ongoing negotiations, one of which is the governance of this agreement.

I think I answered the question of the noble Lord, Lord Anderson, about individuals. He also asked about the British judge on the Court of Justice. Of course, as he will be well aware, judges do not "represent" their member states. As Sir Konrad Schiemann said in his evidence to the committee, the UK will no longer be a member state from March 2019 and it is therefore right that we should withdraw from the institutions. While we will not have a UK judge, we will still have the right to intervene before the CJEU and our lawyers will maintain their rights of audience.

Moving on to the issue of civil judicial co-operation and the Lugano convention, mentioned by a number of noble Lords, we also recognise in the sphere of private law the important role of civil judicial co-operation for businesses, consumers, employees and families in providing clear rules to resolve disputes in sensitive matters quickly and efficiently. That is why the UK wants our future relationship with the EU to include a mutually beneficial agreement on civil judicial co-operation. This would include co-operation in civil, commercial, family and insolvency matters. The UK has presented its position to the Article 50 task force team in the Commission, and that presentation is available on the GOV.UK website. That is subject to ongoing negotiations that we are taking forward with our EU partners.

I also reassure noble Lords about our continued participation in the 2007 Lugano convention. The UK has been clear that we will seek to participate in the convention after our exit from the EU. At the March 2018 European Council, we agreed that the EU will notify other countries that the UK is to be treated as a member state—

Lord Anderson of Swansea: The Minister has on many occasions used the phrase, "negotiations are continuing" over a very wide field, but the clock is ticking. Is he confident that it will have stopped ticking in time for us to be ready by the end date in March?

Lord Callanan: The clock will not stop ticking. I hope that it will continue to tick and that negotiations will continue to advance, but of course, as he is well aware, we cannot wait until March to get agreements. Noble Lords are aware that we have to legislate for the withdrawal agreement through both Houses. We are very aware of the needs of parliamentarians; they will insist on proper parliamentary scrutiny of this important legislation, and therefore we will need to get an agreement swiftly, certainly in terms of the withdrawal agreement, in order to provide for the meaningful vote and then to provide for appropriate scrutiny of the legislation to implement it.

As I said, at the March 2018 European Council we agreed that the EU will notify other countries that the UK is to be treated as a member state for the purposes of international agreements for the duration of the implementation period. This includes the Lugano convention. We are seeking to put in place arrangements to continue our participation in that convention at the end of the implementation period. However, the exact arrangements for continuing our participation are a matter for future negotiations with our EU partners.

My time is up, but let me say a word about agency participation. We believe that it is in the mutual interests of the UK and the EU for us to continue to participate in various EU agencies and we have set those out. We are seeking to maintain co-operation on the EU's law enforcement tools, including the European arrest warrant, although the legal form and governance of these arrangements are subject to negotiation. I say, for the benefit of the noble Baroness, Lady Ludford, that where we participate in an EU agency we will respect the remit of the CJEU, as set out in the White Paper.

I hope that I have, as far as possible, reassured the House that we are developing a robust framework that will ensure that, while we are leaving the EU, we will continue to build on our deep and special partnership for the long term. When we have finally, I hope, reached agreement, I look forward to coming back to the House and updating Members further.

5.59 pm

Baroness Kennedy of The Shaws: My Lords, I thank the Minister for his response, although I find it very dispiriting. We are being told that we are replacing a court—which included a British judge and had considerable input from British lawyers— with what are being described as "bespoke mechanisms". These many different mechanisms will fall short of giving civilians—individuals, small business people and people who would like to bring their family matters before some sort of court—the opportunity to do so. They are not going to be included. I was most disappointed to hear the Minister say that individuals will not have access to the arbitration panels or the dispute mechanism. This is a serious disappointment and will give no comfort to the family lawyers and the many different people who gave evidence before our committee.

I thank the many Members who have contributed to this debate. The quality of every contribution speaks to the great expertise of this House. I should have thought that they would have touched the Minister with the importance of what this debate is about. Law matters. At the heart of all relationships—inside nations and across borders; wherever relationships are created for trading purposes; in marriage and the ending of marriage; in making discoveries and having high standards for the medicines we share—is, inevitably, law. These are the sets of rules that we, in civilised nations, put together to regulate how we live together. At the end of this, there has to be a proper court which is respected and trusted. We are replacing a court that has had many decades of development and input of a really valuable kind from British lawyers. We are withdrawing from it and replacing it with an ad hoc set of mechanisms which I have no doubt will fall short of what the British public would expect. This is disappointing, as is hearing how little progress has been made on these issues in the course of the negotiations.

Law matters because it is the mortar that binds relationships. In creating this red line and tearing up our relationship with the European court, we are taking part in a process of destruction. We have allowed ourselves to be seduced by the popular press and hard-line Brexiteer idea that somehow all this wash of law came at us from Europe and that we were passive

[Baroness Kennedy of The Shaws]
receivers of it. It is not true. Britain is full of great lawyers and judges who contributed collaboratively in many ways in the creation of this law. There is an idea that we have been at the mercies of it. I would ask any noble Lord in the Lobby outside and any person who wants to get themselves free of this court, which judgments do you not like? Almost invariably, the hard line Brexiteer cannot give an example of a case where they did not like the result. They give an example from a court that is not involved with the European Union but is quite separate—the European Court of Human Rights. It is that failure to understand the role played by the European Court of Justice that has been at the heart of this unsatisfactory misleading of the British public.

In thanking the Minister for answering as he has, I pay tribute to the awful school of bureaucratic obfuscation that helped to write his speech. It must pain Ministers some times to have to read what is presented to them as the answer to serious issues. I pay tribute to those on my committee. This report came out of really good advice given to us from people expert in the field. I include the noble Lord, Lord Anderson and the noble and learned Lord, Lord Hope, and those who gave evidence before us. It is sad that it is being dealt with in this cavalier way and that we are putting to one side the riches of our collaborations in trying to make good law that can help create relationships across Europe. I am sorry to hear the response we have had. I am going to keep at it, of course. I beg to move.

Motion agreed.

Religious Intolerance and Prejudice

Motion to Take Note

6.05 pm

Moved by ***Lord Bourne of Aberystwyth***

That this House takes note of the challenges posed by religious intolerance and prejudice in the United Kingdom.

Lord Bourne of Aberystwyth (Con): My Lords, I thank the Chief Whip's office and the usual channels for allowing time for this most important debate.

Barely a month ago, my noble friend Lord Popat—who is not in his place at present—raised a question about what is being done to reassure Jewish communities about anti-Semitism in the United Kingdom. In that debate, we heard many powerful speeches from across this House that brought to light the palpable fear felt by Jewish communities. The message from this Chamber was clear: all Jewish people in the UK today are valued, they are welcome, and they will be protected whatever it takes. This is a message I reaffirm today.

Due to restrictions on our time, much was left unsaid that afternoon, so I am grateful that more time has been found to open up this discussion, not only on anti-Semitism, but more broadly to all religious intolerance and prejudice. A deep discussion of religious intolerance and persecution in our country is needed in the light of the increase in religiously motivated hatred. I regularly speak to and receive messages from people of all faiths. They tell me of their anxiety at being subjected to hatred in a country they call home and of which they are proud, at the hate directed towards them and at the persecution directed at other groups.

I recall the words of the most reverend Primate the Archbishop of Canterbury. It is a pleasure to see him in his place and we eagerly await his contribution. In the debate on shared values and public policy priorities, he said,

"we need a more beautiful and better common narrative that shapes and inspires us with a common purpose",

He warned that we must resist,

"the turn inward that will leave us alone in the darkness, despairing and vulnerable".—[*Official Report*, 2/12/16; col.418.]

I could not agree more, and I begin to see this better common narrative realised in Near Neighbours projects up and down the country, led by people of all faiths and none. These projects seek to highlight the values that bind our society together to invigorate and develop their local areas—values such as freedom of expression and freedom of worship, democracy, equal opportunity and the rule of law. I want to make absolutely clear, as I have stated many times before: any abuse directed at someone because of their religion, race, sexual orientation, disability or because they are transgender, is totally unacceptable and will not be tolerated. The Government will do whatever it takes to unite our country around these values and to confront those who would deny our fellow countrymen and women these freedoms. These values are fundamental and anyone who spreads intolerance or hatred shames themselves and places themselves outside of our society.

This message is timely as we mark National Hate Crime Awareness Week. It is a moment to highlight the challenges we still face. This morning I visited Greenwich Islamic Centre to meet a group of young black Christians and Muslims. I heard first hand their experiences and how they feel we can all do more to improve opportunities and challenge hatred, to tackle Islamophobia and anti-Semitism and to seek to build an inclusive and united Britain around these values.

It is also a moment to listen and learn from the tremendous work of people standing up against hatred across the country. Last month, I was privileged to attend the national No2H8 Crime Awards, which brought together hundreds of activists working to combat hate—many of them partners with the Government and with each other. The importance of this particular awards ceremony has grown over the years.

I was particularly inspired by the winners of their Young Upstander Awards: Siena Castellon, who campaigns against bullying of people with disabilities and particularly highlights hidden disabilities; Rory McGuire, who works to combat hatred directed at people with facial disfigurements; and Ahmad Nawaz, who campaigns against religious intolerance following his experience of being attacked by the Taliban, losing family and being himself badly injured. These stories are but a few examples of the incredible people and organisations honoured that evening. They remind us that the only way to respond to hatred and intolerance is to call it out and stop it.

That is true of government too. We are utterly committed to challenging and condemning religious intolerance and persecution in all forms. We stand half way through the four-year hate crime action plan, and this week we released our refresh of the plan, which is an important opportunity to take stock of progress made. We now have a strong legal framework in place. There are criminal penalties for offences such as incitement to racial, religious or sexual orientation hatred, and racially or religiously aggravated offences such as intentionally causing harassment, alarm or distress. We have increased sentences for offences motivated by prejudice, hostility, or prejudice based on a person's real or perceived race, religion, transgender identity, sexual orientation or disability.

Our work with the cross-government working groups to tackle anti-Semitism and anti-Muslim hatred and Islamophobia also continues at pace. The feedback from these groups and from round tables with members of Sikh communities has been invaluable. We have also continued to collaborate with a range of partners such as the Anne Frank Trust; Streetwise's Stand Up! Programme; True Vision, the police hate crime reporting portal; Tell MAMA and Remembering Srebrenica.

But the renewal and refreshing of our hate crime action plan is also the right moment to look ahead to the next two years of the plan. If the last two years are anything to go by, we have the potential to achieve a lot. We have achieved much better reporting of hate crime, which is one reason—not the only one—why the incidence of reported hate crime has gone up. We have had success in encouraging the reporting of hate crime, and it is important to know that.

We have asked the Law Commission to review the coverage and approach of current hate crime legislative provision. We must be clear: when someone has perpetrated a hate crime, they will be held accountable for it. Later this year, we will launch a wide-ranging national hate crime public awareness campaign publicly to address hate crime. The refresh commits us to updating the True Vision website to make it easier to use and to ensure it remains the key central platform for all hate crime reporting. We are working with the National Police Chiefs' Council to provide hate crime training for all call handlers in order to ensure an appropriate response from the first contact, and we are creating the challenging hate crime support group—a network of organisations who share resources, skills and best practice.

Sadly, security remains a key concern. The Government have already provided over £2.4 million to increase security provisions for vulnerable places of worship, and in the refresh we have committed further resource for this purpose, to be released next year. That has been welcomed by faith communities up and down the country. It ensures that we are alive to community concerns and able to respond quickly and strongly when incidents occur. The need for this was sadly illustrated by the recent incident in Cricklewood, where Islamophobic abuse was directed at worshippers attending a lecture series for Ashura, before people were injured, some of them seriously. But the response was exemplary. We were quickly in contact with communities and condemned the incident, and the police offered their support and presence for remaining lectures. We will do whatever is needed to protect all our communities.

Our message must be that there is no place for hate in our society, and that is equally true of online hate. Last December, with others I hosted a ministerial round table which brought together social media and technology companies with community stakeholders to consider how hateful narratives are able to spread online and, crucially, what can be done to prevent it. These conversations are ongoing and will be reflected in the forthcoming White Paper on online harms. A number of different aspects of government work will be brought together to make industry take responsibility for harms, including using technology to improve user safety, supporting users to increase their own digital resilience, and outlining what direct action the Government can take to address online harms.

I am mindful that these challenges cross borders. Our work, naturally, has a number of international dimensions, notably the promotion of freedom of religion or belief around the world, including in Commonwealth countries. I pay tribute to what my noble friend Lord Ahmad is doing in this regard. We actively defend and promote this right on a number of fronts. We lobby Governments for changes in laws and practices that discriminate against individuals on the basis of their religion or belief. We raise individual cases of persecution with relevant authorities in other countries. Multilaterally, we work through the United Nations and the Commonwealth, and there are important lessons to be learned, not least from attacks on Coptic Christians.

Through this international work, there are a number of lessons we can learn. I was personally reminded of this on a recent visit to Bosnia and Herzegovina, where I visited the Srebrenica-Potočari Memorial and Cemetery for the victims of the 1995 genocide. With the Mothers of Srebrenica I laid a wreath in memory of those cruelly killed. Speaking to them afterwards renewed my conviction that we cannot tackle today's problems without learning from the horrors of the past. In that spirit we are supporting the creation of a national memorial to the Holocaust here at home. Leading British architect Sir David Adjaye has been appointed to design the memorial and learning centre. The ambition is create a world-class memorial in an iconic location, making a bold statement about the importance Britain places on preserving the dreadful memory of the Holocaust. The Holocaust Memorial Day Trust, a charity set up by the Government, runs events and programming for Holocaust Memorial Day both locally and nationally, with government funding. We are committed to ensuring that these awful histories, alongside the horrors of the Rwandan genocide, from which we mark the passage of 25 years next year, the Cambodian genocide and the genocide in Darfur are never forgotten and never repeated—not to mention current challenges such as the Rohingya situation.

In 2017, over 11,000 activities took place around the country to mark Holocaust Memorial Day. It is a real tribute to our communities, and the incredible contribution that people of faith make to their local communities is something I have been honoured to

[Lord Bourne of Aberystwyth]
witness first hand. During my recent faith tour I visited the Khizra Mosque in Manchester for a big iftar during Ramadan, where people from local communities, including those of Jewish and Christian faith, joined worshippers at the mosque to break their fast. The mosque opened its doors on the night of the appalling attack at the Manchester Arena, providing a drop-off centre for emergency services and shelter for victims in need of a safe place. Islam at its best—our country at its best. I have also been inspired by the range of faith-based social action projects developing their local neighbourhoods and creating connections across different faith groups. Jewish-led Mitzvah Day, Sikh-led Sewa Day and Muslim-led Sadaqa Day all reinforce one another, and throughout the year find a network of social activism with our faith communities at the front.

Indeed, engagement between faith communities is growing. It is one of our strongest defences against intolerance and persecution. I was also privileged to learn about the twinning arrangement between St Philip's Church in Southwark and the Old Kent Road Mosque on this faith tour, and to see it in action. The church-mosque twinning programme is an excellent example of interfaith in action. It was clear to me from my visit that twinning has helped the relationship between the mosque and local clergy to move from initial contact, through dialogue, towards real mutual support and friendship.

In his contribution in response to my noble friend Lord Popat's question on anti-Semitism, the right reverend Prelate the Bishop of Birmingham made the distinction between talking about people and talking with them. He said that this was the only way properly to challenge prejudice and intolerance. He is right. I once again call on everyone, whether they are a member of a faith community or not, to visit their local synagogue, mosque, gurdwara, church and temple. Let them know that you stand with them in good times and difficult times. When people from different backgrounds have the opportunity to mix socially and get to know one another, it breaks down the walls on which intolerance creeps and grows. Enter with an open mind and an open heart to hear about their traditions, and their hopes, and share yours with them. I encourage our places of worship to keep their doors open, reaching out to your local neighbourhoods with everything that they have to offer.

It is when we feel the most challenged, and the most afraid, that these encounters are at their most valuable. We must all challenge anti-Semitism, Islamophobia, discrimination against Sikhs, against Hindus—against any racial group—wherever it exists. I am proud of my country, a rich and diverse country which confronts religious hatred and bigotry and must always do so. We must all be of that opinion and act accordingly: government, opposition, institutions and individuals. That is the British tradition. I beg to move.

6.20 pm

Lord Hain (Lab): My Lords, I am sure all Members present would wish to endorse the Minister's final calls at the end of his wide-ranging speech.

We have grown used to pogroms against minorities at various stages in our history as a country: against Jews intermittently and sometimes continuously over the millennia; against the Irish in the nineteenth century; against Jews again in the 1930s; against black and Asian Britons from the late 1950s until today; and against Muslims in the first two decades of this century. But what is entirely novel today is a toxic convergence of attacks on Jewish, black and Muslim British citizens all at the same time. I am not aware of any period in our history when this has occurred before. It is deadly serious, with many of our citizens living in fear or terror simply because of their religion, race or skin colour. This is not just scandalous, it is criminal.

Let us touch on the sheer scale of the problem, turning first to attacks on Jews and synagogues. The number of anti-Semitic incidents in Britain reached the highest level on record last year, including a 34% increase in the number of violent assaults, according to the Community Security Trust. It stated that in 2017 there were nine incidents involving the,

"desecrations of, or anti-Semitic damage to, synagogues",

in the UK. In the previous year, there were 11 such incidents. The most recent CST report for the period from January to June 2018 states:

"There were 43 incidents of damage and desecration of Jewish property recorded by CST in the first six months of 2018 … Three of the incidents in this category in the first half of 2018 involved the desecration of Jewish gravestones, eight affected synagogue buildings and 18 happened at people's homes. All involved some element of anti-Semitic targeting, language or imagery in order to be recorded as anti-Semitic by CST".

There have been other attacks on Jewish citizens, including on fellow parliamentarians; notably, Luciana Berger MP has been subject to abuse, intimidation and attacks of the vilest kind, not just by fascists, but, I am ashamed to say by a tiny hard-left sect comprising members of the Labour Party backed up by the far left outside. One shouted "traitor" at me when I attended the "Stand Up to Anti-Semitism" rally in Parliament Square in the summer. These people seem to imagine they are promoting Palestinian rights by such attacks; as a robust supporter of justice for the Palestinians since the early 1970s, I can tell them flatly that they are damaging, not enhancing, that vital cause—a message that my party leader might heed as well.

Ironically, the Labour Party has long allied itself with our Jewish citizens and it is the Tory Party that has over the decades given shelter to anti-Semites. Today, as brave Conservative Peers, the noble Baroness, Lady Warsi, and the noble Lord, Lord Sheikh, have pointed out, the Tory Party remains riddled with Islamophobia, and some Tories work with UKIP figures such as Nigel Farage and Trump supporters such as Steve Bannon, who have helped create a climate of fear for Muslims.

As European Parliament Member Claude Moraes wrote in the *Guardian* in June after about 15,000 supporters of Tommy Robinson, the fascist former leader of the English Defence League, had marched in London:

"Make no mistake, this is an attempt to build an 'alt-right', pro-Trump movement in Britain. Saturday's demo included chants of 'Make Britain Great Again'".

That march was organised by a former editor-in-chief of Bannon's Breitbart, and an ex-EDL deputy leader; it was backed by Bannon, with forces to the right of the Conservative Party in Britain from UKIP as well as ex-BNP and National Front supporters and the Football Lads Alliance.

Then there are the attacks on Muslims and mosques. The latest report of the organisation Tell MAMA—Measuring Anti-Muslim Attacks—recorded a total of 1,330 reports of Islamophobic attacks in the United Kingdom in 2017, representing a 30% rise when compared to the previous reporting period. In the same year, Tell MAMA recorded 54 incidents that were,

"perpetrated against mosques, Islamic schools and Islamic cultural centres. They include Islamophobic graffiti, threatening letters, the dumping of pork products outside a building, or interpersonal attacks against people attending a mosque".

Turning to racist activity, in 2017-18, 94,098 hate crime offences were recorded by the police in England and Wales, an increase of 17% on the previous year. Of these, the great bulk—71,251, or 76%—were race hate crimes and 8,336, or 9%, were religious hate crimes. A lot of this extremism is being orchestrated by, or follows the activity of, far-right groups, such as the racist fascist English Defence League and the Football Lads Alliance, as well as, now, the Democratic Football Lads Alliance, or DFLA—a contradiction in terms, I would think—set up in the wake of the London Bridge terror attack in 2017, which has been supported by Tommy Robinson.

On 18 June 2017, Darren Osborne from Wales drove a van into a crowd of people gathered outside a north London mosque—the one referred to, I believe, by the Minister—killing one man and injuring 12 people. He had also intended to murder the leader of the Opposition and the Mayor of London. He had no history of extremism but his ex-partner claimed he had been radicalised in just three weeks by devouring anti-Muslim extremist propaganda online, after which he was ready to kill innocent people. Eyewitnesses reported that he shouted, "I want to kill all Muslims!" The judge said that Osborne had been,

"rapidly radicalised over the internet by those determined to spread hatred of Muslims".

Evidence showed that he was infatuated with Tommy Robinson and the Nazi-like Britain First organisation.

Then there is Britain's Young Right Society, run by a Breitbart journalist who is an associate of Trump adviser Steve Bannon. HOPE not hate revealed that the group was "frequently awash with appalling racist" content, white supremacy, jokes about the Holocaust and anti-Semitic conspiracy theories. It was also used to organise the members for events. Because it was formed secretly, it was exposed only when one member alerted HOPE not hate to its existence.

Let us take just a few recent examples of the effect in our communities of these groups' extremist activities of religious persecution. A mosque and a Sikh gurdwara in Leeds were attacked in the early hours of a Tuesday morning in early June in what police treated as hate crimes. The assaults followed a march in Leeds the previous Friday in defence of jailed fascist and anti-Muslim extremist Tommy Robinson, who has a long record of far-right activity, criminality and violence. Police said the main door at Jamia Masjid Abu Huraira Mosque in Beeston, Leeds, was deliberately set on fire at around 3.30 am. Police were called to the nearby gurdwara in Beeston, at around 4.20 am, after someone had set the door on fire. Councillor Gohar Almas, a local Labour councillor was reported as saying:

"Somebody tried to set the mosque and the gurdwara alight. The mosque is bang opposite a primary school. What kind of message is this sending to the children?"

One person at the gurdwara spoke of a "sentiment of fear" among people following the attacks, especially the half dozen who live in the gurdwara, including two elderly couples. A volunteer at the gurdwara told "Leeds Live":

"It is a big concern. I have got sadness with me. This is something which should never have happened".

Rafaqat Ali from the mosque told local media that he was "upset and shocked". Another mosque member added, "My kids go there and are scared now, because of this attack".

The timing was significant—this is a point I want to emphasise—because these attacks followed Tommy Robinson's supporters demonstrating in Leeds after he was jailed for breaching a court order. Various fascists had organised protests to defend his so-called free speech. However, as local councillor Gohar Almas said, allowing Nazis free speech is dangerous. He said that the only thing that should not be tolerated is intolerance; spreading hate speech, Islamophobia, anti-Semitism and homophobia should not be tolerated. He added that the march by Tommy Robinson supporters had "absolutely" given racists more confidence. Gohar said, "We have fought this before. We are a united and resilient community—a community of communities. We are here to unite people, not divide people, and we will not let people divide us". Let us send a message of solidarity to him and his mosque, and to other local religious institutions.

Only the other Saturday, fascist thugs blocked a bus on one of the roads next to Trafalgar Square because the driver was a Muslim woman wearing a headscarf. Video footage of the incident showed one of these thugs appearing to give the "Sieg Heil" salute toward the bus. A photo shows a topless man holding two fingers up to the bus driver through the glass. Others on this fascist mobilisation banged on the bus windows with "Free Tommy" placards or brandished ones reading "Britain Loves Trump".

The point I wish to stress is this: violent attacks against our Muslim, Jewish and black citizens flow from far-right mobilisations and far-right activism as night follows day. There is an umbilical link between activity by racist, Islamophobic and anti-Semitic extremists and these sorts of vile attacks. Over the past year or so, the sheer scale of these far-right protests, and the numbers in attendance, is unprecedented.

In Manchester last year, 3,000 Tommy Robinson supporters were mobilised. On 24 June 2017, in London, the Football Lads Alliance mobilised nearly 5,000. On 7 October last year, the Football Lads Alliance mobilised 10,000, maybe more. On 18 March this year, at Speakers' Corner in London, Tommy Robinson supporters numbered 500. On 24 March, in Birmingham, the Football Lads Alliance and the Democratic Football

[Lord Hain]

Lads Alliance mobilised up to 5,000 in total. On 5 May this year—"Tommy Robinson Day", they called it—5,000 supporters marched in his honour. On 19 May, in Manchester, the Football Lads Alliance mobilised 300 people. On 26 May, in London, "Free Tommy Robinson" supporters mobilised 400. In Leeds, on 30 May, "Free Tommy Robinson" supporters mobilised 400. On 2 June 2018, in Manchester, the Democratic Football Lads Alliance supporters numbered around 1,800. On 9 June, in London, "Free Tommy Robinson" supporters numbered 15,000. On 23 June, in London, UK freedom marchers, made up of various far-right groups including some UKIP members, numbered 2,500. On 14 July, in London, "Free Tommy Robinson" supporters numbered up to 10,000. These are big numbers—far bigger than anything I have seen in modern decades. That is why we need actively to support anti-racist groups such as Unite Against Fascism, Stand Up to Racism, HOPE not hate, Show Racism the Red Card and Kick It Out.

When I helped launch the Anti-Nazi League in September 1977, it was to meet a growing threat, both on the streets and in elections, from the Nazi National Front. Working with Rock Against Racism to organise national carnivals and local gigs, but also by confronting the National Front whenever and wherever its members tried to march or rally, we eventually managed defeat it. Then, over 20 years later, the British National Party took its place, and again we had to mobilise to defeat it. However, the threat today of religious and racial persecution is far more insidious and dangerous.

Today's threat is occurring right across Europe, against a backdrop of despair at neoliberal economic policies which generate massive job insecurity and hopelessness—the habitual fertile breeding ground for racism, fascism and anti-Semitism. From Germany to Greece, from Sweden to Switzerland, from Britain to Belgium, the far right is growing and succeeding, targeting immigrants and religious minorities—familiar scapegoats for collective government economic failure. It must not be allowed to succeed. We need a modern Keynesian alterative to rescue our communities from the austerity and misery of neoliberalism. As we saw so fatally in the 1930s, if that does not occur, persecution of religious and other minorities by racists, fascists, anti-Semites and Nazis will gain increasing traction.

6.35 pm

The Archbishop of Canterbury: My Lords, I am grateful to the noble Lord, Lord Bourne, and others who have made this useful and important debate possible. Like the noble Lord, Lord Hain, I agree with much of what the noble Lord, Lord Bourne, said. I agree also with the passionate and clear setting out by the noble Lord, Lord Hain, of the threats and incidents that have occurred in recent years. However, I want to focus more on religious intolerance and prejudice. If I have one concern, it is how we bring together religious tolerance, and stand against the kind of things the noble Lord, Lord Hain, spoke about, while maintaining freedom of speech.

In his book, *The Home We Build Together*, the noble Lord, Lord Sacks, wrote:

"Society is not a house or a hotel. It should be a home".

The rising tide of anti-Semitism, with which I am deeply familiar through work with the Chief Rabbi, and Islamophobia, which we in the Church are deeply familiar with through working with Muslim leaders across the country, are just two illustrations of the narrowing of those who feel truly at home in the UK today. This terrible, storm-ridden climate is affecting people across a whole range of religious traditions. We have just heard the noble Lord, Lord Hain, set out many of the incidents at temples and gurdwaras, the abuse of people in the street and so on.

Freedom of belief and freedom of speech are fragile plants that need to be intertwined if they are to flourish. They are both menaced by the chill that comes from constraining their expression, except when freedom of speech is promoting hatred. They easily wither, as I have found in many of our churches across the 165 countries of the Anglican communion. We stand against that, through the Commonwealth and the United Nations, but it is the call of religious leaders to bring them together and stand up for them.

Free speech may well be robust, even humorous, as I discovered recently, when a friend of Mr Blobby described me in terms that I cannot use in this House. More politely, I and those on these Benches are often described as those who believe in fairies at the bottom of the garden. That kind of bluntness is good and proper. However, for it to work, there must be a context of what the noble Lord, Lord Sacks, describes in his books as a "culture of civility". Today's multifaith society means that we live in a context of diverse religious practice. For some, this is welcome and enriching—I put myself among them—while others find it strange and threatening. Whatever your views on that, it is clear that debate in Britain across a range of issues risks losing the gains we have made in the post-war period: gains of civility and respect. If you watch the news, read a newspaper or go on social media—let alone stand up against right-wing, fascist and other extremist activity, as the noble Lord, Lord Hain, has done throughout his life—you will know that there is a notable absence of genuine dialogue and listening to different views.

I also wonder that, for all our rich Christian heritage in this country, as seen in our laws, practices and many of our values, the breadth of view which we tolerate has become less and less wide. There are many Christians with whom I disagree on the expression of their views in particular areas. There is a long history of Christians disagreeing with each other: Lambeth Palace has a prison for this. It has not been in recent use, although I am from time to time tempted. However, even where I disagree, I want to uphold the right of these people to say things that are neither fashionable nor conventional today. That has certainly been examined in the Supreme Court recently, through the Ashers case. Again, although there might be things in that case that I would question, it is a thoughtful, erudite and profound examination of the intertwining of freedom of belief and freedom of expression.

There is an attitude—I think this is the underlying issue we face—that there are no absolutes, except the statement that there are no absolutes. That is an absolute. We are told that to criticise that statement that there are no absolutes is, in fact, to be an extremist.

Certainly, as a Christian who believes in the love of God found in Jesus Christ, I have what some people would call absolute views. But almost every day I meet people who do not share those views. I thank God for those encounters, and for the people themselves, who deepen and enrich my understanding.

Jesus criticised directly, bluntly and forcefully, and was criticised himself. He answered his critics, yet he loved them. It is the last bit that we are missing. Love in that context is not a warm and cuddly feeling. What it means in practice is accepting that the other has as valuable a place as me and is fully part of the national fabric. This may be what is behind the trouble that the noble Lord, Lord Hain, explained so carefully: the sense that the people who are attacked, diminished and marginalised are, in some way, not considered to be fully British. Anti-Semitic, Islamophobic, anti-Hindu, anti-Sikh or other attacks have as a presupposition that only "my sort of person" is welcome here. Those who attack them require not just integration but assimilation, so that no difference is seen, but clearly that is impossible and the prospect of it is diminishing. Most religious belief demands a loyalty beyond country or group—a loyalty to ultimate truth. It says there are absolutes, and we should rejoice at them and listen to the narrative. Competitive narratives encourage developing traditions, secular or sacred.

As a Christian, I am encouraged by the Bible to think of myself as a pilgrim and a stranger. That status calls me to the good of the place in which I live, of the nation where I am, determined to contribute to the common good and inspired by the commandment to love your neighbour as yourself. The same can be found in most of our major religious traditions in this country. That means that, for the Church of England, we will work for and on behalf of Christians, but equally, and without distinction, for those of other faiths or no faith, and especially for those who feel marginalised and under attack.

Many of the campaigns that the noble Lord, Lord Hain, listed have had strong participation by Christian leaders over the years. Religiously motivated hate crime, intolerance and prejudice have, as we know, been reported to have increased dramatically yet again. Of course there is a need for better security, and I welcome the announcement of more funding to this end from the noble Lord, Lord Bourne. In the longer term, however, hate crime and extremism in religious affairs have to be resisted by religious leaders, and challenged within their own communities before their roots deepen. We cannot palm it off on others to deal with.

The Church of England seeks to act on this principle in church schools, some in areas with more than 90% intake each year from other faiths; in welcome through the Near Neighbours programme; and in interfaith gatherings at all levels, from local to national. My predecessor, Archbishop William Temple, and the then Chief Rabbi Hertz, founded the Council of Christians and Jews in 1942. It met last week; it continues and is more and more active. This support of other faiths is a part of our recent heritage in which we rejoice.

We must seek a society that is able to voice disagreement freely and to disagree well; where rich and deeply held beliefs and traditions can exist in mutual challenge and respect. Challenge may be tough, but limit it too much and freedom of expression suffers, and so, in the end, will freedom of belief. This is perhaps one of the most important and urgent challenges of our times. Competing narratives, whether religious or secular, test truth and action. Monopoly views, secular or religious, merely enable people to live in bubbles of mutual incomprehension, and even ignorance. Christian faith and values, or those of other faiths, are not threatened by diversity of faith, but by a failure of freedom of expression, provided it does not include incitement to hatred, however robustly used. It is in confidence in our civil discourse and in our free expression that we gain confidence in our faith, and in that mutual confidence among ourselves, confidence in this nation's vocation in the world. This allows us to spread what we say and to exhibit what we proclaim, and, in so doing, to offer a framework within which all cultures and faiths can flourish for the common good.

6.47 pm

Lord Mackay of Clashfern (Con): My Lords, it is an extraordinary privilege to follow the most reverend Primate, the noble Lord, Lord Hain, and my noble friend the Minister on this very difficult situation.

As the noble Lord, Lord Hain, has said, and in a way I have even longer experience than he has, we have never had it like this—in my experience never. This is fundamental, because it means that there are very powerful influences driving these people. What are these influences? I am not sure I know. I have been a professing Christian for many years, though I am nothing like as good as the standard our faith sets. I am convinced that the standards that we have been set in that faith are very high. As the most reverend Primate has mentioned, love your neighbour as yourself is a fundamental law of Christian living and of many other faiths as well.

I was brought up in a family that was absolutely devoted to the scriptures of the Old and New Testaments. I therefore knew more about the intimate history of Israel than I did about any other nation apart from our own. That gave me an understanding of human nature, and of what the Israelites came through, and what damage they experienced during their history. Fixed in my mind—and, I am sure, in those of many others who had similar teaching—is a very profound love for the Jewish people.

Anti-Semitism is a very destructive principle held in the mind, and it would be a great blessing to be able to take it out of people's minds. That is the challenge in which the churches, faith groups and those who have no faith at all but who believe that they are able to influence others should be engaged. Any form of victimisation of a person on account of his or her faith is completely wrong and ought to be pursued with as much strength as civil society and the state can manage.

This debate is about tolerance, and there are aspects of tolerance that we ought to think about. Your Lordships will have seen the briefing prepared by the Library for this debate. It contains a contribution by a gentleman called Krish Kandiah, whom I have met. He now takes a great interest in fostering children, which is a very

[Lord Mackay of Clashfern]

important life work—he is a pastor as well, but fostering is an aspect of his life. In the passage quoted in the briefing he says:

> "As a foster parent, I have been told by some social workers that I should keep my faith a secret. I have been asked to raise the children in my care in an 'ideologically neutral environment'. The views of the social workers who say things like this have little understanding of my practice of faith. Their concerns stem from misperceptions as to what faith is and how it relates to my identity".

Reducing the possibility of children being raised in families with a profound religious faith is a very subtle way of trying to reduce tolerance. I do not understand why that is part of tolerance.

An attitude that is currently generally held is that science has dealt with everything and that religion is rather old-fashioned or something that is apt to mislead. The prevailing view on the origin of the universe and so on has an effect in that direction. The fairly recent book by Professor Lennox from Oxford called *God's Undertaker* is a very mathematical assessment of the basics of evolution, and I think it shows that there is more than one possibility in these matters. I am old enough to remember Fred Hoyle, Bondi and Gold bring out their various theories, which have passed on to others. Of course, Einstein had his theory of special relativity and then his theory of general relativity. His science is not exactly about the origin of the universe; it is about the way in which the universe functions, and his theories have been capable of being checked in some way, which is important. It is rather difficult to check the theories of cosmology because of the time intervals involved. It always interests me that people are willing to think about the big bang as having achieved a great change in a mighty short time, yet they think that Genesis tries to do too much in seven days.

These matters underpin the need for tolerance in our society and the need to encourage people with particular views of which we might not approve but which they wish to promulgate and really believe. It is very important that the procedure outlined for us by the Minister works, but it has to go very deep into the minds of those who are actuated by the sort of thing that the noble Lord, Lord Hain, set out for us in great detail and extremely accurately.

I strongly support what the Government are doing and I very much deplore the extent to which tolerance has been damaged by the victimisation of faith and race. In the last few years, that has become a terrible scandal in our beloved country.

6.55 pm

Lord Kestenbaum (Lab): My Lords, I thank the noble Lord, Lord Bourne, for introducing this debate. It is indeed timely following the Home Office data published yesterday, which reported a steep rise in religious hate crime.

Such reports are never just about the welfare and health of one group; more fundamentally, they ask us what kind of society we wish to be. When it comes to religious tolerance, my community always knew exactly what kind of society this is and must be, and that knowledge is profoundly personal. As my name, Kestenbaum, indicates, home until the traumas of the 20th century was Germany. Leipzig and Frankfurt were our origins, and I distinctly remember listening to my grandmother's recollections of our terrified family hiding under the bed on Kristallnacht on 9 November 1938, almost exactly 80 years ago—the night my family saw every synagogue in Germany, including their own, the renowned Breuer Synagogue, burn to the ground, and the night that discrimination against Jews became the persecution of Jews. We all know what happened next.

As Europe was poised to exterminate its Jews, thereby committing the greatest crime in all history, my family fled for their lives and, after a circuitous route, arrived in Britain. It was here that as children we Jews learned that the blessing of this country is that it does not expect you to make a choice between loyalty to one's faith and loyalty to the national interest, while both are pursued with dignity. We also learned one more thing: that when a society turns on its Jews—indeed, on any faith group—it is always a sign of wider ill health, as shown so graphically in yesterday's report.

As the Minister said, paradoxically it is reports such as these that display not only the shameful aspects of our society but the best too, for in combating hate crimes Jews and Muslims have worked together in common cause, with joint endeavours around the security of synagogues and mosques, and, more positively, joint endeavours in education programmes in schools to combat religious prejudice.

Yet, despite all this, the Jewish community of Great Britain, my community, is witnessing something so improbable and shocking that it defies belief—that is, the emergence of anti-Semitism out of the shadows and from the margins into the political mainstream. For we always knew that, although anti-Semitism has been a constant lurking menace, it can be contained as long as it is never sheltered under the umbrella of political legitimacy. Although this has never been a political fault-line between parties, we have watched with horror as membership of the Labour Party has been infiltrated by those who hate Jews. Its leadership has approached concerns over anti-Semitism in its ranks first with silence, then with denial, then with indignation and, finally, with what felt like grudging, half-hearted attention—to the point at which Chief Rabbi, Rabbi Mirvis, said that the Jewish community and its concerns had been treated with "unprecedented contempt".

With that in mind, and in light of yesterday's report, noble Lords might reasonably ask: how does it feel to be a Jew in Britain today? My answer, unimaginably, is that we Jews in Britain, for the first time in centuries, feel anxious, uncertain and fearful. It is profoundly not what we ever expected this society to be. It is certainly not what we thought would happen to a political party—let alone the Labour Party, whose leadership has become incriminated in fostering a culture of disdain towards the Jews of Britain. We see daily the online perverted depictions of Jews—perversions which too often go ignored or unchecked. We see the resurfacing of all the old anti-Semitic tropes—the same obscenities too grotesque to mention—but this time from a place that none of us in this House, on

both sides ever, thought possible; it comes from those who call themselves members of the Labour Party. This has left Jews uneasy, unsettled and fearful, not least because the social media revolution has given voice to the most extreme and the most vicious, allowing that hatred to be magnified, multiplied and, too often, unsanctioned.

It has often been suggested by some on the left that calling out blatant displays of anti-Semitism from the left is a betrayal of the Labour Party. As my noble friend Lord Hain indicated, the betrayal is quite the opposite: it is conducted by those who choose to align themselves with anti-Semites and Holocaust deniers and then feign righteous indignation when doing so. That is the betrayal, for that has enabled and emboldened the anti-Semites in the Labour Party. As my noble friend Lord Hain said, it has given them the two things that they always craved and were always denied: it has given them space and it has given them a voice. Ultimately, those who are guilty of ignoring anti-Semitism are those who are personally responsible for the virus spreading.

But there is one final outrage: a unique phenomenon, which we have never seen in this country, where it is the victim who stands accused rather than the perpetrator. It is too often said that these Jews are exaggerating, fabricating and are in hock to some extreme right-wing press. In those very accusations rest the most potent, toxic and dangerous five words in the English vocabulary: "The Jews are to blame". Consider the unprecedented act last summer of 68 rabbis right across the community, in good faith and in sorrow, writing a letter to the Labour Party begging it to adopt the conventional definition of anti-Semitism. The online frenzy in response to that called for those rabbis' political allegiances to be scrutinised in search of some kind of conspiracy.

Let me be absolutely clear: the majority of Jews protesting about anti-Semitism in the Labour Party are anxious about anti-Semitism. That is it—nothing more, nothing less. It is the online intimidation, along with the offline contempt, which turns that anxiety into fear. So this debate provokes the question: what type of society stands up against this new culture of prejudice and discrimination? What must we do?

In conclusion, I propose two simple steps. First, if Jews have a heightened attention to the alarm bells of prejudice then there is good reason for that, so symbols, allegiances, empathy and actions matter. When the most reverend Primate the Archbishop of Canterbury goes out of his way to meet Chief Rabbi Mirvis at his home on the eve of Jewish new year to express his concerns personally and sincerely, that matters. It felt as if the Archbishop had visited every Jewish home in the country, and that mattered. Simple acts of compassion and kindness can rebuild trust and mend bridges. Until the leadership of the Labour Party equally finds a way to understand the concerns of Jews in this country and until it can sincerely empathise with those concerns, no amount of party disciplinary procedures, reviews or organisational restructures will help. Too often, Jewish fears have been met not by empathy and understanding but by the violence of the online crowd, by cries of smears and by a political leadership which, at the very least, has been an enabler.

Secondly, and finally, we—the people of all faiths and none, and those of all parties and of none—must stand against prejudice, for we are all at risk; we are at risk of our common humanity, of our religious freedoms and, above all, of the society that we know we must build together.

7.06 pm

Baroness Deech (CB): My Lords, in March I joined the first protest I have been on since CND in the 1960s. People gathered in Parliament Square to protest against Labour anti-Semitism. It was a polite demo, the most aggressive factor being the slogans "For the many, not the Jew" and "Enough is enough"—they sum it up. The *Jewish Chronicle*, the *Jewish News* and the *Jewish Telegraph*—rival papers—combined to run the same front page in July, headed "United We Stand", to claim that a Corbyn-led Government would pose an existential threat to Jewish life in the UK.

I cannot explain intolerance of other religions so I will concentrate on what I know, and I will look to the future and how we can remedy the appalling situation we find ourselves in. Despite everything, the British Jewish community knows very well that the UK is one of the best countries ever in which to be Jewish. At the same time, we know that anti-Semitism is not confined in its effects to this community; if unchecked, it signals a threat to democratic values and opens the door to general extremism. That is why we have not yet stopped talking about it, much as we would like to. What sort of society is this when substantial numbers of Jews—one of the longest-established ethnic minorities—have discussed leaving the country if Jeremy Corbyn were to become Prime Minister? Not only here, but across Europe—especially in Hungary, Poland, Germany, France, Belgium and Sweden—anti-Semitic attacks are on the rise again. Thousands of Jews are emigrating—a massive failure for the European project.

On the far right in Europe, anti-Semitism reflects the past, deeming Jews to be inferior and enemies of the state. On the far left, Jews are associated with power, capitalism and colonialism and are, therefore, enemies of the people. Islamists have religious objections to Jews. This is all historical and religious perversion. I was glad to see the most reverend Primate the Archbishop of Canterbury speaking today and note that the Church of England has adopted the IHRA definition of anti-Semitism.

For the last few decades, since the communist dream was shattered, the left has been looking for a global cause on which to fixate and found it in Israel. There has been a struggle in the Labour Party ranks for the freedom to depart from the international definition of anti-Semitism in just one respect: the right to call Israel a racist endeavour. If that is the case, and if double standards are outlawed in the IHRA definition, as they should be in political discourse, why are there no marches, no exclusions and no intimidation of students in relation to, say, Pakistan, whose creation as a Muslim state involved the displacement of around 10 million people and the deaths of 1 million? Israeli Apartheid Week, which is in breach of the public sector equality duty placed on universities, continues. Would those universities tolerate, say, a "Pakistan honour killing week"? Of course they would not,

[Baroness Deech]
because of the effect on students of Pakistani origin. What mass disapproval and protests are there in relation to, Syria, where at least 4,000 Palestinians have died, the occupation of Northern Cyprus, creating a Muslim enclave, again with accompanying deprivation and refugees, or the suppression of the Kurds? Singling out Israel as a racist endeavour in this context is a pretext for undermining the entire state, putting another 6 million people in danger of their lives and attacking the Zionist success and safe haven that is dear to the overwhelming majority of Jews here and worldwide; in other words, it is anti-Semitism.

One has to conclude that there is a party-wide culture that is anti-Semitic, albeit dressed up as anti-Zionist even when the mask slips and Jews are attacked when they go to meetings simply for being who they are. The more this goes on, the more unlikely it is that a peace settlement will be reached in the Middle East, for the attitude of the extreme left and the extreme right to Jews reinforces the view that only Israel can guard them against persecution and offer security.

I turn now to intolerance. I am most concerned about these attitudes in young people, for they are our future leaders. Many students encounter campaigning and debates about Israel and Palestine for the first time at university. The tensions—indeed, violence—surrounding pro-Israel activities on campus has given students a binary and ill-informed view of the Jews and history. Campaigning about Israel's politics is perfectly legitimate, but free speech does not include hate speech. Universities have a statutory duty to promote harmony between different groups on campus and an academic duty to secure civilised and well-informed debate about all issues. They do not have a licence under law to allow discrimination and harassment. I have spoken about this to your Lordships previously and will not rehearse it again, save to note very recent campus incidents which have occurred despite nationwide publicity about their illegality. Swastikas, racist slogans, conspiracy theories, Holocaust denial and slanders, and the violent breaking up of meetings have appeared in universities including KCL, Exeter, Cambridge, Oxford, Manchester, Birmingham, Kent, LSE, Sheffield Hallam, SOAS and York. An NUS survey has found that two-thirds of Jewish students questioned believed that they were targeted as a result of their faith. Last year's chair of Labour Students blamed her own party's leadership for the rising amount of anti-Semitism on campus. The president of the Union of Jewish Students recently resigned from the Labour Party.

Universities across the UK are pitting Jewish and Muslim students on campus against each other by discriminating against Israeli speakers. Sometimes it is the university administration itself that imposes excessive restrictions and bureaucracy on Israeli speakers while waving anti-Israel speakers through the process with no obstacles. In other cases it is the student union that is culpable of wrongfully promoting Palestinian society events or campaigns, contrary to its charitable status, and neglecting Israeli society's equal right to student union resources. The inability of a university to ensure even-handedness in this area creates an unfortunate animosity between two groups of young people who need to live together.

What is to be done? I do not think a Holocaust memorial could do it. The rise of anti-Semitism has gone hand in hand with an increase in the number of Holocaust memorials and learning centres. They do not seem to have the desired effect, especially when placed somewhere where the neighbours, with some justification, are opposed to it. I also bear in mind the Macpherson report on the feelings of victims as a guide to hate. I am sorry to say that the report for the Labour Party by the noble Baroness, Lady Chakrabarti, has been criticised by the Commons Home Affairs Committee inquiry into anti-Semitism. Her report did not deal with the wealth of evidence submitted, nor did it go into the reasons for anti-Semitism in the Labour Party or suggest effective ways of dealing with it. The report by the noble Baroness, Lady Royall, into incidents at Oxford University was not published in full and does not seem to have led to the necessary sanctions by the university.

Combating anti-Semitism must start with an acknowledgement that it exists. Educators need to learn and teach about anti-Semitic stereotypes and conspiracy theories. Holocaust education must culminate in the realisation that the virus that led to it has not been killed off, even today. Young people need to know that social media promotes hate and fake news in this area. The Government should be commended for funding Jewish communal security and Holocaust education, and it would be even better if this could be secured long-term. They have announced funding for a project that will extend the Holocaust Educational Trust's Auschwitz visit programme to universities for the first time. Under the plan, 200 students will visit the death camp and return to lead seminars in an effort to target anti-Semitism on campus.

All universities need to adopt the international definition of anti-Semitism, not because it is a legally binding document but as a guide to what is acceptable and what is not when they have to recognise anti-Semitism as distinct from normal political criticism. The National Union of Students has adopted it but the University and College Union refuses to do so. University authorities need training in the topic of anti-Semitism. It is insufficient to deal with diversity issues and non-harassment but to omit this. Following the 2016 Universities UK Taskforce report on hate crime, there still seems to be no such training for universities and no guidance on how to deal with conflicts over the Palestine issue. The police are not prosecuting the violent disruptors of such events and the universities are refusing to disclose their disciplinary actions. The resources of student unions should not be used for political campaigns against Israel, and Israel alone, that do not promote their legal remit of education and welfare. The Charity Commission should continue to watch over this. I am very concerned that the guidance on freedom of speech in universities now being prepared by the Department for Education will not deal with this. The Union of Jewish Students does not seem to have been consulted on this most pressing of issues. Without its input and without consideration of the troubles I have referred to, the guidance will achieve next to nothing.

Schoolteachers need more training to deliver a proper Holocaust education in schools, as well as in how to tackle discussions with pupils about the Middle East

conflict and prejudice. Indeed, guidance would help other professionals who may find themselves involved—the clergy, social workers, journalists and those charged with rehabilitating prisoners who have been found guilty of hate crimes. We need to see more and more successful prosecutions for hate crime and hate on social media. Just try searching for the word "Zionism" on Twitter. Last but not least, noble Lords in the Labour Party should stand up for tolerance and freedom from persecution. They have the freedom to express their views and to follow the example of Frank Field MP, who has been widely commended.

7.18 pm

Baroness Warsi (Con): My Lords, it is a pleasure to follow the noble Baroness, Lady Deech. Many years ago we both stomped around universities trying to deal with the very challenges which sadly still persist, and about which she has spoken. Faith is an informer of debate as a driver of good works, as a convenor, as an enabler and as a deliverer for policy. It was the reason I announced many years ago as a retort to Alistair Campbell that a Conservative Government would "do God".

Much has changed since 2010. I had the privilege of being part of much of that change: from an idea that started life as an active faith project which became the Near Neighbours programme, to the Church of England using its network to convene and deliver interfaith action, to campaigning for the rights of Christians and other minorities in the Middle East and elsewhere, to making the case for faith to have a seat at the Cabinet table, to bringing religious literacy training to the heart of government, to establishing stronger and more meaningful relations with the Holy See, to chairing the international forum on freedom of religion or belief, to launching Nisa-Nashim, a Jewish and Muslim women's network, to establishing the Big Iftar, to reforms of and support for faith-sensitive non-invasive post mortems and to becoming the first non-Muslim country in the world to issue a sovereign sukuk—the list could go on and on. It is endless and I am proud of the records of both the coalition Government and the Conservative Government in engaging faith.

I particularly pay tribute to my noble friend Lord Ahmed of Wimbledon who, following my resignation, ensured that the work continued and is now playing a vital global role as the Prime Minister's special adviser on religious freedom. We could not have asked for a better advocate. I also want to put on record the tremendous contribution that the Minister has made in this area. His commitment to equality and his desire to engage has not gone unnoticed in communities. Rarely a week passes without someone praising him to me in the warmest of terms. He is walking the walk, and he is walking many miles.

Today we are debating religious intolerance and bigotry. I am sure that we will hear about the nature of the problem, what has been achieved and what more needs to be done. From the speakers' list it is clear that we will be hearing about the impact on specific communities. We have already heard about Christian communities and Jewish communities and I am sure that we will hear about Sikh communities, Hindus and others. I will focus on a community that I know well, the British Muslim community.

I want to start with a little history. If we are to succeed in making good policy on where we want to be, I am sure it is important that we talk about how we got here. In 2010, when the coalition Government formed, it shocked me that no formal structure had existed under the last Labour Government to discuss, monitor or challenge Islamophobia. We had no definition, no policy, and no statistics. My then PPS, Eric Ollerenshaw, helped to establish the All-Party Parliamentary Group on Islamophobia. It was to be a vehicle through which we would hopefully instigate an inquiry that could lead to a specific policy on how to deal with the issue of islamophobia. However, that is where it ended. A row about the secretariat meant that parliamentary colleagues from both this House and the other place eventually worked towards having that secretariat shut down. No inquiry ever started and no work was ever done. I therefore decided to bypass the inquiry and speak about this issue in government.

In 2011, I made a keynote speech in which I spoke about Islamophobia having passed the dinner-table test. It was criticised by large sections of the media; I think that it hit too close to home. They probably realised that it was their dinner tables I was talking about. There was very little support for it politically. What started thereafter was first a series of arguments about why this speech was necessary. The case was made to me that there was no evidence to suggest that we had Islamophobia. There was a fight to set up a cross-government working group on anti-Muslim hatred and until a few years ago—with one or two exceptions—my colleagues refused to engage with it. What became Tell MAMA was an idea hatched at Conservative headquarters. There were rows about the funding of that organisation, which my noble friend Lord Pickles will probably remember as he was Secretary of State. When he was not convinced, he discovered the error of opposing a tenacious Yorkshire woman. I am pleased that we are still friends.

There was a refusal to acknowledge the need for the remembering Srebrenica programme. Today it is a nationwide programme with cross-parliamentary support, delivering hundreds of visits, schools training materials and commemoration events. There was a battle for the police to disaggregate and record Islamophobia as a separate crime, as we did with anti-Semitism. These are all projects which the Minister referred to in his opening speech.

Why do I raise this? It is because every programme and initiative that we celebrate today was a lonely battle for which I carry a scar. Each scar is a reminder that many parliamentary colleagues were simply not prepared to accept that there was a problem, the extent of it, the right response and the urgency with which we needed to act. I refer to the past because today, sadly, we are still having those battles. The reluctance to tackle Islamophobia, the refusal to listen to the warning siren and the inconsistency with which we fund tackling other forms of hate is deeply worrying.

The anti-Semitism row within the Labour Party has had many facets. It has festered as a sore damaging politics and politicians and it has left a British Jewish

[Baroness Warsi]

community fearful about its space in Britain. We have heard that today. What concerned me most, however, was the way in which many British Jews were not able to determine their destiny. Their concerns about what they experienced—how bigotry felt to them—were simply dismissed. The prevarication about adopting the IHRA definition was the most visible manifestation of that. A community being able to determine its own destiny and set its own standards on how it feels protected must be a given.

However, for British Muslim communities this is not a right we afford them. The policy of disengagement, which I discussed in some detail last week during the Second Reading of the Counter-Terrorism and Border Security Bill, has meant that British Muslims are not able to choose who sits at the government table. Officialdom, not community, determines who is and is not an acceptable Muslim voice. The community, some 3 million-plus strong, is diverse ethnically, theologically and politically. It cannot possibly be represented by a single organisation. No community can. It is why, despite being a community of less than 300,000, the British Jewish community in its Jewish Leadership Council ensures that a wide range of organisations and issues—from the Community Security Trust to the Board of Deputies; from social to political, and domestic to international issues—forms part of the dialogue and engagement with government. I had the privilege of being part of that in government. British Muslims, however, do not have such a privilege. They have much to admire and to learn from the British Jewish community. The JLC, I felt, could be replicated: it was, in the form of the Muslim Leadership Council. It included a wide range of organisations, but the Government refused to engage with it. Often when a Government take partners, they seem to seek out individuals and organisations that, at best, are not mainstream and are neither connected to nor respected by the community they seek to influence. At worst they have a track record of attacking and briefing against British Muslims rather than speaking on the issues that concern that community. This creates unease and mistrust and is not the way to deal with hate.

The hate crime action plan is clear. Hate crime is up by 17%; race crime is up by 14%; religious crime is up by 40%. Of that religious hate crime, 52% is targeted at Muslims, 12% is targeted at Jewish communities, and 21% is unknown. The EHRC statistics are clear: 70% of Muslims have experienced religious-based discrimination. It is important to note that not all hate crimes against Muslims are recorded by religion. Many are also victims of race-based hate crime, so it is important that we make sure that the recording of these crimes is accurate. I would be grateful if the Minister detailed how many police forces are recording religious hate crime, how many disaggregate religious hate crime data and whether the Government would consider disaggregating race to get a more accurate picture.

I would like to focus a little on the positive in the hate crime action report. It has moved on from the 2016 terminology of anti-Muslim hatred and now uses the term Islamophobia, on which the All-Party Parliamentary Group on British Muslims has been taking evidence for the past six to eight months. We found overwhelming support for it in the evidence and consultations that have taken place. It is the widest and deepest form of consultation that has taken place since the Runnymede Trust report of 20 years ago. The report, which has been done with the communities and by the communities, will be out soon. We hope the Government will adopt the working definition that it proposes and that it will be applied across government and statutory agencies such as the police, criminal justice agencies, CPS, education and health. We cannot tackle what we cannot name or number.

I urge the Government to use this moment, as they describe in their hate crime plan, to end their policy of disengagement and make this a truly inclusive and meaningful process. The issue is crucial because when government does not engage, it sets a precedent for all other agencies such as the CPS, the police, and the police and crime commissioners. This is disengaging Muslims at all levels and from all available avenues to have their victim experiences addressed by the relevant agencies. The latest hate crime figures should be a wake-up call. The unfortunate victims, as ordinary Muslims up and down the country are, should not pay the price for the Government's disengagement policy.

Racism, bigotry and intolerance can come in two forms. I grew up when it was overt: being chased by racists after school and being called the P-word were part and parcel of my growing up. But then I was a social mobility success story—I probably no longer hang out in those places where such terminology is likely to be used. But what has concerned me more and more is covert racism, covert discrimination, "respectable" racism—at the dinner table, in the media rooms and among the think tanks and commentators—the dehumanising of a community, the decontexualising of religious texts and lack of collective accountability for the actions of the few.

I said that Islamophobia had passed the dinner-table test. Today, I say that it is Britain's bigotry blind spot. The statistics prove that. It is not a Muslim problem; it is our problem. It is why I hope noble Lords will speak to this issue. It is not a challenge that should be left for the likes of me to fight. My interventions on challenging the persecution of Christian minorities in places such as Iraq, Egypt and Pakistan have been my most powerful because I spoke for the other on an issue of principle. Today, I ask my colleagues to do the same. We must fight bigotry collectively in this country and in our political parties.

I hope that my colleagues on these Benches will tackle Islamophobia within our ranks as vociferously as we, quite rightly, tackle anti-Semitism in the ranks of the Labour Party. It is an issue that I was reluctant to go public with, but three years on from those initial concerns and complaints—which came long before the appalling anti-Semitism row on the left of politics—it is still not being dealt with. It saddens me that, once again, I fight a lonely battle.

When I was growing up, there were two conversations that my parents would have. My dad would dream of having a home in the north of Punjab—in the way that many people might dream of having a house in the south of Spain. He felt that he would "go back home"

one day to that beautiful house. My mum on the other hand, being a cynical woman, said, "We don't need to have a dream of this great house. We need to have the necessity of this house, because the day we have to leave and go back home, we will need a home". I used to argue with both of them, saying to Dad that this was probably the most stupid investment that he would ever make because nobody would ever live in that house and it would therefore be better for him to invest here, a place which for my family has been home for 60 years—my grandfather came in 1958. I was even more vociferous with my mum, because I thought that her ramblings about having to leave were ludicrous and that the direction of travel in the UK was such that we would never be made to feel so uncomfortable that we had to up sticks. Today, in my late 40s, in 2018, it shocks me that I dream my dad's dream and worry my mum's worry. This debate gives me some hope.

7.33 pm

Lord Beith (LD): I am pleased to follow the noble Baroness, Lady Warsi, not just because of her moving speech but because her outspokenness brings out things which we easily neglect or ignore. Her words were very necessary.

Religious freedom is a fundamental principle of any civilised modern society, but we have not always enjoyed it. As I go round rural Northumberland, I find that the congregations that used to be Presbyterians—they are now United Reformed—can almost all trace their origins to the Toleration Act 1689 and the events which preceded it. The fight for religious toleration has gone on through the centuries—it has been central to the purposes and reasons for the existence of liberalism as a political force. Throughout our history, we have been involved in fighting for the rights of non-conformists to attend Oxford, Cambridge and other institutions from which they were excluded. In the 20th century, we were still fighting in Wales for the rights of chapel members to be buried in their village churchyard. The fight was not just for fellow Christians. There can hardly have been a politician with firmer Christian religious views than Gladstone. He fought year after year for the right of the atheist, Charles Bradlaugh, to take his seat in the House of Commons on the basis of an affirmation when he could not accept taking a religious oath.

We think of ourselves today as a free people. Those of us who grew up in the immediate aftermath of World War 2 perhaps naively assumed that, once humankind had seen the horror of the death camps, which were the result of racial and religious intolerance, religious intolerance would be in retreat. After the Holocaust, surely people would see where intolerance would lead. If we assumed that, we were wrong. The price of liberty is eternal vigilance, and vigilant we must now be because intolerance, as several speakers have pointed out, lurks not only on our streets but even in public life, in the form of anti-Semitism, attacks on Muslims, attacks on other religious minorities and challenges to the basic rights of Christians in what, at least historically, is a Christian country.

We have reports of a 26% rise in the number of attacks on Muslims. We know that many British Muslims feel increasingly threatened by the way in which they are falsely associated with extremism and terrorism. We see the careless use of language by people who should know how dangerous it is to create a climate of ridicule or disrespect around a minority community—I am thinking, of course, of Boris Johnson's offensive comments about Muslim women.

At the same time, anti-Semitism is making many in the Jewish community feel more insecure than has been the case for very many years. The Community Security Trust records around 100 anti-Semitic incidents every month—that has gone on since 2016. I do not think that I could add to the moving exposition given by the noble Lord, Lord Kestenbaum, of what it feels like to find the political causes that you have espoused become prey to anti-Semitism; he put that very clearly. I simply comment that the suggestion that British Jews do not understand English irony was quite preposterous. Such language contributes to the atmosphere about which I am so concerned. Sikhs, Hindus and other religious minorities have experienced intolerance and hate crime as well.

Christians in our society have also found themselves victims of abuse and hate crimes, and under threat in their employment, in their children's education or in their business life, particularly if they hold to rigorous principles which they see as the teaching of the Bible, some of which will not be shared by all other Christians. This is not new. In the 18th century, Quakers refused to swear oaths and to remove their hats in the presence of persons of authority, because they thought that only God deserved such a degree of deference. The First World War saw many conscientious objectors, who were deliberately humiliated by being given white feathers, yet many of them served with courage and distinction in ambulance units—those stories have begun to come out in the hundred years since the war, as we have found recorded testimonies and written material about their experience.

Some of the problems that Christians have faced arise from a clash of rights between people of fundamentally different views. As a society, we have to resolve such clashes in sensible and understanding ways. Some of it arises from overzealous and bureaucratic interpretation of things like equality legislation. The most reverend Primate referred to the Belfast bakery case. In that instance, I welcome the clarity of the Supreme Court's unanimous ruling, which draws a clear distinction between discrimination against an individual based on their opinions or sexuality, which is unlawful, and the protection of the right of an individual to refuse to express a message with which they disagreed—in this case on religious grounds. The court referred to the idea of compelled speech as not being consistent with the belief in free speech.

I want to emphasise three general points. First, I see a real danger to free speech and religious tolerance in the misguided attempts to create so-called safe spaces in student unions and university premises. We have provisions to do with hate speech. The "safe space" doctrine threatens religious discussion and the expression of religious views and destroys the beneficial educational experience of hearing and debating diverse views, which is what life at a university is supposed to embrace.

[Lord Beith]

Secondly, we need to be clear that Christianity—and the existence of an established church in England and a national church in Scotland in the form of the Church of Scotland—poses no threat to religious diversity and tolerance. Very few, if any, of those seeking to enhance the protection of other denominations and faiths would see any benefit in driving Christianity completely out of public life in this country or excluding it from our education system. I think the noble and learned Lord, Lord Mackay of Clashfern, made a similar point in his remarks earlier.

Thirdly, I welcome the Government's development of their strategy to combat hate crime, but I enter a warning about using additions to prison sentences as a means of dealing with it, which the noble Lord, Lord Bourne, who is a very helpful and conscientious Minister in this field, referred to in his opening remarks. Anyone who thinks that prisons cure hatred is sadly mistaken. Almost everything about the prison system, especially in its present overcrowded and understaffed state, actually fosters hatred and prejudice. The presence of religious, racial or gender-related hatred in an offender is a sign that innovative and life-changing work is needed to have any hope of challenging those ingrained attitudes. When they can, prison officers, health staff and chaplains try to address this sort of problem, but they have so little time, and so little continuity with individual prisoners, that the task is really beyond the system's present capacity. That capacity is, of course, reduced by longer sentences. Extra time enclosed in a hotbed of hatred will not drive out prejudice.

Across the world, we see terrible persecution of religious minorities. We should do everything we can to challenge it through our foreign, trade and aid policies, and I welcome the involvement of the noble Lord, Lord Ahmad of Wimbledon, in this work. We must also fight the many forms of intolerance we now see here at home.

7.42 pm

Lord Gadhia (Non-Afl): My Lords, there is a certain irony in debating religious intolerance and prejudice in the UK on a day when the Prime Minister is ensconced in Brussels, thrashing out this country's future relationship with Europe. A large period of our continent's history has been blighted by wars based on religious conflict, including in Ireland, which is proving such a Gordian knot to untangle in the Brexit negotiations. It serves to remind us that, for all the positive virtues that emanate from various faith traditions—particularly in the fields of education, healthcare and the alleviation of poverty—there is a darker legacy which cannot be ignored. That is why collaboration between European countries is something we should positively welcome and which must continue, regardless of Brexit.

This evening, I will add a Hindu voice to this debate and, in doing so, I welcome the opportunity to speak alongside noble friends across all Benches, many of whom I would call kindred spirits in their outlook and ethos on this topic. There are around 1 million Hindus living in Britain today. The distinguishing feature of Hinduism is that it is not a religion in the traditional sense. We are not a faith with a codified belief system or a defined set of scriptures that proselytise an unchallengeable truth. We are seekers, not believers, on a quest for truth and meaning taking us wherever the evidence and experience leads. In finding truth, there are many and varied paths. That is why Hinduism is the ultimate big tent. It is as much a civilisation, with its origins in the Indus Valley, as a religion. Its contours, therefore, encompass philosophy, spirituality and a whole way of life, including practices such as yoga and meditation. As a consequence, being open to new ideas, respect for difference and embracing global influences are inbuilt in Hindu thought, stretching all the way back to the *Rigveda*, the oldest of the Vedic scriptures, which dates back to around 1500 BC. It includes a Sanskrit phrase, which I am fond of quoting:

"Aano bhadra krtavo yantu vishwatah".

Translated, this means, "Let noble thoughts come to me from all directions". Another often-quoted phrase is, "Vasudhaiva Kutumbakam". This means, "The whole world is one family", and it is etched in the entrance hall of the Indian Parliament. A similar sentiment was expressed 125 years ago, at the Parliament of the World's Religions in Chicago, by Swami Vivekananda, representing Hindus in India. He was widely acclaimed as the star speaker of this conference for advocating not just religious tolerance but universal acceptance.

In Britain, Hindus provide a role model for how a community can integrate successfully and embrace British values, while retaining its cultural heritage and identity. As we speak, thousands of Hindus up and down the country are packed into school and community halls, participating in a colourful, nine-day festival called Navaratri. At the same time, they will be thinking of others less fortunate, and have organised initiatives such as the Navaratri food bank, providing meals to those of all faiths and none throughout the country. This is a live illustration of what the noble Lord, Lord Sacks, describes as *The Dignity of Difference* in his powerful book, which argues that we must do more than search for common human values; we must learn to make a space for difference. With that important background, I want to make the following four observations relevant for our present times.

I will comment first on anti-Semitism, as many noble Lords have. As somebody who lives in north London and has grown up side by side and in harmony with the Jewish community, who respects and admires its achievements and shares many of the same intrinsic values, it is deeply distressing to witness its anguish at current events—so powerfully articulated by my noble friend Lord Kestenbaum. It is fair to say that British Indians often look to Jewish organisations such as the Board of Deputies, the Jewish Leadership Council or the Community Security Trust as role models for unity of purpose and effective participation in national life. If the British Jewish community is going through such an ordeal, we all need to take heed. It is even more distressing that individuals who have spoken out on this issue, such as my noble friend Lord Popat, who led an excellent debate in this House on 13 September, are now subject to smear campaigns. I say to those who believe that intimidation and innuendo will scare us off: you are mistaken. It will not. In fact, it will strengthen our resolve to stand shoulder to shoulder with the Jewish community until anti-Semitism is eradicated in all its forms.

Secondly, Islamophobia is as unacceptable as anti-Semitism or any other form of religious intolerance. Although others are more knowledgeable about Islamophobia and have more first-hand experience of it than me—especially my noble friend Lady Warsi, who spoke so eloquently—I will share one observation from the Hindu experience of integration in the spirit of speaking for, and helping, the other. It is evident from the work of the Casey review that the Muslim community requires greater support in various aspects of integration, and that sections of the British Pakistani and Bangladeshi communities have struggled on this front and too often lead a segregated existence. It must be the case that elements of Islamophobia have their roots in ignorance about Islam, which better integration could address. The experience of British Hindus demonstrates that it is possible to integrate and still preserve your traditions, values and identity. A diverse society does not mean a divided society. It is therefore welcome to see the Government's Green Paper on integrated communities offer remedies such as a new community-based English language programme and an integration innovation fund to bring people together in shared activities and community spaces. We must work in collaboration with Muslim communities to break down barriers and thus reduce the frequency with which they are subjected to unacceptable prejudice.

My third point is an issue of significant concern to large sections of the Hindu community: so-called caste legislation. This refers to the attempt to make caste a separately defined aspect of race discrimination under the Equality Act 2010. The concern from Hindus is not about standing up to discrimination—discrimination is totally unacceptable in any form—but about creating caste consciousness where it does not exist and unleashing unintended consequences, when the overwhelming majority of British Hindus have no truck with any historic notions of caste. This is especially true for the current generation, which is blissfully ignorant of it even as an issue. Proceeding with dormant legislation would be totally disproportionate to the evidence of such cases and would serve to stigmatise Hindus. The Government's consultation on the subject was published in July, with more than 16,000 responses. Based on the evidence, the Government have concluded that established case law provides sufficient, appropriate and proportionate legal protection against caste discrimination. The Government therefore intend to legislate to repeal the duty for a specific reference to caste to be included in the Equality Act.

I urge the Labour, Liberal and other Benches, including the Lords spiritual, to consider this matter very carefully and to meet Hindu leaders directly to understand their concerns. We do not know when and in what format the proposed legislation will be brought to Parliament but it would send a powerful signal to the Hindu community if all sides of your Lordships' House were able to support the Government's position. Caste legislation is to Hindus what the anti-Semitism definition is to Jews. It has totemic significance. I make a plea, particularly to the Labour Front Bench, not to repeat the same mistakes which were made in handling anti-Semitism when dealing with this sensitive matter for the Hindu community.

Fourthly and finally, I will make a broader point about the growing prevalence of hatred in both public life and private behaviour in Britain. Only yesterday we saw the release of the latest Home Office data on recorded hate incidents for the year to March 2018, covering all types of hostility or prejudice towards someone based on personal characteristics. As noble Lords have already said, it showed a rise of 17% to more than 94,000 incidents, with hate crime having doubled over the past five years. Within this figure, religious hate crime represents 9% of incidents but it has been growing at the fastest rate, rising by 40% in the past year and more than fivefold over five years. This trend reflects a souring of our national discourse, with the growing propensity towards abusive behaviour given new oxygen by social media. The Prime Minister spoke assertively on this issue in her conference speech earlier this month, highlighting,

"the bitterness and bile which is poisoning our politics",

and calling out the fact that the first black woman ever to be elected to the House of Commons receives more racist and misogynist messages today than when she first stood more than 30 years ago.

Mahatma Gandhi said that,

"it is impossible to end hatred with hatred".

We need to find a circuit-breaker to end the growing climate of hate and rediscover the British reputation for politeness and civility. It must be possible to express dissent with respect. There needs to be an acceptance of diversity of opinion, whether in politics or religion. It therefore feels appropriate to conclude with the inspiring words of Swami Vivekananda at the Parliament of the World's Religions in 1893, which I referred to earlier. He said that the parliament of religions had proved to the world that,

"holiness, purity and charity are not the exclusive possessions of any church in the world, and that every system has produced men and women of the most exalted character. In the face of this evidence, if anybody dreams of the exclusive survival of his own religion and the destruction of the others, I pity him from the bottom of my heart, and point out to him that upon the banner of every religion will soon be written in spite of resistance: 'Help and not fight', 'Assimilation and not Destruction', 'Harmony and Peace and not Dissension'".

Those sentiments remain as relevant today as they were 125 years ago and could indeed have been written for today's debate. Like Swami Vivekananda, we must all remain hopeful for a better world, free of hate and prejudice, and one which accepts, respects and perhaps even celebrates difference.

7.55 pm

Lord Pickles (Con): My Lords, I draw attention to my entry in the register of interests. I hold a number of voluntary posts in Holocaust remembrance. It is a great pleasure to follow my noble friend Lord Gadhia. We recently visited a number of projects in Israel to bring Israelis and Palestinians together. In reference to what the most reverend Primate said about bringing communities together, contributing and making up an identity, I certainly feel that Hindus are an immensely important part of the British identity, not least because of my favourite religious festival of all, Diwali, which I am looking forward to with great enthusiasm.

[Lord Pickles]

The rise in the hate crime figures that my noble friend just mentioned is truly frightening: more than 94,000 incidents, the bulk being of either race crime or religious hatred. They are both shocking and shaming, not just to the Government but to the two Houses of Parliament and British society as a whole. I am proud to be a friend of the Home Secretary, who recently spoke movingly about the racial prejudice that his family had suffered, which they faced very bravely. I hope my friend Saj will forgive me but I am even prouder of my noble friend Lady Warsi. I congratulate her on not just a fine speech but the even greater achievement of being recently elected Yorkshire Woman of the Year. She chided me a little bit—which rankles even now—about Tell MAMA. It has to be said that the original application was all over the place and a complete mess. What my noble friend did not say is that she got it into some kind of proper order. She put together something that has lasted a number of years. I was pleased to support her in that and in ensuring that this country remembers Srebrenica and we have a proper ceremony each year.

I hope my noble friend will forgive me if I tell a story about her. I persuaded her—against her better judgment, I think, and at relatively short notice—to be an after-dinner speaker at a conference of Conservative councillors, which is not the easiest of audiences. They tend to be middle-aged men, a bit bored and wanting some kind of entertainment. Anyone who knows my noble friend knows that she is a very entertaining person. She started to talk about her early experience of politics, of canvassing in Dewsbury and of people shouting the P-word at her. I looked round the room at this hard-bitten bunch of councillors and I could see tears forming because they had made a connection with Sayeeda. They liked her and they felt the pain, perhaps for the first time, of what it is like to be persecuted. They admired her bravery enormously.

Thinking of those statistics, imagine the pain of a friend, all their friends and family, and the 94,000 people who feel the hurt that persecution causes, and consider the corrosive effect it has on society. The noble Lord, Lord Hain, who is no longer in his place, talked about it being an intolerant time. I have been involved in politics for 50 years, and in fighting racists and anti-Semites for just as long. I have never before experienced more intolerance in politics and society. There is a coarseness in politics.

The noble Lord, Lord Hain, outlined the growth in the far right—I do not seek to diminish it—but I cannot help but feel that is only half the picture. We had an hour-long debate, when people spoke for two and a half minutes, including my noble friend Lord Popat. I thought it a fine occasion, with some fine speeches, but nothing came close to the speech by the former Chief Rabbi, the noble Lord, Lord Sacks. I will read a short piece from a speech that sums up everything.

"Anti-Semitism, or any hate, becomes dangerous when three things happen. First, when it moves from the fringes of politics to a mainstream party and its leadership. Secondly, when the party sees that its popularity with the general public is not harmed thereby. Thirdly, when those who stand up and protest are vilified and abused for doing so. All three factors exist in Britain now".—[*Official Report*, 13/9/18; col 2413.]

I think we are beholden, as politicians—as leaders of society—to speak clearly and robustly against anti-Semitism and any form of prejudice, but to do so in moderate and liberal language. Whether we are politicians or distinguished columnists, we have a duty to ensure that in defending liberal values, we do not speak in illiberal terms.

Britain has a number of vibrant communities that are a fundamental part of the British identity. Sometimes we have a romantic view of John Bull, or of a Dickensian existence, but it was never so. Even in Tudor times this country had people from different backgrounds, races and countries. They are all a fundamental part of the British identity: Christians, Muslims, Jews, Hindu, Sikhs, Jains, Buddhists and others—people of faith and no faith—are a vital part of what makes this nation tick. Without them we would be a lesser place. If we want to understand what the effect would be, we need only look at central and eastern Europe. Even 70-odd years after the war, the removal of their Jewish communities has ripped the heart out of those countries, and even now they have not recovered from that devastation. We all, therefore, have a vested interest in fighting intolerance.

I join the noble Baroness, Lady Deech, in thanking the most reverend Primate for adopting the IHRA definition. I am a lead delegate on the IHRA delegation. It will make a change gradually over the years, not because it is legally binding—it is not—but because it has been adopted by police forces and education authorities, it is well established in training and used in questions of proof. Over time it will make a difference, and that is why the number of countries adopting it is growing.

There is, right now, a growing number of countries across the world which are starting to build new monuments and institutions relating to anti-Semitism and the Holocaust. Why is this happening? The historian Simon Schama said that the true assessment of the French revolution did not occur until the 1850s, when anyone who had experienced it had passed away. We have some experience of that here, in the centenary of the First World War, of which a great reassessment has been taking place.

In my maiden speech in this House I talked about the influence of my grandfather Smith, who served in the Royal Navy, and my grandfather Pickles, who served on the Somme. Nobody doubts that those two gentlemen served their time in the War: there is no industry saying that the First World War did not happen, or the Somme did not happen, but there is a whole industry of Holocaust denial, and we remember that the final stage of a genocide is denial.

About a year ago I visited Treblinka, one of the terrible death camps, which was only in existence for about a year and killed almost a million people. Nobody was separated for work; everyone was killed. I took a photograph of the monument, which is quite a moving one, and posted it on Twitter, as we politicians tend to do. Within minutes I received a reply that said, "No-one died at Treblinka, it was a transit camp. There was no death there, and any deaths related to influenza". You wonder whether someone like that really believes it. This morning I met representatives of the United States

Holocaust Museum. It has the distinction of being the second most popular site on the web relating to the Holocaust. The most popular is the Holocaust denial site, which leads by a considerable margin.

A number of organisations, including the Holocaust Educational Trust, the Holocaust Memorial Day Trust and the Anne Frank Trust, are doing so much to educate and explain. There has, however, been a growth in casual anti-Semitism. The CST recently found that while hard anti-Semitism was down in single figures, casual anti-Semitism was around 30%.

I will now mention the new monument. I raise it here because it relates to anti-Semitism. Most people object to it because they do not want it in that particular place: they are worried about the trees, the grass, the mess—all kinds of things. That is perfectly legitimate. As part of the modern planning process for something like that you have exhibitions and people in to explain what has happened. I will give a sample of what people said: "Just put it near the War Museum, they have space for it. Or better still, somewhere south of the river, where it is more suitable for the people who live around there. Or in north London, where the Jews live". One said: "Why do I need to be reminded of the bloody Holocaust? I just want to walk my dog in the park; I don't want to be reminded of the bloody effing Holocaust". And another said: "You should get all these people who are against Jews and we will see all the bloody Muslims come and protest". I suppose that is an equal opportunity bigot.

During the exhibition, we heard people say, "Why should we be building a memorial for Jewish people next to the British Parliament"? They then went on to list British subjects, saying that Jewish people were foreigners. One man said that he liked the design and thought we had worked very hard on it, but that it was in the wrong place. He went on to ask, "Why a memorial for them? Why not the Sikhs or the Hindus? Is it because they have so much power and influence in Parliament?".

These things were said by people at the exhibition to government officials without any worry. I may have read out just a selection, but that was 25% of the people who commented at the exhibition, which is roughly similar to the CST figure of 30%.

We are building this memorial. It was announced by the Prime Minister in January 2016, and endorsed by his predecessor. The site was selected—just outside this building. An international competition was held, which attracted some 92 entries. We got down to the last 10 or so, which were displayed in this building, the Scottish Parliament, the Welsh Assembly, and in Manchester. All kinds of people made suggestions, and 11,000 people contributed. Then a distinguished panel looked at the various designs. We have come up with a design that will be a monument and a learning centre, which will deal with the Holocaust through British eyes. It will tackle some very difficult questions with regard to our involvement—things that we should be proud of, and some things that we should perhaps be slightly less proud of.

At a time when parts of Europe are seeking to rewrite history, it is important for us to set a clear example that we will look at our history with an unblinking eye. The real reason it will go there is because it will stand right next to Parliament and remind people, as they leave the monument and look towards Victoria Tower, that this place is a bastion against tyranny. As we look out at the memorial, it will remind both Houses of Parliament that the legislature has a power to protect or to oppress. We will remember that a compliant legislature introduced the Nuremberg laws. It is my sincere hope that we will build a monument of which we will all be proud; we will build a learning centre that will be a beacon to the world.

8.14 pm

Lord Bilimoria (CB): My Lords, I shall tell you a story. Three years ago in Kerala in South India, the heart of a Hindu man was transported across Kerala for a Christian patient in dire need of a new one. Funds were raised by a Muslim businessman to pay for the operation which was performed by the state's top heart surgeon: a Christian. Kerala is known as "God's own country". Over the centuries, people have come from different cultures and communities and travelled to live in Kerala—Jewish and Christian migrants, Arab merchants, European traders and colonisers. The city of Cochin—Kochi, as it is now called—has the oldest active synagogue and the oldest European church, both from the 16th century. Kerala is a symbol of religious co-existence—not just tolerance, but co-existence in a world that is struggling with virulent intolerance and violence, which is what this debate is all about. The state has a mix of three of the world's largest religions—30% Muslim; 20% Christian and 50% Hindu.

The essence of all this is when it comes to religion we are all too quick to focus on what divides us rather than what brings us together. The former Indian President, Pranab Mukherjee, said that a society as diverse as India can be governed only as a democratic, federal and pluralistic polity.

I thank the noble Lord, Lord Bourne, for leading this debate and everything that he does for the communities in our country, which I have seen first hand. He wrote an article in the *House* magazine, headlined:

> "We will not allow hatred and intolerance to go unchecked".

He summed it up by saying:

> "Britain is a proudly tolerant nation—a nation where everyone has the right to live according to their beliefs. Indeed, this is a quality Britain champions and recognises as one of its great strengths. We believe that our differences make us stronger—that together we can learn from one another and grow as individuals and as a society".

Yet if we look at the statistics in the data provided to us, they show that Christians have declined from 72% to 59%; Muslims have increased from 3% to 5% and the number of Hindus, Sikhs and Buddhists rose slightly, while the Jewish population remained broadly the same. There were 80,393 offences recorded by the police in which one or more hate crimes was a motivating factor. The majority were race hate crimes—78%—but 7% were religious hate crimes. There has been a surge in reports of hate crimes directed at people in England and Wales because of their religious beliefs. They rose by 40% from 5,949 to 8,336 this year, according to Home Office data. To back up what the

[Lord Bilimoria]

noble Baroness, Lady Warsi, said, most religious hate crimes—sadly, 52% of all offences—were aimed at Muslims.

I am so happy that the Government have appointed the noble Lord, Lord Ahmad, as a special envoy to promote religious freedom. As the Prime Minister said:

"Tolerance for those of different faiths is fundamental to our values, and is an issue I know is already of great importance to Lord Ahmad, who is constantly looking for fresh ways to promote religious liberty in his role as Minister for Human Rights at the Foreign Office".

I commend the work that he does.

Minorities in this country make up 14% of the population. We have to keep this in context. Sadly, we have heard, and I shall not repeat it, about the religious prejudice that exists at the moment within political parties. These statistics were again provided to us. In the Labour Party in particular there have been statistics after statistics of anti-Semitism, and I shall cite just some of them. The Conservative Party and the Labour Party were prejudiced against six groups: Christians, British Jews, British Muslims, British Hindus, Sikhs and atheists. In the case of the Conservative Party, definite or probable prejudice was said to range from 13% against Christians to 27% against Muslims but for the Labour Party it was 11% against atheists to 36% against Jews.

Noble Lords: Oh!

Lord Bilimoria: I am just quoting the figures I have been given—36% and 34%. These are really worrying statistics.

An omnibus survey was carried out demonstrating the relatively low significance attached to religion by a cross-section of the population. Given 12 options to define personal identity, just 7% chose religion. Asked how important religion was to them, 72% said that it was not important at all. This is worrying. Another survey included the statement that religions are inherently violent and 32% agreed. On the question that the teachings of religion are essentially peaceful, 61% agreed. On the statement:

"It is religious extremists, not religions themselves that are violent",

81% agreed. That is the important statistic. Here is another example:

"Most of the wars in world history have been caused by religions",

70% agreed. Here is another worrying one:

"On balance, religions are much more peaceful today than violent".

With that, 44% agree and 44% disagree.

On anti-Semitism in the Labour Party, another poll revealed that 34% of the entire electorate—even 16% of the Labour Party—believe that it is a serious problem within the party. The noble Lord, Lord Kestenbaum, spoke about that. Another very scary fact is that 1 million people in our country have experienced faith discrimination.

There is one other fact that nobody else has mentioned, or probably will mention. One of the best lectures I attended at Harvard Business School was given by Professor Mahzarin Banaji, who is a fellow Parsi—and, ironically, hails from Hyderabad in India, where I too am from. She creates awareness of unconscious bias in self-professed egalitarians. She studies human thinking and feeling as it unfolds in social contexts, and her focus is on mental systems that operate in implicit or unconscious modes. How much unconscious bias exists, most often unintended, within social groups? We should all be aware of this. Professor Banaji has written a book, with Tony Greenwald, entitled *Blindspot: Hidden Biases of Good People*.

His Holiness the Dalai Lama, who I have had the privilege of meeting, said:

"India's treasure is that all major religious traditions co-exist in harmony".

The Nobel laureate talked about

"education for wisdom and compassion",

and said:

"There are different spiritual traditions whose philosophies are also different, but all of them carry the same message of love. All religions teach us the practice of tolerance and have the same potential of bringing inner peace".

He stressed the need to get rid of conflict in the name of religion, and called upon people to

"acknowledge each other as brothers and sisters and develop a sense of oneness with others ... a concern for other human beings without being self-centred or short sighted. We need a sense of global responsibility".

Last year when the Foreign Office celebrated UN Human Rights Day, its theme was "freedom of religion or belief". Here I should read out Article 18 of the UN declaration of human rights, which says:

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance".

Yet look at what is happening; look at the sadness of what ISIS—so-called Islamic State—is doing. Its behaviour in the Middle East has been absolutely appalling. Article 18 has been completely disrespected around the world. Religious intolerance is the virus that causes the persecution, and if not treated it will lead to more and more of the atrocities that we have seen.

Archbishop Desmond Tutu—a fellow fellow of my college at Cambridge, Sydney Sussex—said about Nelson Mandela that he was a magnanimous individual. In a situation of ongoing conflict and violence, we should try to achieve conflict resolution. That is what the archbishop and Mandela did so brilliantly. The principles of reconciliation should be based on truth, justice and forgiveness.

The most reverend Primate the Archbishop of Canterbury, when he led a debate two years ago, said:

"At their heart they bring true integration based on the God-given dignity of all human beings whatever their ethnicity, gender, sexuality, ability or economic worth. A vision of this kind will promote cohesion around the common good, it will encourage courage and creativity, it will lead us to train young people in new skills, it will give us the strength to open new markets, to share our wealth and wisdom fairly and not only to our advantage, and to welcome the alien and the stranger. It will challenge us to be consistent and to have an eye to our relationship with future generations, notwithstanding the events that intervene".—[*Official Report*, 2/12/2016; col. 418.]

From a Zoroastrian perspective, my community—one of the smallest communities in the world—has full freedom to practise our ancient religion over here in the UK. We have never been persecuted. Yet to see the persecution of the Zoroastrians in Iran is very sad. One thing that worried me greatly when I came to this country in the early 1980s from India, is that I was told that this country had a glass ceiling for foreigners, and that if I ever wanted to work after I finished my studies I would never get to the top because I was a foreigner. That was so true, I am afraid to say, years ago. Today it has changed, and this country has evolved into a country of aspiration, where anyone can get anywhere, regardless of race, religion or background. I led a debate here a few years ago on the contribution of minority and ethnic religious communities to the culture and economy of Britain. In that debate, which some Members here tonight spoke in, it was said that we would not be where we are today—the fifth largest economy in the world—without the contribution of those minority communities.

In India there are only 59,000 Zoroastrian Parsis out of a population of 1.25 billion; here there are less than 6,000 of us out of a population of 65 million. Yet wherever you go, people know who a Parsi is. Mahatma Gandhi said: "In numbers they are beneath contempt, in contribution, beyond compare". Ambitiously, I say that by achievement per capita we have done so well, going back to Cyrus the Great. Forget Magna Carta: that is modern. In 539 BC, Cyrus the Great, with his cylinder in the British Museum, issued the first bill of human rights, in which he allowed people in his kingdom to practise whatever religion they wished and allowed the Jewish community to go back to their homeland.

In the context of the European Union, Brexit, as the noble Lord, Lord Gadhia said, is dividing this country. Immigration was the highlight of that—yet where would we be without those 3 million immigrants from the European Union who came to this country and contributed to it? The most reverend Primate spoke about assimilation and integration. My father, the late General Bilimoria, said, "Wherever you live in the world, integrate as best you can, but never forget your roots". It is important that people can integrate but also be proud of their roots. That is the difference between secularism and pluralism: we are proud of our own religions but we celebrate, not just tolerate, all other religions—and we do so with integrity.

The most reverend Primate's predecessor, Rowan Williams—Archbishop of Canterbury at the time, and now master of Magdalene College, Cambridge—spoke about integrity. That word comes from the Latin words "integritas" and "integer", and you cannot practise integrity unless you are whole and complete as an individual, as an entity, or as a community. You cannot be fragmented in front of the light; you can only practise integrity if you are whole.

Yet, as the noble Lord, Lord Bourne, said, we have had a chilling reminder that many people around the world live in fear purely because of their beliefs. We must never let ourselves fall victim to such intolerance and divisiveness. That is where my favourite poem by Rabindranath Tagore, the Nobel laureate, starts:

> "Where the mind is without fear and the head is held high …
> Where the world has not been broken up into fragments
> By narrow domestic walls",

and ends:

> "Into that heaven of freedom, my Father, let my country awake".

Although the fundamentalists in each religion affirm that their religion is exclusive, and look on other religions as enemies, according to their scriptural and theological traditions all religions have a notion of a god who is inclusive. This morning I was talking to my elder son Kai, who has just graduated in theology from Cambridge. I said, "I'm speaking in this debate, Kai. Have you got any advice for me?" He said, "Yes dad: where religion is concerned, we are more similar than we are different". He talked about the difference between secularism and pluralism, and about celebration rather than tolerance. Then he reminded me of his grandfather—my father—and said that when he was in the army there would be cavalry regiments with a Sikh squadron, a Hindu squadron and a Muslim squadron, not just living together but fighting together as comrades in arms. Finally, he said, "Dad, there's a Chinese proverb: there are many paths to the top of the mountain, but once you're there, the view is the same". Brexit is dividing this country and threatening the existence of our precious union. My wife is South African, and there is a wonderful South African saying: if you want to go fast, go alone, and if you want to go far, go together. We have to go together as a country, and then we will go far.

8.29 pm

Lord Patten (Con): My Lords, any objective observer in the Public Gallery, looking down and listening to this debate, will sense that our tight little Chamber has worked itself up into a fine old consensus. It is not a consensus I dissent from at all, I agree with it all, but I will disappoint your Lordships by not going round the same arguments that I think we all agree on. Indeed, I will go off-piste a bit to say that sometimes I think that it is okay, with restraint, to be disobliging and attack religions—I think in particular of my own, Roman Catholic religion in this country—and to be a bit intolerant sometimes. I think a bit of intolerance is sometimes richly deserved, even by the cassocked ones.

I also think we must be very wary of thinking that the situation here is terrible, that there are terrible problems facing the Jews and terrible problems facing the Muslims—which I abhor. My noble friend under the skin, the noble Baroness, Lady Deech, knows my feelings and my strong support for the Jews, and I have close Muslim friends who know of my support, so I shall not to reiterate it. However, knowing of someone in the Indian subcontinent who has been waiting a long time for trial for blasphemy on the grounds that they drank water from a particular well, they would think they were in a heaven of tolerance in the United Kingdom by comparison to what they face. We also have to be careful not to endlessly extend the margins of victimhood in this era of identity politics. I do not mean party politics, but everyone forming into little groups—me too here, me too there. There is a danger that we may well, by seeking to be tolerant, become intolerant. That is something I would abhor and I warn against.

[Lord Patten]

I think it is terrible that certain groups in this country do not feel safe and want to leave this country. That said, we have to be robust and not push the frontiers of victimhood too far. My noble friend Lady Warsi talked about casual dinner party conversations: I am now very fearful of the dinner party police perhaps recording what I say and what I think, as I am very cautious in the financial services world, where I work, and, indeed, in the political world, where I talk to that most dangerous group of people, the political journalists, from time to time. I very much agree with my right honourable friend the Prime Minister's words in her Easter message last year, when she spoke about the importance of the shared values of compassion, community and a sense of mutual obligation.

It is not easy to condemn nor lecture, for example, a Pakistani, or a Minister in Pakistan, for their lack of tolerance to words about non-Muslims, so it will certainly be a challenge for my noble friend Lord Ahmad. I too, like other noble Lords, welcome his appointment on 4 July this year to be a special envoy to the rest of the globe promoting interfaith respect. It is very interesting: a few years ago, under a previous Administration, he would have been called a tsar, but he is now called a special envoy, doubtless to deal with sensibilities in the Russian direction. Whatever his title, no one will do this better than my noble friend Lord Ahmad, despite the difficult situation he will find himself in when he goes round trying to promote interfaith respect. For example, in Pakistan when he asks, "Why do you imprison those people who allegedly blaspheme?" the likely response, very quickly, from his Pakistani vis-à-vis will be, "Well, your Excellency, before I answer that, please tell me why the recent unfettered surging anti-Semitism and what about the most recent figures showing a soaring number of attacks on Muslims in the United Kingdom?" He has a difficult road to travel.

Whatever the answer, it is clear to me that Christians of all branches in the United Kingdom need to keep on their sense-of-humour armour about the attacks that Christianity sometimes gets, particularly from jokers and stand-up comics. The mass media rather stopped that sort of comic remark about Jews or Muslims, and certainly about Hindus—I have never heard a good joke against or for a Hindu in that respect. We have to recognise that a lot of unfortunate remarks are still made about the Christian church at large, but my response to that is, "Hey-ho. I am going to shrug this off and not worry about it: I am not going to be a victim". Not being a victim is extremely important. I am slightly worried about the sense of spreading victimhood in some of the speeches I listened to this afternoon.

What we cannot do is shrug off increasing intolerance towards us. Here, the us I am talking about is the Roman Catholic Church, not any other Christian church in this country. I am entirely talking about intolerance, although I think that a certain amount of intolerance at the moment in our direction is deserved. Let me illustrate this with the story of a few weeks ago when someone I greatly admire, Monsignor Rod Strange, one-time head of the seminary for mature would-be priests in Rome, the Beda College, and now a distinguished professor of theology at Saint Mary's, Twickenham, told of a fellow clergy coming out to start his day, walking through the door of his presbytery with a bounce in his feet and his clerical collar on to be met by a direct spit hit by a woman, exploding with, "Here comes another paedo priest". That is the damage that has been done, sometimes, by the Roman Catholic faith to itself. This sort of lamentable but understandable intolerance is made manifest in the sometimes slow response by the hierarchy of my Church to decades of institutional abuse of little boys in Roman Catholic schools.

One of the great things about the Roman Catholic Church, embedded in the Vatican, is that it is an ancient outfit, embodying splendid durability and long-term vision, not responding to every tweet or critical remark with some instant reaction to what the 24-hour media says. This is generally a good thing, but there is no excuse for the sometimes tardy grasping by the hierarchy that there is a problem. Just weeks ago, it was announced with a slight roll of Vatican drums that there to be a great, global inquiry into child abuse globally. It was an urgent matter, so urgent that it will come in the first quarter of 2019, so we have a long time to wait for this.

In the UK Church, we have been listening to the outpouring of well-meant, holy apologies, sometimes expressed in somewhat clericalist language, for what has happened to children in this country at the hands of Roman Catholic priests. There have been lots of calls for prayer and fasting—all good stuff—but, of stable-clearing action and prevention plans there has not been very much. No wonder that we Roman Catholics in this country have lost a bit of respect. This may be one of the reasons why so very few young men now go into our seminaries. That twitch on the thread of a possible vocation from the Almighty is counterbalanced by the self-searching of whether this is—or perhaps is not anymore—a respectable profession or calling to go into. It must explain why, where we live in the West Country, there are less than a handful of likely-to-be-ordained priests during the next five years. It is why where people go to Mass, they are closing down. Times are changing.

Yet, in many abbeys, there are good, holy, ordained monks. Not every monk—such as the unfortunate priest who was spat on by the lady—is remotely a paedophile. These abbeys were the epicentres of some terrible. admitted abuse, so much so that monks are kept away from the schools that they once set up, which are now entirely in the hands of laity. It might be a good public and practical act of penance to decide to mothball their own buildings; to realise that the intolerance being shown towards the Catholic faith is reasonable, and to go out into the parishes, many of which no longer have the priests they used to—some are in their 80s—to keep Mass going of a Sunday.

The Roman Catholic Church in the UK cannot preach tolerance for others, or about itself, when some see it as inactive in demonstrating practical intolerance of what they have unknowingly presided over. No more can we politically preach about what goes on in

the Muslim bits of Pakistan, when some of their brethren are having such a rough time today in the United Kingdom.

8.40 pm

Lord Triesman (Lab): My Lords, I start by thanking the Minister—not just for launching this debate, but for what was a very important speech. I want to read and study his contribution again. It is a pleasure to follow the noble Lord, Lord Patten. I know this is what Ministers normally get to do at the end of debates, but I want to thank everybody I have heard so far. I have not heard a speech from which I have not learned a good deal. One of the conventions of the House is that we only refer to people on our own side as our noble friends. However, I think this is an occasion when the friendship and empathy across the House is a great deal more significant than which side we are sitting on. So, if I do not use the convention, it will be because I see people across the House in exactly that spirit. I am looking forward to what my noble friend Lord Griffiths says at the end, though I have not heard him yet. He is a very distinguished leader of his own Church, in which he has played such a significant part. I am sorry that the noble Lord, Lord Popat, is not in his place at the moment. He has also been a formidable champion of many of these issues and I want to record my thanks to him.

Ten, maybe even five, years ago I could not have imagined that we would be having this debate, nor felt that it was necessary. The headlines that we saw yesterday about the dire increases in hate crime might not come as a surprise because we have probably all charted them. They do come as a surprise, however, because somehow, we have arrived at a point in this country where these things are manifest and serious. I am not going to repeat all the statistics because your Lordships have read them and heard them in other speeches. They are devastating. It is true from these statistics that some communities in particular have found themselves in the crosshairs of this—the Muslim community, and the Jewish community of which I am part. It moves me and has made me want to speak today because I reflect on my own family's history, as my noble friend Lord Kestenbaum did a short while ago on his. He talked about the escape of his family from Germany. More or less none of the members of my family who were in mainland Europe escaped, with fatal consequences for pretty much all of them. One part of my family escaped from Portugal in 1492—the Portuguese have managed to track them back all that distance, which must mean that their Home Office is a good deal more efficient than ours. The reality is that our family survived because that branch escaped all that time ago.

Part of what I say, reflecting on what has been said by my noble friend Lord Hain and others, is bound to sound a little angry. I do not mean to indulge in anger or victimhood, but I want to understand what we are trying to deal with.

The issues that we have begun to explore today have led the Commissioner of the Metropolitan Police, Cressida Dick—somebody I greatly admire and trust—to indicate the level of work and attention that her force will give to them. I welcome that enormously. Equally, however, I do not wholly buy into the certain amount of complacency shown by the Government when they say this is simply down to increased effectiveness in keeping records. There are very real problems which go beyond police recording; indeed, the Minister made the same point himself, and I am glad that he did. Everybody knows that a great many victims feel that they have to shrug these things off and somehow carry on without reporting anything to anybody. They either see that there is little prospect of action or believe that it has become such a normal part of their lives that they do not report it. If anything, I suspect that the crimes we have been discussing which go unreported, as with crimes against lesbians, gay people, bisexual people and transgender communities, would have boosted the figures significantly had they been reported. It is not a spike in the statistics; when you look at them, there is an unrelenting, upward curve.

I will quickly mention two examples from my own experience. A lady who worked for me was punched in the face on a London bus two days after the Brexit result, when she was with her five year-old daughter. She was not visibly from any minority community; as it happens, she was from Latvia. However, she spoke with a strange accent, which caused huge fury to somebody. She would not report it. She said that what she would do was to take herself and her daughter back to where they came from. It may be that many of the people who took part in that referendum wanted exactly that outcome, but the reality was that she decided not to report it but to go. The other example is of my own intern in your Lordships' House, who just a few weeks ago was set upon by three thugs in the East End of London. She is visibly and, I would guess to most people, obviously a young Muslim woman. She has been badly injured; thank God, she is moving around again, albeit on crutches. She was attacked for those reasons, and she is just one of many examples. It is all very close to home, which is the point I wanted to make.

We are seeing not just something in the general population; we need to reflect on ourselves as well. Political elites do not always do as much they could, or the right things in the circumstances. We see many advocates of a decent, tolerant set of relationships, and that is very much what I see and experience in this House—I described all noble Lords speaking in this debate as friends in a sense, and I meant it. But I fear that others should hang their heads in shame. Boris Johnson has become a man whose public bigotry is a significant issue. It is unbelievable to me that he should talk of Muslim women as he does, but in fact he has talked of many minority communities in much the same way. The leader of my own party, it is sad for me to say—having been involved in the party, and its general secretary—has a long history of rhetoric but is wholly bereft of action. Inaction has allowed anti-Semitism to fester in the Labour Party, and the serried ranks of bigots, who are waiting for action to be taken, see that it somehow never matures. In these cases leadership rarely says the right things, and it appears that in my party it does not do the right things. Above all, for me it is what you do rather than what you say that tells people who you are and what your values are. A Labour MP who can walk around a difficult and tough constituency in the north-west without any kind

[Lord Triesman]
of police escort or protection cannot walk through the Labour Party conference without police protection. That is a fundamental, visible example of a significant problem. Many of us have experienced similar things—not that we needed police protection, but similar kinds of abuse.

I say to my noble friend Lady Deech that in my experience it is not always about Israel and Palestine—in fact, that is unusual. The thing which apparently I do, and which people know about me without ever asking my view, is that I use whatever authority I have to prop up my friends the Rothschilds and George Soros to make sure that the secret network which makes so much money for that part of the community is intact. One could have heard it in the 1930s of course, and we are hearing it again now.

It is a sad truth that we are becoming an ugly and intolerant country. This is a tragedy for the United Kingdom, given its history and ability to absorb peoples. As many others have said, civility and respect are not quite dead in this country but I fear they are they are heading for a rather shallow grave.

The internet, which is the default mass publishing house for trolls, racists, homophobes, liars, fakers, charlatans and racial supremacists, has deepened the ugliness and intolerance. Freedom of expression is, of course, tremendously important, but I urge noble Lords to reflect on when the expression of something goes beyond freedom of expression into something that is, by repetition, more significant. If we look at any individual statement by Bannon, it is unlikely that we would see it, in itself, as the cause of anything. Yet, aggregated, such statements were sufficient to help the President of the United States say of a group of Ku Klux Klan members that they were not "bad people". If we can begin to define where things move from being expressions of opinion into being dangerous, we should do it.

The problems have been there below the surface for a long time; we need to face them. Black communities in the United Kingdom have faced them and we need to do so too, in a very candid way. In the case of Jewish people, Conor Cruise O'Brien rightly described anti-Semitism as a very light sleeper. Sadly, many of us who have experienced problems in the recent past will know just how lightly it is asleep.

The speech given by the noble Baroness, Lady Warsi, at the Second Reading of the anti-terrorism Bill was, I thought, exceptional; I applaud it, and I applaud what she said today. It is absolutely clear that, unless you can engage with communities who can engage with other people, the likelihood of finding solutions is very small. I assure her, as I am sure others in the House will, that many will support the positions she has taken and argue for them.

I do not think people's fears are fanciful. My late father used to keep a packed suitcase—a bit like the parents of the noble Baroness, Lady Warsi—because he thought things would probably go wrong in this country. I always thought that was crazy but I am now beginning to see things which appear to be going very wrong. Any number of my friends and relatives are beginning to plan their departures to various places—Canada seems the most popular destination because they feel it is likely to be tolerant. What an extraordinary thing—I could not have imagined that this would happen in my lifetime.

Some of it is unquestionably down to the politics of identity. The sorts of social alliances that were so cohesive for us over so long a period have broken down in many ways. People still respect those institutions—most of us try to ensure that they remain healthy—but the truth is that people can identify themselves in smaller and smaller groups, which identify themselves partly through not being part of another identity. They are in many cases hell-bent on describing how their group has been set upon by the most considerable disadvantage. For those reasons, they regard themselves as needing a remedial case to be argued, which places them above others.

What might we do? First, I agree completely with those who say there is no place for hate crime. I do not like the idea of criminalising people, and I do not think it often works, but it is essential that people understand that the Government of this country will pursue crimes and seek to convict criminals, and that the regime which criminals then experience is enough to make them reconsider what they do. I do not see any point in thinking otherwise. I think of how the late Lord Scarman dealt with some of the issues that arose out of the original Notting Hill riots. It was an absolutely clinical intervention and it had a dramatic effect.

Secondly, the leaders of political parties must act expeditiously against members of their parties who promote hatred. This should apply absolutely to Islamophobia as much as it does to anti-Semitism or any other form of discrimination. They are in many ways distinctive, but they have much in common.

Thirdly, I will not repeat the point made by the noble Lord, Lord Hain, but I completely agree that fundamental economic change is important to raise aspirations and people's feeling that they are part of this society.

Fourthly, and for the sake of our future, it is important to look at and address the school curriculum, the way teachers work and the sort of things that happen to kids in classrooms. There are good arguments for classroom discussions that enable all pupils to take part, with everyone being properly heard and their opinions respected. We need to focus on evidence and a means of dealing with fake facts. We need to draw on the external and community resources around schools, and we have to moderate opinions and strong emotions to try to retain cohesion. We have an amazing teaching force in this country in many ways, and it is perfectly capable of doing this. I am well aware that I am making no greater an appeal than to make sure that all the things in the Runnymede report of 1994, and reprinted in 1997, are finally done. Of course a lot has been done in schools—it would be stupid for me to suggest otherwise. However, I suspect that we have not done as much as we could.

For those reasons, I make one final point to your Lordships—to my friends, right across the House. The existential issues may take us a generation to deal with. As the noble Baroness, Lady Deech, said, that

applies to universities too, but it applies also to the next generation. If we do not get it right, our future as a cohesive people will be in the gravest jeopardy.

8.57 pm

Lord Morrow (DUP): My Lords, like others, I welcome this important debate on religious intolerance and prejudice in the United Kingdom. The protection of the right of freedom of religion or belief for all must be a central challenge for us in this House. Despite the protection of the right to freedom of religion or belief being afforded greater priority in the UK than in many other parts of the world, this does not mean that individuals wishing to enjoy this right do not face challenges here. Moreover, there is reason to believe that this is becoming more, not less, of a problem.

Other noble Lords have observed that yesterday the Home Office published new figures for hate crime in England and Wales. I recognise that others have said something about these figure, but I want to repeat it. In 2017, 8,336 religious hate crime offences were recorded in England and Wales. That constitutes an increase of about 40% in comparison with the previous year. In 2017-18, where the perceived religion of the victim was recorded, 52% of offences were directed at Muslims, 12% at Jews, 5% at Christians, 5% at other, 4% at individuals with no religion, 2% at Sikhs and 1% at Hindus. Very strangely—I cannot get my head around it—21% were directed at those with an unknown religion. I suspect the Minister might be able to help me with this figure when he responds, but I confess to being somewhat baffled by it. Despite being classified as religious hate crimes, the relevant faith of those involved in 21% of cases is unknown. I find that strange and difficult to understand, and look to the Minister for help. How can one be clear that an incident should be classified as a religious hate crime if it is not possible to identify a religion?

I understand that, over recent years, police forces have been required to disaggregate hate crime data by faith. This should allow for a better understanding of the trends of hate crime perpetrated against different religious groups and ensure a more targeted approach in addressing such crimes. However, an article published in the *Spectator* in March 2017 casts considerable doubt on whether that is actually happening. The article reports on freedom of information requests by Hardeep Singh. The results reveal some striking problems in the recording of hate crime incidents. While in 2016 there were 1,227 recorded Islamophobic incidents, in 57 of these recorded cases the victim had never been contacted. In 86 cases the religion of the victim was unknown. Information on another 85 cases was recorded as blank. The article further indicated that the cases of 19 Hindus, 11 atheists, 39 Christians, four Sikhs, two Greek Orthodox, two Jews and two Roman Catholics were recorded as Islamophobic, rather than as hate crime targeting the relevant religions.

The report suggests that 912 of the 1,227 victims of a crime classified exclusively as anti-Muslim were Muslim. The fact that 912 religiously motivated hate crimes were directed at Muslims is very concerning, and must be condemned without reservation. I do not wish to detract from that in any way; it is a fact and cannot be denied. However, erroneously recording over 300 crimes as Islamophobic neglects the problem of other religious groups being targeted for their religion. This is an issue which urgently needs to be addressed. Ultimately, if police forces are required to disaggregate hate crime data by faith in their documents, they should be provided with extra training to enable them to do this adequately. Mindful of these circumstances and considerations, I ask the Minister: are the Government aware of the discrepancies in the recording of hate crime by faith, as highlighted by the *Spectator*? What investigations have been conducted by the Government, and what practical steps have been recommended, or already implemented, to address this issue?

I now turn to an issue that has not gained sufficient attention, despite constituting a significant challenge: namely, the issue of religiously motivated hate crime perpetrated against Christians through attacks on their places of worship. Attacks on Christian places of worship appear to be on the increase. I will provide some examples, but this is just the tip of the iceberg. On 12 September 2017, individuals broke into Christ Church on Infirmary Road in Londonderry, stole a decanter used in holy communion and defecated on holy scripture. On 10 September 2017, a man with a knife attacked and injured three people during a service at the New Jerusalem Apostolic Church in Aston. Throughout 2017, St John's Church in Keynsham was subjected to several attacks; the damage was assessed at £3,000 for the repair of windows alone. In August 2017, Holy Trinity Church in Back Hamlet, Ipswich, was attacked on four separate occasions. Windows were smashed and a section of the memorial garden destroyed. In August 2017, Airdrie Clarkston Parish Church was attacked and war heroes' graves tampered with. In August 2017, St Mary and St Nicholas Church was attacked, causing over £10,000 worth of damage. In July 2017, a food bank based at the Church of the Venerable Bede in West Road was forced to close after it was attacked. I could go on and on—the list is endless. I will not do that, but, as I said, these examples are only the tip of the iceberg, quickly identified courtesy of Google. There needs to be a much more comprehensive investigation. Have the Government obtained any data on the number of attacks on Christian places of worship by year and by region? If so, what was their conclusion and practical response to such attacks?

In coming to terms with the significance of these attacks, it is important to consider not only their effect on places of worship—that is, the damage to the building and religious items—but the adverse effects on people who attend places of worship. A significant number of attacks on Christian places of worship might have a detrimental and chilling effect on people going to such places. If these criminal activities are not adequately investigated and prosecuted, it is likely that this impunity will encourage further attacks. It is crucial that the Government and the police take seriously attacks on places of worship, irrespective of where they are, and that they deal with such cases effectively and with the same diligence as they do any other crime. Furthermore, it is imperative to scrutinise the steps that are taken to ensure that future criminal activity is prevented and that safety and security in places of worship is guaranteed.

[Lord Morrow]

I understand that the Home Office has been supporting places of worship and improving their security to counter the threat of hate crimes at their premises. This is a very positive initiative. I also understand that, as mentioned in *Action Against Hate, the UK Government's Plan for Tackling Hate Crime—'Two Years On'*, the Home Office's places of worship scheme in 2019-20 will provide further funding for this initiative. Can the Minister say how many places of worship have benefited from this initiative so far and what the disaggregation is on the basis of faith? Furthermore, it would be beneficial to know how many places of worship were denied such funding under the scheme and for what reasons. I very much look forward to the Minister's response to the points I have put to him this evening.

9.06 pm

Lord Desai (Lab): My Lords, I am the 15th speaker and I rise to speak three hours into the debate. As someone said, everything that can be said on this subject has been said but not everyone has said it. However, that does not mean that I shall repeat what has been said in what has obviously been a very good debate.

The peculiar thing about our current problem is not that this country was always tolerant—that is a delusion which I will speak about in a moment—but that intolerance is taking a particularly vicious form in relation to religion. I have lived here for 53 years. In 1964, the year before I arrived, Patrick Gordon Walker lost an election at Smethwick due to his opponent's slogan, "If you want a nigger for a neighbour, vote Labour". We have had a lot of intolerance and prejudice, but the achievement in the first 45 years after I arrived—this was not due to me; I am just giving the dates—was this country, which was not a multiracial culture, becoming a multiracial culture.

That took a lot of hard work and nobody should believe that this country was always tolerant. For most white people, it was—there is no doubt about that—but even within white people there is a lot of prejudice, as the noble Lord, Lord Patten, said. Roman Catholics suffered a lot of prejudice. Jews feel safe now but that has not been the case for all that long because they too did not feel very comfortable in this country. Therefore, let us not pretend that all was hunky-dory and suddenly Jeremy Corbyn came along and everything turned bad. We have to understand how we became a tolerant, open and multiracial culture and how much hard work it took on the part of the Government, the community, the judicial system and the voluntary organisations.

Housing was difficult when I arrived. People would say, "You may go anywhere but you will not be able to rent", but I could because I had a middle-class job and a middle-class income. The discrimination was being suffered by people who were poor; there was an element of class as well as race. One must never forget that an element of class is very important in the forms that intolerance and discrimination take. What we had was a class problem where the people who were coming in were poorer—they knew English but their English could not be understood by local people—and there was a variety of discrimination.

I have personally suffered no discrimination, but I did hold a seminar at the London School of Economics when the right honourable Enoch Powell made his "rivers of blood" speech. That was the only time I had the National Front threaten me and break into my apartment and scrawl things on it, but that did not bother me. That is part of being a person who wants to struggle to make a society better, but the feeling that the non-white community was alien—that they were not properly here, that they should go back and that there should be a scheme to send them back—was there for a long time. The only time I thought I might leave was in 1978 when Mrs Thatcher, in a television interview, said that this small island was getting rather crowded. That is a dog whistle and I said to my white, English wife and my children that we may just have to leave and go to Australia because it may become very difficult for us to live here. Luckily, that did not come true. We had race riots in the 1980s in Brixton and Toxteth; people may not remember, but I remember.

One of the positive things is that we can overcome intolerance but it takes a lot of effort on the part of everybody—it is not just the Government's job. It is also the job of social organisations and of volunteers. More than anything else, I plead—as a social scientist and as a man who made his living by teaching—for a serious investigation into the nature of intolerance in this society, which we do not have. There may be lots of studies for all I know, but why did our intolerance change suddenly from racist to anti-religious at the beginning of the 21st century? Was it because of 9/11, or was it something else?

It is remarkable that what we had in the 1960s—the League of Empire Loyalists—was a right-wing nationalist movement. Nationalism then was purely a right-wing phenomenon; the left wing could not be nationalist at all—it was internationalist, or whatever it was. The nationalist view or the right-wing view was, "This is a country of white people and all non-white people should go". That right wing was partialised—not entirely eliminated as my noble friend Lord Hain reminded us recently—but now we have a situation in which, on the right and on the left, there is a peculiar kind of intolerance.

Of course, the social media exaggerate all of this. What people used to say in private meetings or in the pub is now broadcast all over the world because they can use Twitter. Everyone knows, and of course they can remain anonymous in their abuse, which gives it more power. We need to find out what the social and political roots of intolerance are and why it has moved on from racial prejudice to religious prejudice. This phenomenon is unusual and I agree with speakers who have said that for the first time, many Jewish families are asking whether they feel they can go on living in this country. I have mentioned my own example because I felt like that in 1978, although I had been here for only a short time. We have to take those feelings seriously and make quite sure that we understand the causes of this new phenomenon, not just the statistics. Are the roots in nationalism or some peculiar kind of internationalism? I am sure that a lot of the anti-Semitism on the left is to do with the Palestinian muddle. That is where it comes from and we have to examine the reasons for it. This is not just a problem for the left or

for the right. They are different, but they may be addressing the same kind of issue and we have to understand why it happens.

I want to make one anti-religious comment because I am not religious. One of the strangest facts is that the Abrahamic faiths have hated each other for longer than anyone can remember. The roots of anti-Semitism are in the Christian tradition. Everyone now talks about the Judaeo-Christian faith, but we know that they did not do so until after 1945. Today there is a battle between Judaism and Islam. I remember that after the 9/11 crisis Tony Blair said that we are all children of Abraham. I said, "Include me out. I am not a child of Abraham, thank you very much". There is a tradition of religious hatred within the Abrahamic trinity and we also need to find out why that has been the case for a long time.

Lastly, just to be awkward, my friend the noble Lord, Lord Gadhia, said some nice and generous things about Hinduism with which I do not necessarily agree. Let me say this, although it is a non-related fact, because he raised it. It is about discrimination. It is not about caste, it is about untouchability. It is about the fact that the Hindu religion may be a great religion—I am sure it is—but Hindu society has lived with excommunicating a part of itself for 2,000 years. There is still a problem today and that problem has come here, and that is what some of us are fighting about. We are not trying to abolish caste, we are trying to abolish discrimination within a caste.

Discrimination can happen within a religion and it can happen across religions. Let none of us be proud of our own religion—instead, let us admit that we are all capable of a lot of hatred. We have only to find out why.

9.18 pm

Lord Suri (Con): My Lords, we are all fortunate to live in a country that is relatively far less prone to religious intolerance and injustice than many of our peers. In Europe we compare favourably to our neighbours and we have cultivated a strong global position as a pluralistic and multicultural nation. When I first came to this country as an immigrant, I knew that I was coming to the country which had passed race relations Acts and celebrated the Notting Hill carnival. I worked hard when I first arrived to set up forums and spaces for interfaith understanding and reconciliation, and this country has increasingly accommodated the needs of minority groups. Today, I am proud that more of our public buildings have prayer rooms, and that we enjoy the right to express our beliefs. We should rightly champion all of these achievements, but there is a rot in our society. Two awful prejudices have started to creep back into mainstream discourse, and they must be stamped out before they get worse.

I will start with Islamophobia. Hatred of Muslims is nothing new, but under the new leadership of UKIP, there appears to be a renewed attempt to push it into the mainstream. Tommy Robinson has repeatedly called for actual violence against Muslims, but when he is invited on to news programmes he is not challenged hard enough on his past statements. Giving racists a platform on respectable channels legitimises their points of view and helps them spread their hatred through the internet. The places where racists organise now are mainly online, and I have seen barely any effort from large social media companies to address their obligations to society to shut these spaces down.

These companies kid themselves if they think the pressure is just from politicians. Ordinary people are growing increasingly frustrated with what they see as foot-dragging and shirking of responsibilities. If social media companies committed to working with the DCMS to police spaces where hatred is rampant, it might go some way to addressing those concerns.

Across the hard left, anti-Semitism also seems to be making a comeback. Labour's summer of denying the full International Holocaust Remembrance Alliance definition of anti-Semitism gave succour to extremists who would use the actions of the Israeli state to attack and demonise British Jews who have no part in the conflict in the Middle East. Sadly, the leader of the Opposition in the other place has a long history of these statements. Repeatedly, he has blamed Israel for events that are not directly attributable to it, and has long associated with those who have made anti-Semitic comments. His comment that some British Zionists did not understand English irony despite,

"having lived in this country for a very long time, probably all their lives",

was worrying and ought to be condemned by all right-thinking people. There is nothing wrong with criticism of Israel's actions, and a robust debate is part of a healthy civic society; but the tone and actions of the Labour leadership have created a climate of fear for British Jews. Many Members, both here and in the other place, have made this point. I despair that the Labour leadership are not listening, or that they might not even care, but they should. Anti-Semitism is the first of many evils in society, and Jews are the canary in the coalmine for waves of incoming prejudice. We dismiss concerns at our peril.

I urge Ministers to make it clear that all types of crime—hate crimes and others—against Christians, Jews, Hindus, Muslims, Sikhs and other faiths must be stopped. Human beings are the image of our maker. They should be respected and not hated. As the most reverend Primate said, love thy neighbour.

Sant Kabir was born in India near the holy river Ganga. As a newly-born baby, he was left at a pond. Nobody knew who his parents were. He was picked up by a Muslim weaver. As he grew up with him, he became a saintly person, because the holy river Ganga is in the holy city of Varanasi. His sayings are included in the holy books of Siri Guru Granth Sahib, so we can see what the difference means—Hindu, Muslim, Sikh or Christian.

A Muslim, a Hindu or a Sikh—they are all the same; there is no difference. Kabir believed in one God and other people the same. As I have said, his sayings are included in Guru Granth Sahib. We should practise that method: that we are all children of God; there is nobody bad and nobody good. They are all the same.

9.26 pm

Lord Singh of Wimbledon (CB): My Lords, I want to thank the noble Lord, Lord Bourne, for initiating this important debate. I shall take my cue from the noble Lord, Lord Patten, and be a little controversial.

[Lord Singh of Wimbledon]

I read the Government's half-time review of their hate crime strategy and find it disappointing in that it completely fails to address the underlying causes of hate crime—for much of this evening, we have done the same—and, while repeatedly addressing the concerns of the Abrahamic faiths, virtually ignores the equally real suffering of other faiths. The review details some 20 initiatives to protect against anti-Semitic and Islamophobic hate crimes. A reference to occasional round-table meetings is no substitute for action. Why the disparity? To echo Shakespeare: if we are cut, do we not bleed?

There are no comparative statistics on hate crimes suffered by different religions to justify partiality. Figures presented to justify additional resources for the Jewish and Islamic faiths come from those communities. Chief Superintendent Dave Stringer of the Met has made it clear that a significant proportion of hate crime recorded as Islamophobic is against other communities. The noble Lord, Lord Morrow, referred to a freedom of information request made by my colleague, Hardeep Singh, which showed that there is no clear definition of whom hate crime is committed against.

Many of the hate crimes described as Islamophobic are directed against Sikhs out of ignorance or mistaken identity. In the States, a Sikh was the first person murdered in reprisal after 9/11, and six worshippers in a gurdwara there were shot by a white supremacist in another mistaken-identity killing.

The day after 9/11, I was going to a meeting with the then CRE at Victoria. As I came out of the station, two workmen digging the road looked at me in a hostile way. Fortunately, their lack of religious literacy saved the day. The elder turned to the younger and said: "He's not a Muslim; he's a Hindu." I did not argue the point.

Few Sikhs have not been called "bin Laden" at some time or other, and some have been violently attacked. We heard about the gurdwara in Leeds being defaced and partly burned and, only a couple of months ago, a gurdwara in Edinburgh that I had recently visited was firebombed.

I do not in any way begrudge the protection that Jews and Muslims receive against hate crime. The Jewish community has suffered grievously from anti-Semitism, and Muslims are suffering hate crime today. I have always had a warm working relationship with both communities. All I ask is that the Government are a little more even-handed to non-Abrahamic faiths in both policies and resourcing.

Let me now turn to the important causes of hate crime. Prejudice, in the sense of fear of—or irrational, negative attitudes to—those not like us, is not something found only in others; it is common to all of us. The existence of heathens in distant lands gave us a perverse sense of unity and superiority based on a shared, irrational dislike of those not like us. We find this again and again in literature. John of Gaunt's speech in "Richard II", with its reference to,

> "This precious stone set in the silver sea",

against the envy of lesser breeds, is simply an example of how we viewed foreigners. Some on the leave side of the Brexit debate will probably say Shakespeare did not go far enough.

Today, the one-time distant foreigner, with a different culture and religion, can be our next-door neighbour, and it is imperative that we set aside our own prejudices and see people as they really are, equal members of one human family.

It is equally important that we look openly and honestly at prejudice embedded in religion. What generally passes for religion is, in fact, a complex mix of superstition, rituals, culture, group history and uplifting ethical teachings. While ethical teachings are easy to state, they are extremely difficult to live by, so we tend to focus on other things. Often we have a perverse, unifying but naive, belief—we find it again and again in different religions—that the creator of all that exists has favourites and takes sides, regardless of merit. As Guru Nanak reminded us:

> "The one God of us all is not the least bit interested in our different religious labels but in what we do to serve our fellow beings."

This bigotry of belief is widespread and is often found in religious texts. As a Sikh, I feel that the ultimate blasphemy is to say that texts condoning the killing or ill-treatment of the innocent are the word of God. Such beliefs lead to horrendous crimes and savagery—not only between faiths, but even within the same faith—and to increasingly familiar terrorist outrages in the name of religion. It is important to understand that religious extremists and far-right extremists need each other to thrive.

Today, despite all the lip service paid to interfaith understanding, there is virtually no dialogue between faiths to explore and understand their different religious teachings, with each remaining smug in its beliefs. I have been a member of the government-funded Inter Faith Network of the UK since it was founded in 1987 and am a member of other bodies committed to religious dialogue. Meetings rarely go beyond pious statements and academic discussions on safe peripheral concerns, with members going back to their congregations to stress the exclusivity and superiority of their teachings. Looking at an internet learning site about Islam, I was startled to see a colleague saying that he felt sorry for people of other faiths because they were "all going to hell". I once attended a meeting of the Three Faiths Forum where Christians, Jews and Muslims were talking in a superior way about the three monotheistic faiths. According to the opening line of the Sikh scriptures, there is one God of all humanity. We need to learn a little more about each other to combat religious prejudice.

It is not all up to the Government. People of religion have a common responsibility to look afresh at negative cultural practices such as discrimination against women and others that attach themselves to religion. Religion will become more relevant if we separate dated culture from abiding ethical teachings. Secular society, which sometimes shows an aloof superiority to warring religions, should also encourage more open dialogue.

With the best of intentions, we skirt around questionable beliefs and practices by using coded camouflage words to address symptoms, rather than looking to the underlying causes of violence and hatred. Words such as "Islamist"—insulting to Muslims—"radicalised", "extremist" or "fundamentalist" are loaded

euphemisms or vague innuendos, devoid of real meaning. The absurdity of such language is illustrated by the true story of a visit to my home by two Scotland Yard officers following my criticism of the Indian Government's involvement in mob violence against Sikhs. The men from the Yard asked if I was an extremist or a moderate. I replied that I was extremely moderate. They then asked if I was a fundamentalist. I replied, "Well, I believe in the fundamentals of Sikh teaching, such as the equality of all human beings, gender equality and concern for the less fortunate. Yes, I suppose I am a fundamentalist".

If religions presume to tell us how we should live, move and have our being, they must be open to discussion and challenge. The same openness is absolutely essential in combating prejudice and working for a safer and more tolerant world.

9.38 pm

Lord Cormack (Con): My Lords, the noble Lord, Lord Singh of Wimbledon, has given us several thoughts for the day in that rather splendid speech, the subtext of which was that hostility is bred from and fed by ignorance. That is something we should all bear in mind. In his very interesting speech, the noble Lord, Lord Triesman, talked about our becoming an "ugly and intolerant" society. He went on to indicate that ugliness and intolerance are fed and propagated by social media. We have to bear that in mind.

It is difficult when you are the last speaker in a debate to say anything new, as the noble Lord, Lord Desai, said, but I want to try to put this in a historical perspective. When I go across to the great cathedral in whose shadow we live in Lincoln, I go in—perhaps appropriately for a politician—through the Judgement Porch, and the first thing I see are the remains of the shrine of Hugh of Lincoln, who was canonised in 1220. We will be commemorating that in a couple of years' time. His shrine, which was a centre of pilgrimage second only, for part of the Middle Ages, to that of Thomas of Canterbury, was despoiled—smashed up—and his body taken. He had two shrines, one for his body and one for his head. This was during a period of repression, when Henry VIII, having despoiled and dissolved the monasteries, was taking the treasures from our cathedrals and did not like the idea of shrines, making an exception only for the shrine of Edward the Confessor across the road, because it was pointed out to him that Edward was a king as well as a saint.

I go into that cathedral and look at that shrine. As I walk down to St Hugh's Choir I see more evidence of intolerance: all the brasses commemorating great figures were ripped up, not during the Reformation but 100 years later at the time of the English Civil War. Then I see the most moving thing of all—one entirely relevant to today's debate: the shrine of Little St Hugh. Until the last century the story was told of how Hugh, a little gentile boy, wandered into the Jewish quarter of Lincoln. We had—and I am proud that we had—a Jewish community in Lincoln of enormous importance in the Middle Ages, of whom St Hugh was a great protector. St Hugh was dead by this time. The little boy did not re-emerge, and the story was told that he had been set upon and murdered by the Jewish community. Many of them perished because of that. This was an early example of anti-Semitism, and within a few decades the Jews had been expelled from England by Edward I. They did not return until the time of Oliver Cromwell, who did not bring them back because of great tolerance on his part—he was not the most tolerant of men—but because he thought that they could contribute to society and the economy, as they undoubtedly did.

That early example of anti-Semitism should bring us all up sharp. Only about 30 years ago the Chief Rabbi, I think—it was certainly a very senior rabbi—came to Lincoln and, in a very moving ceremony, a plaque was put up that ended with the word "Shalom", indicating that this was a deed of which we should all be ashamed. You cannot apologise for what other people did centuries ago, but you can deeply regret it and feel ashamed of it. I always think of that when I go into the cathedral, and I think also of the hatred and bitterness of those times, which, sadly, is being replicated in our own time.

However, we must be very careful when deploring these things not to get the whole issue out of perspective. The most reverend Primate touched on this when he talked about the importance of freedom of speech. One of the things that has made our country great over the centuries has been true freedom of speech. We cannot legislate against human feelings. Although it is right to punish hatred, we have to be careful how we define it. Something you deplore, which you yourself might hate, can be entirely legal. I was brought up always to think of the words of Voltaire:

> "I disapprove of what you say, but I will defend to the death your right to say it".

We have to be very careful when discussing these things not to get them out of perspective. Hatred is always to be deplored. To hate a man or woman for his or her religious belief is about as low as you can get. But we have to be careful. We have to recognise that a repudiation of a belief, even if it is a Christian belief that I, as a Christian, might deplore and deeply regret, is not in itself a gesture of hatred. The most reverend Primate the Archbishop touched on that.

If I were to give your Lordships an example of what I am talking about, I would say, "Go across to the Abbey, where Stephen Hawking was commemorated. Pick up your paper of this morning, if you have not yet read it, and see that in his last work, he emphatically stated: there is no God; there is no afterlife". Yet, a truly tolerant society properly recognises that man's genius and his contribution to the degree that he is memorialised in the Abbey along with so many of those who have made our country what it is. We must be very careful indeed in deploring hatred. In seeking to protect those who wish to practise their beliefs, we have to be careful that we do not slip over the edge and trash our own reputation for freedom of speech.

I was one of those who was very glad last week when I read that judgment of the Supreme Court, which has been referred to in this debate. The cake bakers of Belfast were exonerated, not because they had refused to serve anybody—they had not refused to do that—but because they refused to put a slogan in which they could not believe on a cake. That was a very important landmark judgment, and I hope it will play a part in making us more understanding of

[LORD CORMACK]
each other. I was very glad to see an article in a paper that is not necessarily my favourite, the *Daily Mail*, the next day, by a journalist who himself is gay, saying how much he supported the judgment and that he would think of commissioning a cake from those people to mark his own civil partnership. That is beginning to get the balance right, and we must get it right.

I want to touch on one other thing. I have very great admiration for my noble friend Lord Pickles, and I have as much legitimate hatred as he has for the Holocaust. As the founder chairman of the campaign for the release of Soviet Jewry, I think my creditworthiness in being fundamentally opposed to anti-Semitism is okay. I was also one of those who spoke out in the other place, when neither Front Bench would do so, against the atrocities in Bosnia, and Srebrenica in particular.

It is right that we should commemorate and remember these things, but we must also have regard to where it is best to do so. I have to say to my noble friend Lord Pickles that although I yield to no one in wanting to see a Holocaust memorial, I think that the site chosen is not necessarily the best. Seven Members of your Lordships' House, all or most of whom were Jewish, sent a letter to the *Times* on this subject, and I hope my noble friend will be prepared to reflect further on that.

We have had a good debate and I see that, at 12 minutes, my speech has been one of the shortest. As I sat through every single speech I began to think that there was something to be said for a 10-minute time limit. That I have exceeded, but now I look forward to the final speeches, by the noble Lord, Lord Griffiths, and my noble friend Lord Bourne, of what has been a remarkable few hours.

9.51 pm

Lord Griffiths of Burry Port (Lab): My Lords, I can only concur with those words of the noble Lord, Lord Cormack. I thank the Minister for honouring the pledge that significant time would be made available for the debate—and, indeed, for his opening remarks, which set out the stall admirably and pointed to a number of government initiatives that we must all welcome, although we shall also want to keep an eye on them to make sure that they are doing what they are supposed to.

I admit that I stand here in some difficulty. It was refreshing to hear a different point of view from the Conservative Benches, which mitigated my sense of inadequacy as the Labour spokesman in view of the nature of the debate, especially as it concerns anti-Semitism. I have been devastated, to be honest, by the speeches of my noble friends Lord Kestenbaum and Lord Triesman. I pay them tribute for having been so frank with us, although that does not help me with my sense of devastation. We have reached a truly parlous state when esteemed Members of this House feel it necessary to speak in that way.

I have loved the Labour Party all my life: I have been a member of it for longer than I have been a Christian, for example. It was the Labour Party of the post-Second World War years that gave me all my life chances, and I have stood by the Labour Party through thick and thin—through the 1980s and all the rest. When I was a boy my Member of Parliament was Jim Griffiths, deputy leader of the Labour Party, who brought in four of the six Acts of Parliament—on national assistance, family allowances, injuries at work and national insurance—that put the welfare state on to our statute book, but who has been forgotten by everybody. So I have it in my blood, and I do not find it easy to give voice to my feelings in the light of the comments that we have heard. I am glad we have heard them; I am glad the debate has offered us the opportunity to share opinions in this way—but comfortable I am not.

I am very grateful that we began with my noble friend Lord Hain, in view of what I have just said, who reminded us that we must set this debate within his view that the toxic attacks on Jewish, Muslim and black people—I take the point of the noble Lord, Lord Singh, that we must be careful to be more inclusive when we mention those who are on the receiving end of prejudice and discrimination—represent a broad canvas. We have tended, inevitably, to focus on anti-Semitism and there is a properness about that, but we must remember that it is a very pernicious kind of racism, set, at the moment, in a context where racism in various mutations is doing damage across the field.

The noble and learned Lord, Lord Mackay of Clashfern, reminded my noble friend Lord Hain of his seniority in these matters, and of the longer period during which he could say that he too had never seen a situation quite like this one. The noble and learned Lord went on to ask how we could identify the powerful forces that are at work beneath the epiphenomena. That is really where I would like to concentrate. Indeed, I think it was the noble Lord, Lord Singh, who came nearest to where all my thoughts were as I prepared for this debate. It is true that those conferences and symposia, those seminars that you go to, full of blandishments and fine words unrelated to causes, are about ephemeral and marginal issues. I am so pleased to hear that said. I would not have had the courage to say it, but I am delighted to have the courage to echo it. We must find a way to get to the core of the things we need to discuss together, the things beneath all the things that happen on the surface.

It was a privilege for me, 20 years ago, to find some seed-corn money to set up a study centre in Cambridge, at that time between Christians and Jews. It has subsequently blossomed and has been patronised by the noble and learned Lord, Lord Woolf. It is now called the Woolf Institute and it is for the three Abrahamic faiths. I feel proud to have been identified with the very beginnings of that. It does simply astonishing work but I must resist the temptation to just go on and expatiate about that, because there is one strand of its work that caught my attention. Woolf Institute specialists are brought in to advise the Foreign and Commonwealth Office and the Metropolitan Police, through anti-Semitism awareness courses. I feel I can draw some comfort from the fact that somebody is working systematically with these major agencies of our state—and other bodies to, I should say—to help people identify what lies under the surface, how to recognise it and how to understand why it is there.

I remember in the 1970s attending an anti-racism course. My wife and I had been living as the only two white people in a community of 250,000 black people. I had been living in those circumstances and felt that I was going to attend an anti-racism course so that people could tell me who the racists were, but I ended up coming away recognising the racism that was in me. That was a significant thing, and I would say the same thing about these anti-Semitism awareness courses. How can it be otherwise: a country such as ours, which has had a long imperial past, subjugating so many parts of the world to our rule and keeping the "race problem" at bay because it was all overseas, and yet germinating the seeds of attitudes towards those whom we governed? How could it be that embedded deep in our psyches is anything other than something that can flourish as a racial question of one kind or another? How can it be that I, as a Christian, can be part of a faith that, during the 2,000 years of its history, has significantly and continuously persecuted, stigmatised, marginalised or ghettoised the Jews? How could it be that I should be surprised to find within myself something that could become hateful and odious? The indigenous population has to understand that it may be germinating the problem, rather than focusing on minority groups as if, in some way, they are the problem. This is a generous way of looking at what is a very significant issue in our general social situation at the moment.

There is a vision of how religions might come together. It might include Sikhs and Hindus—although you will tell me afterwards whether it would or not. This vision is one I read and, although it is late, I hope your Lordships will forgive me if I read it. For me, it touches a possibility that, if religions were capable of the self-criticism needed, this could yield a fruitful outcome.

"The radical transcendence of God in the Hebrew Bible means nothing more nor less than that there is a difference between God and religion… Religion is the translation of God into a particular language and thus into the life of a group, a nation, a community of faith. In the course of history, God has spoken to mankind in many languages: through Judaism to Jews, Christianity to Christians, Islam to Muslims. Only such a God is truly transcendental—greater not only than the natural universe but also than the spiritual universe articulated in any single faith, any specific languages of human sensibility. How could a sacred text convey such an idea? It would declare that God is God of all humanity, but no single faith is or should be the faith of all humanity. Only such a narrative would lead us to see the presence of God in people of other faiths. Only such a worldview could reconcile the particularity of cultures with the universality of the human condition".

I see in that a vista which will not be pleasing to those for whom their particular religion is their all in all. However, these are not my words; they are the words of one whose name has been quoted again and again in this debate—the noble Lord, Lord Sacks. He wrote them in a book called *The Dignity of Difference*. It might behove us to think about them very carefully.

The noble Baroness, Lady Warsi, mentioned dinner-table talk. The indigenous population is racist around the table all the time. I do not care about being or not being policed; it is just odious that, when we are on our own, we say things that we would be ashamed to say anywhere else. We have to admit it. Dinner-table talk is a bit the same as locker-room talk for another part of the Atlantic family.

We have a long way to go. The obstacles are great because, in the end, we are fighting against human nature, but the goals are worth while. Living together is an infinitely richer thing to dream about than going on fighting our corner in the way that we do.

10.04 pm

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord, Lord Griffiths of Burry Port, for what he has just said. He will be a very difficult act to follow because of the transparent honesty and great insight of his contribution. This has universally been a very good debate. I shall try to do justice to the contributions that have been made. I first heard what a formidable preacher the noble Lord, Lord Griffiths, was from my church. Now I know how formidable he is as a statesman. His was a very moving contribution.

I will try to deal with the various contributions that have been made under different headings. I will say once again, perhaps echoing the noble Lord, Lord Triesman, that this has been a good debate where the House came together, giving a clear message. I do not think that a great deal separates individuals who have made contributions in an important debate. Questions and issues have been raised, which I will try to deal with.

I will try to set the scene of this debate—rather curiously, at the end. Although it is quite true that there are some dreadful statistics on race crime, religious crime and hate crime in general, as we have seen this week, it is important to put it in context, that we are seeing a much better level of reporting. We can see that from the crime survey. These dreadful statistics was raised by the noble Lord, Lord Triesman, my noble friends Lord Pickles and Lord Gadhia, and the noble Lord, Lord Bilimoria. The statistics are dreadful, but without minimising the massive challenges that exist, we are having success in upping the rate of reporting, such that the rate of reporting of hate crime appears to be higher than the average reporting of other crime. That is not to minimise the problem but to try to give some context to what we are talking about. It is still a deeply serious position, but I do not want people to think that it has suddenly taken off and escalated massively in the way that some reports in the media might suggest. That is not quite true, and it took me a while to grasp that, looking at all the documents. I can now see that although there have been increases, they are not as alarming as perhaps appears to be the case. What is undoubtedly true, as many noble Lords highlighted, is that most reported cases have certainly been aimed at Muslims—the vast majority—while others in the next category were aimed at the Jewish community, and at others such as the Sikh and Hindu communities, as well as at the Christian community. Religious hatred therefore involves all our communities, but clearly it is mostly in relation to Muslims, and then anti-Semitic hate crime.

I pay proper regard to my noble friend Lady Warsi and express my gratitude to her for the awesome work she has done and continues to do in this field, which is,

[Lord Bourne of Aberystwyth]
quite rightly, massively valued in the community. She asked about the breakdown of the statistics in relation to religion; this happened for the first time this year, and I have been very keen that it should. The intention is to carry on with that, because it gives us a greater insight into what is happening.

The noble Lord, Lord Morrow, asked about the breakdown of the statistics, and in particular about the category of no religion. Part of this is that different forces seem to have been reporting in different ways, and I am trying to get to the bottom of that. The point was made, I think by the noble Lord, Lord Singh, that it is partly because other religious groups are attacked because some people may think, for example, that they are Muslim or Jewish when they are not. It is therefore a more complex picture then perhaps appears to be the case at first sight. However, I will write to the noble Lord, Lord Morrow, with a more detailed background on what is happening and will copy the letter to other noble Lords. I will do the same on the other, very germane point the noble Lord asked about the vulnerable places of worship scheme and the particular breakdown of the different places of religion. That is a good question, and although I have the figures, rather than go through them all and take time now—I could also talk about unsuccessful applications—I will cover that in a letter.

Many noble Lords focused on anti-Semitism. I was particularly grateful to my noble friend Lord Pickles, who highlighted what the noble Lord, Lord Sacks, said in the previous debate. This becomes a real problem and moves from the fringes to the centre of a political party when the party concerned does not have a lack of support as a consequence, and when there is vilification of those who seek to protest. Where it happens there is a perfect storm, and we are entering that territory.

Whatever other conclusions we take from the picture today, we are in a very serious position. This was highlighted by the noble Lord, Lord Griffiths, by my noble and learned friend Lord Mackay and by the noble Lords, Lord Triesman and Lord Kestenbaum, in two very courageous speeches. The noble Lord, Lord Hain, also referred to this issue and spoke of Luciana Berger—I join him in saying she has done outstanding work; she was quite rightly recognised at the No2H8 Crime Awards, and my noble friend Lord Suri also referred to this.

The noble Lord, Lord Desai, said we have not always been a tolerant country and there is some truth in that. He cited the situation with Enoch Powell but he did not go on to mention something germane, which is the swift action that was taken by the leader of the Conservative Party—I was still at school but, from memory, we were in opposition—to dismiss him. It was an act of great political courage at a time when this issue might not have been regarded in quite the same way that it is now. That is perhaps a difference. All political leaders—particularly leaders of political parties, including my own—need to provide strong leadership and have to be very careful in the language they use.

The point has been made about the particular issue that confronts the Labour Party and I do not want to dwell on it. While I have not historically loved the Labour Party, I have always had the greatest of respect for a succession of leaders, many of whom have done great things for this country and would not have seen a situation like the one we have now. It is unthinkable that Harold Wilson, Jim Callaghan, Tony Blair or any leader, frankly, until the present one would have tolerated what has been happening. That is not to say there are not issues that confront the Conservative Party, but they do not go to the core of the leadership. It is unthinkable that anyone could make these sorts of accusations against the Prime Minister. While I accept there are membership issues and issues around the language some people use, I think there is a particular issue confronting the Labour Party and it has an effect on our nation.

Lord Griffiths of Burry Port: I am happy to be given this opportunity to say that, until quite recently, Boris Johnson was at the heart of the Conservative Party and embodied many of the negativities that we are talking about.

Lord Bourne of Aberystwyth: One might say, "To a degree, Lord Copper". I will not defend his use of language but I think the noble Lord would agree that the structural issue in the leadership of the Labour Party is different from that. I accept that there are issues that need addressing. They are being investigated in the party and I hope an appropriate conclusion will be reached.

If I may move on, the noble Baroness, Lady Deech, spoke about Holocaust denial, which is important, and important too in the context of genocide denial. My noble friend Lord Cormack spoke about the need for balance. I agree with that and about the importance of freedom of speech, and with much of what the most reverend Primate said about it, except that freedom of speech cannot exist in a vacuum. Nobody has the right to go into a crowded theatre and cry "Fire!" during a performance. That would be freedom of speech but there are laws to protect against it and I am sure that neither Voltaire nor Stephen Hawking would disagree with that. This has to be in the context that many people who fear greatly for the future of this country and their position in it are protected against some of the things happening in our country at the moment.

I too applaud the Church of England for adopting the definition of anti-Semitism, as many other institutions have done—our Government were the first in the world to do so. On Islamophobia, I applaud once again the work done by my noble friend Lady Warsi—Yorkshirewoman of the year, as announced by our Yorkshireman, my noble friend Lord Pickles. I seem to have had a rather Yorkshire day today, with a question on Yorkshire too. The noble Baroness is formidable and I am pleased about the work that the All-Party Parliamentary Group on Islamophobia has been doing on the definition. As I think she knows, I have refreshed the membership of what is currently the Anti-Muslim Hatred Working Group—a bit of a mouthful. It has a strong membership, well led by Akeela Ahmed. It will be looking at the definition of Islamophobia and, as it is revamped with new life injected into it, a proper budget and proper work schedule, it will be looking at different aspects of Islamophobia and how we can help in that regard.

That should not, however, be at the expense of neglecting other communities. We meet representatives of the Sikh community regularly, as I am sure the noble Lord, Lord Singh, would acknowledge. I accept that they too are subject to attacks and prejudice, and that must not be forgotten.

Lord Hain: The Minister shot into the open goal that the Labour Party has provided on anti-Semitism. Will he also comment on Islamophobia in the Conservative Party, given that he spent some minutes on Labour?

Lord Bourne of Aberystwyth: The noble Lord will be aware that I did comment on that. I said that we are investigating the issue relating to Boris Johnson and looking at issues raised to do with members. Some members have been suspended and some have been removed. That is not to say there is no issue to confront—I have not ducked that on any occasion. However, the noble Lord is always fair, and I think he will accept that it is different in nature. What is happening in the Labour Party involves the leadership. I do not seek to draw division here, where there is unity on the basic themes of the debate.

Baroness Deech: The noble Lord mentioned the importance of freedom of speech and understanding what the boundaries are. I referred to that in my own contribution in relation to universities. Will the Minister take to the Department for Education the importance of getting proper guidance ready so that it can deal with the difficult issues, not just the easier ones, around knowing the difference between political discussion on campus and anti-Semitism? Will he make sure that the Union of Jewish Students is consulted on this? It has not been consulted so far, and its contribution would be invaluable.

Lord Bourne of Aberystwyth: The noble Baroness would, if she stood where I am, see that the next section of my response moves on to that, but I accept the concern she has expressed.

We have had good contributions from Members from across religions. We heard the Hindu position from my noble friend Lord Gadhia, and the Sikh position from the noble Lord, Lord Singh, and my noble friend Lord Suri. I accept what the leaders of these faith groups, Guru Nanak and Swami Vivekananda, have said about the importance of plurality, community and so on. The Zoroastrian community was, as always, ably represented by the noble Lord, Lord Bilimoria, and we heard a contribution on Roman Catholicism from my noble friend Lord Patten.

Before I talk about universities, I want to comment on the Holocaust memorial. I will not comment on the siting—this is perhaps not the time to do so. However, the case for the memorial is widely accepted and was put powerfully by my noble friends Lord Pickles and Lord Cormack and the noble Baroness, Lady Deech. I agree with her that this is not the sum total of what needs to be done; these issues are not solved by memorials alone. A lot will be affected and influenced by what goes in the Holocaust centre, which will deal also with genocides since the Holocaust.

Before I come on to what unites us, let me deal with the points made on universities. I agree with the noble Baroness, Lady Deech, that the balance of freedom of expression and speech is not right in universities at the moment. It has improved under the current leadership, but I accept what she said about the need to involve the Union of Jewish Students and the need for the Department for Education to come forward on this issue. However, have no doubt, the Government are determined that there will be that freedom on campus. That is central to getting the balance that my noble friend Lord Cormack referred to. Here, we are in favour of some action.

What unites us? The noble Lord, Lord Bilimoria, talked about this being key, and it has to be. Let us take strength from the positive things that are happening in our communities—and a lot is happening, on interfaith in particular. When I first took on this job, I was stunned to find how much is happening. It surprised me and I am sure it would surprise noble Lords. I shall cover some examples in the letter, but I will give one or two examples now. At the Finsbury Park Mosque attack, just over a year ago—that was not the one I referred to earlier; I was referring to the Cricklewood mosque attack—the first people there to comfort their Muslim brothers and sisters were members of the Haredi Jewish community, who knew them well and who lived just down the road. That was surprising enough on its own, but it is an example of some of the strengths present in our communities. It is important that we do not lose sight of these things.

Lord Griffiths of Burry Port: I simply wanted to say that Jeremy Corbyn was among the first there on that occasion.

Lord Bourne of Aberystwyth: That is perfectly true—he was there as the local MP—and, in fairness, I think Diane Abbott was there soon after, as was the Prime Minister. Political leadership is important, but that faith dimension is very important to note. But the noble Lord is absolutely right: he was there.

The same is true of the Manchester Arena attack, with communities coming together. In fact, there was interfaith activity after all of the attacks we have had, which is very important and signals what can, and often does, happen regularly—in difficult, and not so difficult, times. This often happens around food, dance, music and sport; coming together and becoming friends and allies.

Let me just say something about social media, which is a massive challenge, and which many noble Lords referred to—the noble Lords, Lord Triesman and Lord Desai, and my noble and learned friend Lord Mackay all referred to it. I was very interested in talking to HOPE not hate and, like the noble Lord, Lord Hain, I pay tribute to the work it does, as well as to Kick It Out and Show Racism the Red Card. They all do great work. I was interested in what it said about the massive amount of damage that can be done by a few lone wolves, often sitting in a bedsit, sending out this stuff on social media. The ability to tackle that, acting nationally, locally and globally, is a real challenge. Some organisations such as Google are doing good work, but others need to step up to the

[Lord Bourne of Aberystwyth]
plate somewhat more. It is a real challenge and, again, we are trying to deal with that across parties and across Government.

There are a couple of things I would like to touch on briefly in this very limited time. In the autumn, the Government will come forward with the integration action plan, which relates to the earlier White Paper, indicating things that are important. One of those, which was touched on, was the importance of the English language. That is of key significance and makes a real difference. It perhaps ties in with what some noble Lords were saying about the need for positive action in communities to help with some of the issues that confront us.

We have social action programmes. I referred previously to the *Hate Crime Action Plan* and mentioned the Anti-Muslim Hatred Working Group. Perhaps I may also mention the race disparity audit, the Prime Minister's initiative to issue data across government on outcomes for different races. I appreciate that I have moved away from religion, but it is important to see where we are in the fields of health, education and housing in relation to different racial groups. When you have the data, which you cannot really disagree with, you then have to do something about it. We are in the process of doing that and some actions will be announced this month. They will take place on an ongoing basis, which is also important.

Perhaps I may mention one other key point. Action by government, local authorities and institutions is important, but so too—this came out at the meeting I had this morning when talking to a young Muslim teacher—are role models, not just at the local level, such as the doctor, the teacher, the accountant or the person who runs a small business, but nationally. I often say that Mo Farah, Nasser Hussain, Natasha Kaplinsky and so on probably do far more than government programmes could ever hope to do—certainly, they do it in a different way—and we should recognise that too.

In conclusion, I accept that political action is needed in all parties on behalf of all individuals, and we all have a responsibility to step up to the plate. It sticks in my craw that my fellow countrymen and women fear the tap on the shoulder and have a packed suitcase ready. Many across different faiths worry that they are not welcome in their own country—a country they were not born to but have lived in and a country they love. This is frankly outrageous and not acceptable. As politicians—whether it is Boris Johnson, Jeremy Corbyn or anybody else—we have a responsibility to provide leadership across the country, because such a situation is fundamentally wrong and totally contrary to what makes this country great, and we must not tolerate it. Indeed, we will not tolerate it. I thank noble Lords for taking part in this debate.

Motion agreed.

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

Returned from the Commons

The Bill was returned from the Commons with the amendment agreed to.

House adjourned at 10.25 pm.

Grand Committee

Wednesday 17 October 2018

3.45 pm

Third Parties (Rights Against Insurers) Act 2010 (Consequential Amendment of Companies Act 2006) Regulations 2018

Considered in Grand Committee

Moved by ***Lord Keen of Elie***

That the Grand Committee do consider the Third Parties (Rights Against Insurers) Act 2010 (Consequential Amendment of Companies Act 2006) Regulations 2018.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the Third Parties (Rights Against Insurers) Act 2010 (Consequential Amendment of Companies Act 2006) Regulations 2018 will make amendments to the Companies Act 2006. The amendments are consequential to the changes in the law introduced by the Third Parties (Rights Against Insurers) Act 2010. They are necessary because of the effect of the interaction of the Third Parties (Rights Against Insurers) Act 2010, the Third Parties (Rights against Insurers) Regulations 2016, and the Companies Act 2006 on the ability of insurers to exercise their rights of recourse against other parties liable for the same loss.

I will make clear that the draft regulations are concerned only with the ability of one insurer to obtain money from someone else, typically another insurer, where the first insurer has already paid out an award of damages. They do not affect the rights of personal injury claimants.

The Third Parties (Rights against Insurers) Act 2010 simplified and modernised the previous law and procedure by which victims could obtain compensation for wrongs done to them by insolvent wrongdoers. Most importantly, the 2010 Act allowed claimants to take legal proceedings directly against the insurer of the insolvent wrongdoer, rather than having to establish the wrongdoer's liability in separate legal proceedings.

Wrongdoers which are dissolved companies were brought within the scope of the 2010 Act by the addition in the Third Parties (Rights against Insurers) Regulations 2016 of new Section 6A. This also meant that claimants no longer had to spend time and money restoring the company to the register of companies simply for the purpose of suing it, establishing its liability and thereby gaining access to its insurer.

The creation of this direct remedy against the insurer affects the insurer's rights of subrogation in respect of their ability to recover payments of contribution from other wrongdoers and their insurers potentially liable for the same loss. Subrogation is a common law concept allowing a person who pays out a claim to "stand in the shoes" of the payee as regards other rights of action the payee had in relation to the claim. An insurer who pays damages to the claimant is therefore subrogated to the rights of the insured in relation to the claim.

Importantly in this context, as a result of the 2010 Act claimants no longer have to restore companies to the register. As a result, the current six-year time limit imposed on the restoration of dissolved companies, other than in relation to personal injury claims, will bite on insurers who are directly sued under the 2010 Act. This is because a claim for subrogation is not a personal injury claim.

The effect is particularly acute in personal injury claims for exposure to asbestos, where Section 3 of the Compensation Act 2006 makes any defendant liable for the whole of the loss to the claimant, irrespective of whether others might also have caused the injury and might also have an obligation of contribution.

Damages in these and other personal injury cases are usually paid by the defendant's insurer. As a result of the payment the insurer is subrogated to the rights of the defendant against other parties liable for the same loss. However, a right to subrogation can be exercised only if the company to be sued exists. A dissolved company clearly does not, and a company that has been dissolved for more than six years cannot currently be restored to existence.

The changes to the law introduced by the 2010 Act, which removed the need for a claimant to restore a company, have therefore had the indirect consequence in personal injury cases that the insurer has to restore the dissolved company to be able to exercise rights of subrogation, but cannot do so if the six-year limit has been exceeded. A right to be subrogated to a claim for contribution against such a company has therefore been made inoperable, with the consequence that one insurer will have to bear the whole loss. This was not the intention of the 2010 Act.

The draft regulations cure this problem by allowing an application to restore a company under Section 1030(1) of the Companies Act 2006 outside the six-year time limit for the purpose of an insurer bringing proceedings against a third party, typically another insurer, in the name of that company in respect of that company's liability for damages for personal injury. This change ensures that the same subrogation result is produced for direct claims against insurers under the new Section 6A of the 2010 Act as is already produced for indirect claims where the person who suffered the loss claims against the insured wrongdoer and the insurer pays for the loss. In other words, this solution restores insurers' rights of subrogation without prejudicing any third party. We submit that it is a fair and sensible way to resolve the problem inadvertently caused by the 2016 regulations. I beg to move.

Lord Beecham (Lab): My Lords, try as I might, I can find absolutely nothing wrong with the regulations. I have tried very hard to do so and failed completely. It is perhaps worth noting that it is unfortunate that this problem arose in the first place; presumably the original drafting ought to have anticipated and dealt with it. However, it is being corrected, although somewhat belatedly. What are the consequences, if any, for cases that have already gone through the process? It is presumably too late to apply the present terms to cases that have already concluded. Will there be litigation to go back over cases that have already been determined?

Lord Keen of Elie: I am obliged to the noble Lord for his efforts in trying to find some flaw in the regulations. I am relieved that he was not able to do so. I do not see how the problem of prior claims could arise, because we would be within the six-year time limit for restoring a company to the register with regard to past claims. I do not understand there to be an issue over that; a problem is not anticipated. As far as future claims are concerned, it is entirely proper that we should be able to accommodate these matters. In these circumstances, I commend the regulations to the Committee.

Motion agreed.

Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018

Considered in Grand Committee

3.53 pm

Moved by ***Lord Bates***

That the Grand Committee do consider the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.

Relevant document: 38th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, as this is the first in a series of SIs preparing the ground for a potential no-deal scenario, it may be helpful for me to set out in more detail in my opening remarks the context in which these SIs are being brought forward. I hope that it will help the Committee in considering future SIs.

Following the UK's decision to leave the EU after the referendum of 2016, the Treasury has undertaken a significant amount of work with respect to the withdrawal negotiations themselves and in preparing for a range of potential negotiation outcomes. The best outcome is for the UK to leave with a deal, and we have put forward a serious and credible proposal for the future relationship. While we remain confident of agreement this autumn, in the meantime we must continue to work to prepare ourselves for the event of no deal. As the department responsible for financial services, the Treasury is working to ensure that there continues to be a functioning legislative and regulatory regime for financial services in a scenario where the UK leaves the EU without a deal or an implementation period. This includes using powers delegated to Ministers under the European Union (Withdrawal) Act 2018 to fix deficiencies in applicable EU law that will be transferred directly on to the UK statute book at the point of exit from the European Union.

The approach of the European Union (Withdrawal) Act is to maintain existing EU- derived legislation at the point of exit to provide continuity and certainty for businesses and consumers. While the fundamental elements of current financial services legislation will remain the same after exit, it will need to be amended to ensure that it works effectively once the UK has left the EU. The Treasury is therefore in the process of laying around 70 statutory instruments ahead of exit day to ensure that the UK's financial services regime is prepared.

A key decision the Government had to make in approaching this work was how to allocate responsibility for the huge body of financial services regulation being brought on to the UK statute book by the EU withdrawal Act. The Government have decided to allocate responsibility in a way which respects democratic accountability and the UK's existing regulatory framework, as set up by Parliament. Legislation which has been developed at the political level—proposed by the European Commission and negotiated through the Council of Ministers and the European Parliament—will become the responsibility of the UK Parliament, while rules developed at a technical level will become the responsibility of the UK regulators.

The EU's directly applicable financial services legislation broadly falls into three categories. The most important category is regulations, which play an important part in setting the overall policy direction for areas of financial services activity; then there are the delegated regulations, which tend to be used for setting out more detailed requirements; and the lowest level of legislation is technical standards, which are used to flesh out the most detailed and technical aspects of regulations. It is only this last level, the technical standards, which the Government propose to delegate to the UK's financial services regulators.

The responsibility for developing these technical standards currently lies with the European supervisory authorities, before they are adopted by the European Commission. As required by EU law, technical standards do not need policy decisions to be taken but lay out the granular level of the requirements that firms need to meet to implement policy set out in higher EU legislation. The existing stock of these technical standards runs to over 7,000 pages. Common examples of technical standards are those that set out the processes for providing supervisory information to regulators, including the specific form templates that firms should use.

The job of this SI is to set out the terms on which UK regulators will exercise the proposed new function for EU technical standards. It will also delegate the EU withdrawal Act's deficiency-fixing power so that the UK regulators are able to ensure that these technical standards, as well as domestic regulator rules, work effectively from exit day. Part 1 of the SI, which will come into force the day after it is made, is necessary so that UK regulators will be able to use the EU withdrawal Act's deficiency-fixing power in advance of exit to ensure that technical standards and UK regulator rules are amended to work effectively from day one of exit.

Part 2 of the SI delegates the EU withdrawal Act's deficiency-fixing power to UK regulators and sets out the basis on which they are to exercise this power. The regulators specified are the Bank of England, the Prudential Regulation Authority, the Financial Conduct Authority and the Payment Systems Regulator. In delegating the deficiency-fixing power, Part 2 applies those requirements and constraints that would apply to a Minister's exercise of that power. The regulators

will be able to make changes only to the technical standards listed in the schedule to these regulations or to regulator rules in order to correct deficiencies that arise as a result of the UK's withdrawal from the EU. The two-year time limit on using the power will also apply.

4 pm

Part 2, along with the schedule to this SI, allocates each existing technical standard to the appropriate UK regulator. The schedule lists all EU technical standards currently in force and specifies the appropriate regulator for each standard. A limited number of technical standards will be relevant to the responsibilities of more than one regulator and Part 2 also sets out how the regulators will co-operate when amendments need to be made to those standards. The regulators will make their deficiency fixes for technical standards and regulator rules using EU exit instruments. The Treasury will need to approve these instruments before they are made and will ensure that the fixes proposed by the regulators are consistent with the fixes that Parliament will be asked to approve in higher onshored legislation.

The Government are not proposing that Parliament be required to approve these fixes. Parliament will be asked to scrutinise and approve around 70 SIs amending the legislation that sits above technical standards. The regulators will use an open and transparent process for making fixes to technical standards. There will be public consultation on all of their fixes—the FCA published its first consultation last week and the Bank of England will follow shortly. Should Members of this Committee or this House have concerns about any fixes proposed by the regulators, Ministers will, of course, look into them before approving the regulators' EU exit instruments. Part 3 of these regulations sets out the procedure that will be used when the regulators are given power to make technical standards under the EU exit SIs.

The post-exit responsibility for each EU technical standard will be transferred to the appropriate UK regulator by the SI that deals with the relevant area of EU legislation. For example, technical standards that sit under the Solvency II directive will be transferred to the Prudential Regulation Authority using the Treasury SI that makes fixes to onshored Solvency II legislation. Wherever a Treasury SI transfers responsibility for a technical standard, Parliament will be asked to approve the SI using the affirmative procedure.

As I mentioned earlier, the Government propose to transfer responsibility for technical standards in a way that is consistent with the UK's existing regulatory framework, as approved by Parliament in successive pieces of legislation. Specifically, the Financial Services and Markets Act 2000, or the FSMA, is a key piece of framework legislation for regulation of financial services in the UK. The FSMA already delegates to the PRA and the FCA the responsibility for making the detailed rules that apply to firms in order to operationalise the framework that Parliament has set in legislation.

Part 3 of the SI amends the FSMA and the Financial Services Banking Reform Act 2013 so that the regulators will be responsible for technical standards in the same way that Parliament has given the PRA and the FCA responsibility for rules made under the FSMA. Whenever the regulators propose changes to technical standards in future, they will be required to consult and carry out cost-benefit analysis of their proposals, just as they do now for rules made under the FSMA. The Treasury will need to approve post-exit changes to technical standards and will be able to veto them if it appears to the Treasury that a proposed change would have implications for public funds or would prejudice any negotiations for an international agreement. This would include any negotiations that may still be taking place for an agreement with the EU.

As well as being consistent with the FSMA framework set by Parliament, this approach recognises the fact that it is UK regulators which have the necessary expertise and resource to maintain technical standards after the UK's exit from the EU. UK regulators have played an important role in the EU to develop these standards through their membership of the boards and working groups of the European supervisory authorities.

In advance of laying this SI, Her Majesty's Treasury published the instrument in draft, along with an explanatory policy note, in April 2018, in order to maximise transparency to Parliament and industry ahead of laying the SI. We have engaged and will continue to engage stakeholders on these issues and are publishing advance drafts of our financial services onshoring SIs throughout the autumn.

As already mentioned, UK regulators are committed to a fully transparent process for fixing deficiencies in technical standards and their own FSMA rules. Starting with the FCA last week, the regulators will issue public consultations on all of their proposed deficiency fixes. This SI will play an essential part in ensuring that the UK has a fully functioning regulatory regime for financial services in the event that we leave the EU in March without a deal.

The UK regulators perform a vital role in our financial services regime and they will have an important job in ensuring that the UK is ready for exit. This SI proposes a clear and transparent statutory basis for the job that regulators are being asked to do, which I hope this Committee can support.

Following the approach set by Parliament in the FSMA, our regulators are best placed to ensure that EU technical standards are fit for purpose as we prepare to withdraw from the EU and in the period following exit. I hope that the Committee will join me in supporting these regulations and our regulators in this important preparation period which is now taking place. I commend the regulations to the Committee.

Lord Wrigglesworth (LD): My Lords, I am grateful to the Minister for introducing the SI. I am sorry that my colleagues and noble friends Lady Bowles and Lady Kramer cannot be with us today, which is why I am here rather late in the day.

Returning to retail banking and other matters—it is a long time since I was last involved in it, both in the City and the north-east—when I saw the Explanatory Memorandum and the mention of some of the Acts, I realised that I am more familiar with the Acts that I remember were passed when I was in the House of Commons back in the 1980s than some of the legislation that has been coming through in recent times.

[Lord Wrigglesworth]

However, this is a very different situation from any we have ever faced. Therefore, before I go on to ask questions and seek assurances about the contents of this SI, I wish to say something about the political position that has led to this. I regard all this as a complete and utter waste of time and effort. It would never have been necessary if it had not been for the Conservative Government getting us into the predicament that we are in at the moment. The referendum and the decisions that have been taken since then have given rise to a massive distraction from the many problems facing this country. I frequently sit in the Chamber of this House and think we must have gone mad. Although this SI has big implications it is one small example of many thousands of other problems that are taking place because of the distraction of Brexit on the country, the Government and Parliament. These SIs today are symbolic of the terrible problem we face as a country. It is completely fatuous that we should be doing this but we have got to live with it and hope to get through to the other side. This is really the Treasury's equivalent of preparing the M20 and M26 as car parks, and I assume other departments are doing similar things.

I give my broad acceptance to these regulations. We have questions to ask and assurances to seek. The Minister has already given some in his comments introducing the statutory instrument, but the first thing I would like to ask is: where is the impact assessment? It is mentioned in the Explanatory Memorandum but we still do not have it. It is vital that we know the impact that this is going to have on the important and complex financial services sector. I will be grateful if the Minister will tell us where it is, and when not just the Houses of Parliament but the industry can expect to see it.

I was pleased to hear what the Minister said about openness and the consultation that will be done by the bodies taking over the binding technical standards. That was one of my major queries about how this is going to operate. Can he say a little more? He mentioned some 7,000 pages of regulation, which gives an indication of the scale of the work that these organisations will be involved in, but it is vital that institutions in the City and the financial services sector are consulted properly on changes that might be made. In addition to publication in the way that the Minister described, I hope that active consultation will take place with City institutions and the different sectors that work in financial services to ensure their input in any changes in the regulations that will so profoundly affect them. I will be grateful if the Minister will give some indication of how the financial services sector will be consulted on any changes that take place.

Will the Minister also give us an assurance that if there is any amendment to the principal financial services legislation it will be done through a Bill rather than by statutory instrument? I take it that that will be the case and that if some of the financial services legislation is to be amended it will be done through the normal procedure of a Bill and that the Government will not try to make changes—even minor amendments—to primary legislation through statutory instruments. If the Minister can give assurances on the way in which this will operate, he will have our support for the statutory instrument coming into operation.

Lord Tunnicliffe (Lab): My Lords, we all know that there is no chance of anybody voting against this SI or any of the other SIs the Government bring forward, because we all know we are not going to start a constitutional crisis at this time. There are enough of them being generated by the Government as it is.

We now know that there are 70-plus SIs that we are going to have to consider, and I know that I am going to have do all 70 of them, so I have had a look at why we are here. What do we achieve? We do not have massive attendance in Grand Committee, and even if we had been on the Floor of the House we would not. This is what I think we should be doing. Of course, the great thing about SIs and the House of Lords is that you can get away with more or less anything. As a result, one can take an SI and lay a political point on it. I do not criticise the noble Lord for doing that; it is what we do. But with 69 SIs in front of me, I do not want to make 69 searing political points. What will be useful? I think what is useful is to give the Minister a hard time. That is not because I enjoy the spectator sport of Ministers squirming through lack of knowledge, but because the Minister is responsible for the machinery that generates the SI, the Explanatory Memorandum and the elusive impact assessment.

My experience of organisations is that they perform better when they know that their leader is going to come under scrutiny than when they do not. I believe that the process of scrutinising and questioning the SIs that come in front of us is constructive in its own right in encouraging quality both in drafting and right the way through the process. I also think the process of questioning SIs and *Hansard* reporting the conversation is useful to the industry that they impact on. It allows people who read the raw SI to look at the debate and on occasion get a better view of the nuances. I believe it is also useful to those people who will have to draft the advice, regulations and so on that flow out of the Sis. I am talking about the generality of it.

4.15 pm

Lastly, although we may criticise the SIs, there is little chance of the Government ever withdrawing them. In fact, with the timetable in front of them it would probably be impossible. But from the SIs flows a lot of material, and if we can make turning points at least at the level of the nuance that will allow the Government to reflect on what has been said in Committee and, perhaps, nuance the regulations or the advisory material. On this and the other 69 SIs we will be trying to do those things. What I am not going to do is produce elegant speeches because I do not have the energy to do that 70 times. Rather, I am going to stick to questions that I hope will bring out points that are useful.

Starting with this particular SI, there is a fundamental point—I will call it a political point—that distresses me. I have a problem here because I do not actually have a remedy, but the substantial part of the SI depends on Section 8 of the European Union (Withdrawal) Act. The section is headed, "Dealing with deficiencies arising from withdrawal", Subsection (1) begins:

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

I know there were an awful lot of debates about that section because I sat through them, and I am absolutely convinced that Parliament took comfort from the words "Minister of the Crown"—that is, from the fact that there would be political involvement in the use of Section 8. But the whole essence of this SI is to take politicians out of it. There is no obvious requirement for them. The SI says that wherever you read "Minister of the Crown" in this section, in so much as it relates to the SI, you should substitute "appropriate regulator". So there is a clear transference of responsibility from the Minister of the Crown to the regulator.

The Minister said that, in order to inspire confidence, the regulators will work in an environment that means their response will—and so on, and so on—and that they will work within the constraints of Section 8, which says that changes have to be small and must not create a new policy. My worry is that there is going to be an enormous volume created by the regulators out of this, and the problem when there is an enormous volume of anything is that systematic biases or errors can be built in. I would be happier if there were some more obvious form of supervision or scrutiny in the process. I do not actually have a solution, as I have said, but this transference of powers from a Minister of the Crown to the regulators is not what Parliament had in mind when it approved Section 8. I make that point to the Minister and invite him to try to convince me that there are necessary safeguards.

When you read this stuff—which is a pretty brave thing to do—from time to time you come across the words "the Treasury must approve". So it looks as though the Treasury is playing a supervisory, checking and scrutiny role. But then you discover, as the Minister said in his speech, that the particular role of the Treasury is, first, to ensure that the SI is not a call on public funds, and, secondly, that the instrument or whatever being made does not interfere with the negotiation taking place at the time. That would imply that the Treasury has no other role. So I ask the Minister: is that true or does the Treasury—and hence, at least, accountability through Treasury Ministers—have a general role to supervise the activities of the regulators enabled by this statutory instrument?

My next question is about the regulations, rules and whatever produced by this system. Will they be put in the public domain? If so, how? What sort of documents? Will there be some way one can track the products of this SI and see what its impact is and where? Will there be a system, somewhere or other, of summary reports, if only on how many pages have been covered, how many areas fixed et cetera?

Another thing I could not get my mind around is that Section 8, which I referred to, has a two-year sunset clause. How will this work with this instrument? At one extreme you could argue that all the powers have to be reviewed after two years. Or you could take the view, at the other end of the spectrum, that all this work will have happened in the two years. Alongside the sunset clause is the commencement. This SI will commence the day after it is made, so it will be there all the way through. Does it in itself have a de facto sunset clause, or is that part of Section 8 somehow eroded?

Another area that I did not understand which is rather more mechanical is when the regulators will actually do this work and how it will relate to exit day. Will they create new regulations in draft so that they can come in on exit day? Basically, how will the work carry on? Will the work of these SIs be finished, in a sense, as soon as they are made by the fact that the authorities are being transferred, or will there be an ongoing look at what needs to be transferred to regulators that can be transferred under this SI?

I think the Minister made the point that this is for a no-deal situation, so what happens if there is a deal? If this SI is commenced, will it become uncommenced if there is a deal or will it carry on because it is a useful device to put responsibility on particular parts of government to carry on with the complexities for the financial sector of being outside the EU?

My next point was raised by my colleagues in the other House: it is the sheer resource problem. I think the Explanatory Memorandum admits to thousands of pages. A considerable resource is required just to read thousands of pages, never mind go through and carefully alter them as required by the new situation. It is difficult to believe that the regulators can execute this SI or its consequences without increased resources—and if they need increased resources, will the Treasury stand behind them and provide the additional resources that will be necessary, in our view, as a result of the transfer of responsibilities?

As I read it, the regulators may have an ongoing responsibility to relate to the EU, particularly in the interim period between March and 2021. How will the regulators co-ordinate that? It will be important to maintain a stable relationship between UK industry and European industry. Even if we crash out of the EU, I would have thought that that would be an objective. If we crash out and are in a no-deal situation, this SI will be alive and well and doing its work. The regulators will be doing their work of supervising the industry and it is very important that they establish a relationship that will be outside a treaty. It will have to be a bilateral, practical relationship. How are they going to work to keep the two sectors in step?

Finally, the noble Lord raised the point of whether it is reasonable to seek approval without an impact assessment. What is the point of an impact assessment produced after the commencement date? You might as well say we are not going to produce an impact assessment. I do not have the faintest idea what I will do with this document when it appears on my desk. I would like to claim that I have the energy to read it—but, knowing that there is absolutely nothing I can with it, I suspect that that energy might drift away after the first two or three pages. I thank the Minister for introducing the instrument.

Lord Bates: I thank the noble Lords, Lord Wrigglesworth and Lord Tunnicliffe, for their questions. I guess that the noble Lord, Lord Tunnicliffe, and I are going to be spending many happy hours in this Committee over the next year, and I know that the noble Lord is always assiduous in the way that he prepares for these matters and in the questions that he puts. He is also right to say that this is an opportunity to provide scrutiny for these regulations and what is being put forward.

[Lord Bates]

Many questions have been raised and I will go into a bit of detail in responding to each of them. The first issue is in relation to impact assessments. This statutory instrument would have no cost to business as it deals with the transfer of responsibility from the Treasury to the regulators. As a whole, these SIs will significantly reduce costs to business in a no-deal scenario. Without them, the legislation would be defective and firms would be left to deal with an unworkable and inconsistent framework that would substantially disrupt their business.

In making these changes we have attempted to minimise the disruption to firms and their customers and to maintain continuity of service provision. However, it is inevitable that firms will need to prepare for changes made by these SIs and the Government have committed to providing the UK regulators with the power to phase in regulatory requirements that change as a result of exit. This will substantially mitigate the costs to firms and give them more time to implement the changes.

On the issue which, I suppose, is at the heart of this initial—

Lord Tunnicliffe: It seems to me that the Minister has just given a précis of the impact assessment, which is designed to satisfy us when we do not need one. I would have been much more comfortable if the document had said, "We do not intend to produce an impact assessment because the argument is simple," and then printed his explanation, rather than receiving a document that says, "We do not have an impact assessment because we have not finished doing it yet and we will publish it later".

4.30 pm

Lord Bates: We are in the process of preparing five impact assessments covering financial services and onshoring legislation. They will be considered by the Regulatory Policy Committee, the independent body that scrutinises impact assessments before they are released. As has been said many times, we are in extraordinary times in terms of what we are seeking to do with this work. I think we all recognise that the conventional form would be that the impact assessment would have been available at the same time. With that explanation about the context of the decision—

Lord Wrigglesworth: I wonder whether the Minister will mind if I emphasise the importance of this. We are dealing with thousands of businesses whose procedures are possibly going to be changed as a result of this. Not only are businesses going to be affected: millions of customers may possibly be affected. It is tremendously important that they and their customers know what impact this will have, so that if necessary they can change their forms and procedures, move their money and do whatever they want to do in the light of the impact of this. If changes are in the pipeline as a result of this, and they are going to affect businesses, it is vital that businesses know about them as soon as possible.

Lord Tunnicliffe: On the same point, I draw attention to page 33 of the statutory instrument:

"Explanatory Note (This note is not part of the Regulations)".

The final paragraph states:

"An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector will be available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and published alongside this instrument".

I apologise for this, but if we are going to get impact assessments on time, the Government have to realise the irritation it causes to the Opposition and our colleagues in the Liberal Democrats if we do not have them published on time.

Lord Bates: I fully accept the point the noble Lord is making. There is no need to apologise, because the point is that there should be scrutiny. I am trying to explain that this SI would not be expected to have an impact on business for the reason that I have set out. Other SIs will have impact assessments published. This SI has been published in draft form and we have been engaging in consultation with the Financial Conduct Authority and the regulators. The Financial Conduct Authority and the regulators interact most with businesses and consumers and therefore they have already commenced work on that part of the process to ensure preparedness.

On that point, the noble Lord, Lord Wrigglesworth, asked how industry will be involved in the regulators' role. The regulators will consult on their deficiencies fixes. The Financial Conduct Authority has published its first consultation and the Bank of England will follow.

On the key issue of where the powers in the SIs are derived from, it is Section 8 of the European Union (Withdrawal) Act. That Act was subject to considerable debate in Parliament, including debate on the nature and scope of the deficiency-fixing power delegated to Ministers. Part of that debate considered whether it would be appropriate for Ministers to subdelegate the power to non-ministerial bodies. Parliament decided to leave open the possibility of subdelegation. Subdelegation of the powers is provided for in this SI so that UK financial services regulators can fix deficiencies in EU technical standards and regulator rules in time for exit. Section 8(6) of the Act provides for the transfer of EU functions to an appropriate UK body.

On the amendments to principal financial services legislation, which the noble Lord, Lord Wrigglesworth, asked about, some deficiency fixes will be put into primary legislation through SIs. These will not change policy but will be technical in nature.

On how we have consulted industry in drafting these SIs, we have not carried out a formal consultation on these particular SIs. What they can do is strictly limited by the enabling power of the EU withdrawal Act to fixing deficiencies. Therefore, there are limited policy choices. We discuss EU exit preparations regularly with the industry. This engagement has been invaluable for understanding the impact of these SIs. We share draft legislation with the industry to allow stakeholders the opportunity to familiarise themselves with our approach and to test our understanding of the likely impact. We are also, where possible, publishing draft legislation in advance of laying it.

The noble Lord, Lord Tunnicliffe, asked how the regulatory changes will be put in the public domain. The regulators are committed to a fully transparent

process for fixing deficiencies in EU technical standards. The FCA has already issued its first consultation on this. The regulators are required to publish all the instruments in which they will make regulatory changes to ensure that they are brought to the public's attention. In practice, they will do so by publishing them on their website.

The noble Lord also asked whether there was any requirement for the regulators to report on how they are exercising these powers. All regulatory deficiency fixes will need to be approved by the Treasury. I accept the point he made about the circumstances and tests, and whether there was an impact on the Exchequer, but the EU withdrawal Act requires an annual report on the exercise of the powers under the Act. The regulators will provide this on their use of the deficiency-fixing power and on their post-exit responsibility for technical standards. Parliament will be able to scrutinise and question the regulators on the use of these powers through the Select Committee system, as it does now across a range of regulatory functions.

Lord Tunnicliffe: I do not know whether the Minister feels that he has answered the question, but does the Treasury have a supervisory responsibility other than through or in relation to the two reasons he just outlined?

Lord Bates: I have an answer to that and it will be ready in just a couple of minutes. It was on how the powers will be used.

The noble Lord also asked how regulators would co-ordinate with EU regulators after exit. This statutory instrument does not deal with the co-operation arrangements between the UK and EEA regulators. However, if the UK leaves the EU without a deal, the UK will fall outside the EU's legislative framework for supervisory co-operation. The EU has confirmed that the UK will be treated as any other non-EEA country in this scenario. Common legislation will no longer be the basis for co-operation between UK and EEA regulators, but the UK's firm intention is to maintain the current high level of co-operation that we have with EEA authorities. UK statutory powers have this under the FSMA. As some of the world's most important regulators, the Bank of England and the FCA are well-established co-operation partners with non-EEA regulators.

The noble Lord asked what would happen to the statutory instrument in the event of a deal. These regulations will come into force on the day after they are made. This will allow regulators to prepare for exit day by making these changes. However, if we reach an agreement on the implementation period, for the duration of that period the UK will remain subject to EU law, including binding technical standards. It will also generally not be necessary to fix deficiencies in regulators' rules until the end of the implementation period. The withdrawal agreement Bill will include provision to delay, amend or revoke SIs made under the powers of the EU withdrawal Act.

On the supervisory point the noble Lord asked about, the regulators may make an instrument to fix deficiencies using the powers delegated by this statutory instrument and an EU exit instrument only with the approval of the Treasury. In this case the Treasury can approve the EU exit instrument only if it is satisfied that the instrument makes appropriate provision to fix deficiencies arising from the UK's withdrawal from the EU—in other words, that the EU exit instrument is not doing anything which could not appropriately be done by the Treasury using its own powers under Section 8 of the EU withdrawal Act. Similarly, the regulators may make an instrument to exercise any powers to make technical standards transferred to them by other SIs made under the 2018 Act only if the instrument is approved by the Treasury. For standards instruments, the Treasury may refuse to approve a standard instrument only if the regulators believe it would affect public funds or the instrument would prejudice international negotiations.

On the point which was made about resources—clearly we are placing a heavy responsibility on the regulators—the Treasury is confident that the financial services regulators are making adequate preparations ahead of 2019 and have an appropriate level of resources to manage their new responsibilities. We have worked extremely closely with the regulators in preparing this legislation. The current business plans of the FCA and PRA set out their priorities in preparing for EU exit and their plans for ensuring operational readiness. The regulators have considerable experience in this area. This means that the responsibilities of EU bodies can be reassigned effectively and efficiently, providing firms and their customers with confidence after exit. The FCA has published its first consultation on the changes it proposes to make using these powers.

The noble Lord asked about the sunset clause. Under Section 8 of the EU withdrawal Act, no government department would be able to make any regulations after 11 pm on 29 March 2021—that is, two years after exit day. Under regulation 3(3) of these regulations, Section 8(8) also applies to the regulators, so they will not be able to make any EU exit instruments to fix deficiencies after this date. This relates to a question which I dealt with in my previous remark. However, in supervisory situations—I have said this—regulators may make an instrument to fix deficiencies using the powers delegated by this SI only with the approval of the Treasury.

I hope my responses have gone some way to addressing the points and concerns raised by noble Lords in the course of this debate. As I said, this is the first of many debates on these issues, but this first statutory instrument is crucial and I commend it to the Committee.

Motion agreed.

Building Societies Legislation (Amendment) (EU Exit) Regulations 2018

Considered in Grand Committee

4.43 pm

Moved by ***Lord Bates***

That the Grand Committee do consider the Building Societies Legislation (Amendment) (EU Exit) Regulations 2018.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, following the UK's decision to leave the EU after the referendum, the Treasury has undertaken a significant amount of work with respect to withdrawal negotiations and in preparing a range of potential outcomes for these negotiations. The best outcome is for the UK to leave with a deal and we have put forward a serious and credible proposal for the future relationship. While we remain confident that agreement will be reached this autumn, in the meantime we must and will continue to work preparing ourselves for no deal.

As the department responsible for financial services, HM Treasury has been conducting particularly intensive work to ensure that there continues to be a functioning legislative and regulatory regime for financial services in the event that the UK leaves the EU without a deal or an implementation period. An essential part of that work is using powers delegated to Ministers under the European Union (Withdrawal) Act to fix deficiencies in applicable EU law that would be transferred directly on to the UK statute book at the point of exit.

The Building Societies Act 1986 and related legislation contains various technical provisions governing how building societies must act. This includes setting out requirements relating to the UK's membership of the EEA. For instance, one provision ensures that loans secured on UK land and loans secured on EEA land are treated equally. The concept of a loan secured on land is used when defining who counts as a building society member in legislation and calculating a building society's lending limit—a legal requirement which makes sure that the building societies focus on their core business of mortgage lending.

Other parts of the legislation ensure that EEA bodies and UK companies are treated in the same way regarding transfers of business from a building society to a commercial company. However, in a no-deal scenario the UK would be outside the EEA and outside the EU's legal supervisory financial framework. The legislation therefore needs to be updated to reflect that, and to ensure that the provisions work properly in that scenario.

The original legislation treats members of the EEA differently from third countries in certain respects. Given that that will no longer be appropriate after exit day, this SI will amend the Building Societies Act 1986 and related legislation to treat EEA countries similarly to other third-party countries after exit day. To take an example, I have already set out that this SI will amend the original legislation to ensure that in future new mortgages on properties in non-EEA states and EEA states are treated the same after exit day. Note that the instrument maintains the pre-exit legal treatment of mortgages on properties in EEA states, providing contractual continuity for building society members who have an existing mortgage on a property in an EEA state. Building societies will have to take this treatment into account in calculating lending limits and defining building society members.

The original legislation also allows building societies to transfer business to and from companies and mutuals in EEA states but not those in countries outside the EEA. This SI will amend the legislation so that such transfers are no longer allowed, equalising the treatment of EEA firms with those in other third countries. The SI also replaces several references to EU directives with equivalent references to the Prudential Regulatory Authority's rulebook and ensures that the current relationship between the UK and the Channel Islands, the Isle of Man and Gibraltar is maintained. There may be some cost to businesses linked to the restriction on the ability of building societies to lend on properties in the EEA, although since building societies do the overwhelming majority of their lending in the UK we believe this would be minimal.

In summary, the Government believe the proposed legislation is necessary to ensure that the legislation governing building societies functions appropriately if the UK leaves the EU without a deal or implementation period. I hope the Committee will join me in supporting these regulations, which I commend to the Committee.

Lord Wrigglesworth (LD): I am grateful to the Minister for managing to get through the presentation of this SI to us. He might think of going into juggling at some stage. I want to raise a number of very important issues that affect millions of our fellow citizens. There is no more self-evident part of the financial services industry that impacts on so many people than the building societies. I will therefore return to the discussion we had a few moments ago about impact assessments.

Once again, we have no impact assessment of how this will affect those societies. I refer to the millions of people involved, but they are not all people with mortgages. There are also people saving in building societies and they want to know what the impact of all this will be on their savings. What will be the impact on the balance sheets, profitability and liquidity of building societies? Their resources may be at risk as a result of changes of this sort being made. The importance of the impact assessment for this SI is tremendous; it cannot be exaggerated.

In that context, I also want to return to the question of this being time-limited under EU legislation, which could have a direct bearing on the impact it will have on people—a point made by the noble Lord—and the fact that it will fall away two years after exit. When will our exit take place? Here we are, with the Cabinet not knowing on this very day where it is going and whether there will be a deal, discussing alternatives that will impact upon very many people. What impact will a no-deal scenario have on when this statutory instrument comes into effect? What will happen with the transitional period? Will we leave on the date forecast? It raises profound questions that will affect the livelihoods, savings and mortgages of millions of our fellow citizens. This is just one example of where the Government have a tremendous responsibility to make things as clear as possible to building society customers. I hope that the Minister will address the issue of the impact of this when he responds.

Can the Minister also say something about the impact of this SI, if it is agreed to, on the members of buildings societies who will no longer necessarily be able to become members if they borrow overseas? As I understand it, the position is that as soon as they get a mortgage with a building society, they become members of it; in the future, under this statutory instrument, that may or may not be the case. What position will

those people be in? It has been well understood that membership of a building society comes with being a customer in that way. It would be helpful if the Minister could make it clear whether people can, and will, become members of building societies if they do business in that way in the future.

What will be the position of people if they wish to borrow money from building societies to buy overseas? A lot of people might be contemplating buying a property in France, Italy or somewhere else in Europe. Will they be able to borrow from a building society and what will the status of their mortgage be? What happens from the building society's point of view if the customer defaults on an overseas property? If the building society cannot regain the property and set it against the debt, that will have an impact on its financial position. Can the Minister tell us how many of these loans there are, whether they can be rolled over and what the impact on building societies will be if these changes take place? How will their business be affected in the future?

If any changes are to be introduced—this is the same question as on the previous SI—can we have an assurance from the Minister that the building societies will be consulted? I assume from his previous remarks that they will be as a matter of course. But clearly, like so many other institutions in the country, they are wondering what the devil is going to happen in the coming months. If they at least know that they will be consulted if changes are taking place, I think they will be consoled to a certain extent. Because so many people—people with very modest means, in many instances—could be involved if these changes take place to their detriment, I hope that the Minister will be able to respond to these questions and that the Government will be able to reassure us that that will not be the case.

Lord Tunnicliffe (Lab): My Lords, I join the noble Lord, Lord Wrigglesworth, in his comments on an impact assessment. I have to admit that rather than knowing that there is not one, I could not find it—but that may be a lack of skill on my part. I hope that the Minister's answers may cover my concerns. On a lighter note, can the Minister confirm that paragraphs 7.1 to 7.8 of the Explanatory Memorandum are identical to the same paragraphs for the previous instrument? From my reading, they are. Will it be standard procedure for all Treasury SIs to have identical paragraphs 7.1 to 7.8? If they are to be identical, it will save an awful lot of time in reading them if I know that to be true.

An impact assessment would have been useful because it tends to use plainer language. It would have been particularly useful in this case because I took an entirely different view of this instrument from that of the noble Lord, Lord Wrigglesworth. I did not put much effort into it because it seemed pretty benign and reasonably consequential. I did not see the risks, so perhaps I may ask the questions that the noble Lord asked—but rather more bluntly. What will happen if there is a deal, as this document's commencement date is the exit date? Will it therefore still be alive or be deleted? Will all contracts in force on exit date between a building society and its members be secure thereafter? If they are entered into before exit date, will they continue in force after it? My reading was that they would, but it is an absolutely key point that they should. If you have foreign property as a result of a loan from a building society, is your security in the relationship and all that sort of stuff unchanged by this instrument? Does it refer only to new loans or not?

My reading of the instrument was that it would not have an immediate impact on a building society's balance sheet, because the composition of that balance sheet would be unchanged by it. The instrument starts to impact on the balance sheet only as new contracts are commenced, which will then have different weightings and so on. Will all UK consumer protections stay in place, so that consumers will in no way have less protection as a result of the instrument?

Lord Bates: I thank noble Lords for their questions. Perhaps I may make one top-line comment at the outset, in order to assist. We are effectively seeking here to ensure that there is absolutely no change in the situation of the building societies in relation to their members and mortgages. The whole purpose behind this provision is to bring onshore that legislation which currently operates while we are members of the European Union, and to ensure that there is no break in or interruption to that work.

It is not anticipated that this SI will have any impact on savers or mortgage holders. On the question of the impact on balance sheets, which the noble Lord, Lord Tunnicliffe, asked, the SI will have no direct effect on either side's balance sheets on day one. However, EU exit could more broadly impact on both sides' businesses, in which case we could see changes reflected in balance sheets over time—but of course that depends on a number of factors, including the nature of a future relationship and future deal.

With regard to the wider impact on savers, the Government published a series of technical notices explaining what the consequences of a no-deal exit would be for most UK-based customers. We stated clearly that UK-based customers would not be affected. Where customers will be affected, firms including building societies will be expected to communicate that at the appropriate time. I stress again that building societies overwhelmingly deal with lending against properties and savers based in the UK, and that the provisions in relation to the treatment of property and land on which mortgages are granted in non-EEA states and EEA states are to ensure that there is consistency of treatment in future so that differences and problems will not arise.

5 pm

Lord Wrigglesworth: I wonder whether the Minister will therefore explain why the memorandum says:

"There will be some costs for businesses linked to the restriction on the ability of building societies to lend on properties in the EEA. This is because loans secured on properties in the EEA post-exit will no longer count towards the calculation of the building societies' lending limit (which requires that 75% of a building society's assets are secured on residential property)".

Another paragraph says that,

"the legislation allows building societies to transfer business to and from companies and mutuals in EEA States, but not countries outside the EEA. This SI will amend the legislation to no longer allow these transfers".

[Lord Wrigglesworth]
So we are in a different situation again. Taking out a mortgage with a building society on property in the EEA will no longer automatically mean becoming a member of that society, which I have referred to as a slightly separate point. There are specific references to changes that will take place under this SI, and those could have an impact both on members and on the societies.

Lord Bates: I would counter that by saying that the majority of those changes are going to relate to the building societies themselves that have been cited in terms of the treatment of those provisions. I will come back to that in just a second, if I may, after dealing with another point that the noble Lord raised about members borrowing overseas and members' rights. All current building society members will retain their membership and associated rights. Loan terms are not affected. If people wish to borrow from the building society for an overseas property, they will not automatically become members. This is the current situation with all non-EEA countries, but it will be extended to EEA countries as the EEA will become a third country. Paragraphs 7.1 to 7.8 are the same in both these Explanatory Memorandums and will be very similar for all the SIs in this group.

The noble Lord asked what the impact of the SI on building societies would be and how the Government were mitigating it. The SI will act to prevent building societies diversifying too far into EEA-based mortgage lending in future, should they wish to. However, the vast majority of building societies conduct all their lending in the UK and show no interest in lending overseas. Mortgages currently owned by building societies in EEA states such as Spain will not be affected by this SI as the provision applies to new mortgages only. However, the SI may make building societies which have previously given mortgages on properties in Spain unwilling to remortgage such properties. In that case there is no reason why the individuals concerned would be unable to remortgage with another bank.

The noble Lord, Lord Tunnicliffe, asked what will happen to the SI if there is a deal. These regulations will not come into force on exit day if there is an implementation period, as we expect. If we reach an agreement on the implementation period, for the duration of that period the UK will remain subject to EU law. Building societies can continue to operate in the same way as they do now. The noble Lord asked what will happen to all contracts on exit day. This SI does nothing to affect existing building society contracts. On exit day all contracts between a building society and its customers, including mortgage contracts, will remain unchanged.

The noble Lord, Lord Wrigglesworth, and the noble Lord, Lord Tunnicliffe, asked whether UK consumer protection would remain in place. This SI does not remove any existing protections for building society customers. Financial services compensation varies depending on the financial services in question. Generally, FSCS protection for customers in the UK will not change. Further details on the changes to FSCS protection will be set out by the regulators over the autumn.

I hope that I have been helpful in responding to the questions raised by noble Lords in this debate. I commend these regulations to the Committee.

Motion agreed.

Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018

Considered in Grand Committee

5.08 pm

Moved by ***Lord Henley***

That the Grand Committee do consider the Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) 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 these regulations, which were laid before the House on 18 July 2018, be approved.

The purpose of this statutory instrument is to introduce additional requirements for quoted companies and new requirements for large unquoted companies and large limited liability partnerships—LLPs—to report annually on emissions, energy consumption and energy efficiency action. In 2013 the UK was the first country to make it compulsory for quoted companies to include emissions data for their entire organisation in their annual reports. At the time, the Government made a pledge to review the legislation and whether it should be extended to all large companies at a later date.

The Government recognise that for organisations to take action to reduce their energy use, they must have the appropriate tools and guidance. Measuring energy use and emissions is the first step to managing them effectively, and this legislation provides large organisations with a legal framework, creating the much-needed consistency in emissions reporting that aligns with the existing requirements for quoted companies. The importance of disclosure of consistent, comparable and clear energy and emissions information was also highlighted by the Task Force on Climate-related Financial Disclosures in June 2017, which the Government endorsed in September this year.

These regulations deliver what is known as streamlined energy and carbon reporting—part of a package of changes that were announced in the 2016 Budget with the aim of simplifying what stakeholders view as an overly complex tax and reporting policy landscape. They ensure that reporting on emissions will continue following the early closure of the CRC energy efficiency scheme, while further incentivising energy efficiency and thereby helping to improve productivity and reduce energy bills and emissions across the UK.

I turn now to the regulations. The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 brought in requirements for quoted companies to report their annual greenhouse gas emissions in their directors' report, alongside an intensity metric, and to disclose the methodology used. The Companies (Directors' Report) and Limited Liability Partnerships

(Energy and Carbon Report) Regulations 2018—these regulations—introduce a new obligation for these companies to report their underlying global energy use to reflect the true impact of their operations.

These regulations also introduce new requirements for large unquoted companies and large LLPs to report information about their UK energy use and greenhouse gas emissions in so far as it relates to electricity, gas and transport, and to disclose the methodology used in calculation of the relevant disclosures. Additionally, these regulations bring in a new requirement for all the organisations in scope to report on the principal measures taken to increase energy efficiency if any such action has been taken in the organisation's financial year.

As per the existing requirement for quoted companies, these regulations require the disclosures for companies to be included in annual reports, specifically in the directors' report. We consider that this will provide visibility of energy efficiency for senior management and transparency for investors and stakeholders, and will enable energy and carbon performance to be aligned with both financial and operational performance. These regulations introduce a new vehicle for reporting energy and carbon emissions information for large LLPs via a new report, the energy and carbon report, to be filed with Companies House alongside an LLP's annual accounts.

To simplify reporting at group level, if a company or LLP is preparing group accounts and its report is a group report, the company or LLP must make the relevant disclosures on the basis of its energy use and greenhouse emissions and those of its subsidiaries—but only as far as those subsidiaries would themselves be in scope of these regulations. A subsidiary which would itself be required to disclose its energy and carbon information in its directors' report will not have to do so if the group report meets certain requirements. These regulations apply to financial years that start on or after 1 April 2019.

The Government consulted widely on the policy behind this legislation, receiving responses from a wide variety of stakeholders including businesses, regulators and trade associations. The majority of respondents agreed that mandatory reporting was important and that it should apply UK wide, align with best practice in the UK and internationally and build on the existing mandatory reporting of greenhouse gas emissions by quoted companies and mandatory energy audits under the Energy Savings Opportunity Scheme. However, there was also a strong message that the Government should not be imposing unnecessary administrative burdens on UK business.

To balance these concerns with the overall objective of increasing transparency and improving consistency of energy and carbon reporting, the provisions contained in these regulations have undergone a number of refinements, such as the introduction of a minimum energy use threshold for the full disclosures, enabling organisations using domestic levels of energy to meet their obligations by simply confirming that they used 40 megawatt hours or less of energy in the reporting period.

We have also introduced the ability for unquoted companies and LLPs to state where they have not disclosed the information required under these regulations on the grounds that it would not be practical to obtain the information, or if, in what we expect would be exceptional circumstances, the directors or members think that disclosure would be seriously prejudicial to the interests of the organisation.

These regulations strike the right balance between disclosure of energy and carbon information by organisations and limiting the administrative burden. In line with the Government's goal of enabling businesses and industry to improve energy efficiency and contribute to the goals of our clean growth and industrial strategies, consistent, transparent and comparable reporting will ensure that businesses make informed investment decisions in their preparations for a low-carbon future—an appropriate goal in Green Great Britain Week, which we are in at the moment, when we are showcasing the benefits of clean growth and what it will bring to all parts of society. I commend the regulations to the Committee.

5.15 pm

Lord Teverson (LD): My Lords, I thank the Minister for going through the detail of this instrument. It is Green Week and I suppose we ought to welcome that. To put this in perspective, the thing I would really like to do during Green Week is go through actual hard legislation that will determine how we meet our fifth carbon budget, rather than something that is very worthy in many ways but concerns the details of medium-sized companies or non-listed companies doing some carbon reporting mandatorily. But there we are; we are where we are and I welcome the fact that we are extending carbon reporting. As the Minister said, we were in the lead as a nation in 2013 by having carbon reporting for listed companies in the UK, which is good. Where we have led, others have followed.

We have to remember, as the Explanatory Memorandum says so well, that this is part of a broader package announced in the 2016 Budget where the death knell of the carbon reduction commitment as I know it—I know that it got a different name latterly—was announced. I was always very sad about that scheme, because when it originally came about it was to look at that tier of commercial business that was not captured by the EU ETS. It was brilliantly designed before it was launched so that it was taxation-neutral and rewarded those companies at the top of the league table that had done best in carbon and energy savings while penalising those at the bottom. There were incentives and, like all good energy taxation, it was neutral overall. Unfortunately, by the time it was introduced it was taken over by the Treasury and became a tax-raising regime that had all the complications that the Explanatory Memorandum goes through. I can see that that scheme became a burden for industry when it was effectively just a method of taxation rather than a proper method of incentivising through league tables and having good performance.

There is something I would be interested in understanding from the Minister. I know it is in the figures, but I found them quite difficult to go through—although I see the figures very clearly on the financial savings of the sector, which I agree are important. What is the net estimated carbon saving or deficit with this overall package of raising the climate change levy

[Lord Teverson]
taxation rate and getting rid of the CRC and bringing in this management information system? I think that it is in the figures, but there was a whole range of figures and I found them very difficult to understand. I hope that the carbon savings are still positive because of that. I would be disappointed if they were not.

I am interested in the term "streamlined", because going through the detail I was unclear whether it meant "rough estimate" or "back of the envelope" rather than the proper way that these things are calculated. I presume it is the latter but I am interested in the term "streamlined".

The Minister mentioned global reach on these figures. As we know, the long supply chains in industry these days are one of the problems for carbon reporting. It can be relatively straightforward for corporates and large companies to estimate and publish their emissions, but one of the major ways in which any corporation can reduce its emissions is through offshoring or subcontracting more of its supply chain to suppliers. I would like to understand whether these figures include supply chain emissions and how the Government see themselves coping with that issue in future. I understand that it is not an easy question, and I am not suggesting that it has an easy answer. I would be interested to know how the Government see that area working as part of their broader green growth strategy.

Lastly, the Minister mentioned ESOS, a European scheme which is very useful in this area. Perhaps he can assure us that the scheme will continue post Brexit.

Lord Grantchester (Lab): I, too, thank the Minister for his introduction to the regulations. Although limited in scope and somewhat technical, they are crucial to highlighting and building energy efficiency into everyday activities. We greatly welcome that.

As the Minister said, the regulations introduce mandatory requirements on emissions, energy consumption and energy efficiency action for large, unquoted companies. They also extend the reporting requirements for quoted companies to bring both, along with large limited liability partnerships, in line with common reporting requirements. Such organisations must set out their activities and performance in each year's annual report. The intention of the changes is to compensate for and extend the reporting requirements previously obligated by the carbon reduction commitment, which is to end in April 2019. The new reporting requirements are to be in place after that date.

I have always thought that an organisation's annual report is a very important document that sets out its strategic direction and how it has performed against its objectives. It should be a good promotional tool for its activities. Last week, the Intergovernmental Panel on Climate Change brought out a special report to warn again of the dangers of climate change without serious corrective action being taken on emissions, decarbonisation and energy efficiency. Previously, Labour supported and advocated companies reporting their activities in a coherent regime.

Regrettably, although the new measures are welcome they do not exactly replicate all that was in place under the carbon reduction commitment. Primarily, there was a league table of companies' performances alongside the report. In the regulations, there is no measure of comparative performance and no means of producing such comparisons other than by a time-consuming and expensive trawl through all company reports, which may—or, more likely, may not—be reported in strictly comparable terms. While the regulations are prescriptive regarding what should be reported and how, there appears to be some leeway in the regulations whereby reports could mislead or be non-comparable in their meaning, particularly in terms of the possible distribution of reporting among subsidiaries of the main company. Does the Minister recognise the deficiency that there will be a lack of full comparability of reports because of the absence of a mechanism to allow performance to be compared and graded?

As what gets measured gets attention, how are companies to understand how they compare to their peers? Surely the full impact of these energy use indicators in annual reports is not being utilised as a competitive challenge for improvement. As the clean growth strategy states, businesses need measures,

"to improve their energy productivity, by at least 20% by 2030".

The CRC was due to run until 2043. Here I echo the questions asked by the noble Lord, Lord Teverson, in his analysis of the CRC and its workings. The impact assessment outlines that the policy will be reviewed in 2024. That is some time away, especially given the timeframe in which the intergovernmental panel stresses mitigating measures need to be taken. How will any comparative analysis take place under these regulations? Indeed, will the Government undertake any analysis of the results of this reporting prior to 2024, and how will they measure success? Will government incentives be brought to bear on poor performance, not merely on reporting?

While we are in favour of these regulations today, there are nevertheless serious issues to address in which these regulations have perhaps not been as constructive as they might have been. Climate change is one of the most pressing issues of our age. The intergovernmental panel issued a special report last week between its fifth and sixth reports to underline its most recent assessment that there could be a very limited number of years, may be as few as 12—that is, until 2030—in which the world's increase in temperature could be limited to less than 1.5 degrees above 1990 levels. I thought it was strange that the Conservative Government came out with a Ministerial Statement on Monday extolling all the achievements that have been secured when we all know that greater progress was made under previous Labour Governments and even under coalitions. Indeed, under the Conservative Government from 2015 progress has slowed, with a litany of cuts and policy reversals that I need not list at length today. Suffice to say that the UK is possibly no longer on track to meet the fourth, but more definitely the fifth, carbon budget.

I have one question for the Minister on the Government's Statement on Monday. Labour has a policy of net zero emissions above 1990 levels by 2050, subject to the advice of the climate change committee. On the back of the report last week the Government have asked the CCC to advise on when and how we could achieve a net zero target. Whether they have

precluded the CCC assessing and issuing immediate advice, it must advise on actions to secure net zero emissions to start at the end of the fifth carbon budget. That carbon budget is set to conclude in 2032. So the CCC cannot issue guidance or recommendations to begin until two years after the IPCC estimates that the world will be in a dangerous condition, recording in excess of its maximum 1.5 degrees above 1990 levels. The CCC advice will need to work hard and fast to secure a net zero target by 2050. I ask the Minister to answer on this feature of Monday's announcement. Do the Government have some strategic assessment by which they have decided to limit the CCC's advice until after 2032? The Government's self-congratulatory words must be met by coherent and comprehensible policies. Winning slowly on climate change is the same as losing.

Lord Henley: My Lords, I thank both noble Lords for their interventions. I rather regret the unnecessarily party-political line that the noble Lord, Lord Grantchester, took. Perhaps he could instead have taken that by responding to Monday's Statement, which we offered to the Opposition but they did not wish to have it repeated in this House.

I welcome the fact that the noble Lord, Lord Teverson, highlighted that it is green Week. I think the Government have been doing their bit to highlight the achievements that we have made in green Week. I hope the noble Lord, Lord Grantchester, has received a number of invitations to some of the events that we have been holding to highlight the achievements of this Government, the previous coalition Government and—dare I say it, on this occasion, because, unlike the noble Lord, I do not want to be party political—the Labour Government who left office in 2010. In 2008 that Labour Government brought in the Climate Change Act, which had cross-party support. The noble Lord will find that Ministers—I am going way beyond the regulations, but it is worth getting this on the record—have been making it quite clear that over the past 10 years this country, again with cross-party support with the Labour Government, the coalition Government and the Conservative Government, has achieved great things on this front, particularly when he compares what we have done in carbon reduction with other G7 countries. Would he have liked us to have followed the route of Germany, which is now burning more coal than it has for many years while we are on the road to seeing coal disappear from energy generation by 2025? It is down to some 7% of our energy needs at the moment from 40% only a few years ago. The Government are very proud of those great achievements but we also pay tribute to the Labour Government who brought in the 2008 Act and the coalition Government, of which I was a part and the noble Lord, Lord Teverson, was a supporter. So in this green Britain or green UK week, whatever its long-winded title is, let us pay tribute to what we have dealt with as a country.

5.30 pm

Turning to the regulations—it is important that we stick to the subject—I hope I can answer a number of questions and make it clear to the noble Lord, Lord Grantchester, that we will keep this under review and analyse how it has gone on, just as we did with the original regulations brought in in 2013. These regulations now extend them to other organisations and we will want to see how they develop and what they achieve. We want to make sure, as the noble Lord put it, that they not only provide information to potential investors or shareholders but act as a competitive challenge to business to do what it can to achieve a reduction in carbon over the years.

I will deal with some of the more detailed questions. I promise to write in due course after the debate on any detailed points that noble Lords may feel I have not answered. The noble Lord, Lord Teverson, asked what was the overall saving as he was having problems with the figures. The advice I have is that we are hoping that between 2019 and 2035 this could lead to 12.8 million tonnes of CO_2 equivalent being removed. That would be equal to 0.75 million tonnes being saved per year. I hope that provides him with the information he wanted.

The noble Lord also asked how the streamlining of energy and carbon reporting is a simplification. A key aim of the package announced in the 2016 Budget, which included a revised reporting framework, was to reduce duplication and simplify measuring and reporting. The Government will deliver this through the abolition of the CRC energy efficiency scheme after the current phase covering emissions to March 2019 ends and the integration of mandatory greenhouse gas reporting by quoted companies into the SECR framework.

We are taking simple approaches that are familiar to organisations to avoid, as far as possible, additional burdens resulting from them having to learn new rules and put in place new processes. The new framework also does not involve CRC's complex allowance trading aspects.

The noble Lord, Lord Teverson, echoed by the noble Lord, Lord Grantchester, asked whether ESOS would continue. These regulations have no impact on the separate ESOS regulations. Businesses required to comply with ESOS should already be gearing up for the next compliance deadline in December next year. Systems already in place to collect annual energy consumption across buildings, processes and transport for the purposes of ESOS should provide much of the information that organisations will need for their SECR obligations. SECR also strengthens ESOS by requiring organisations to disclose energy efficiency action they have taken, if any, which can include progress with implementation of the ESOS recommendations.

Lastly, I turn to consistency of reporting. That was a query from the noble Lord, Lord Grantchester. Moving from a number of established schemes to a specific single methodology could have added significant costs for a number of organisations that are already reporting. This goes back to the point about balance I made earlier. While we have not specified in the regulations specific methodologies to be used, we will set out in the guidance what we consider to be good practice, in particular to improve transparency and consistency of reporting when considering issues such as on-site generation, green and renewable energy tariffs, business travel, carbon off-setting and the increasing prevalence of ultra-low emission vehicles.

[Lord Henley]

I appreciate that that does not deal with every detailed point put to me by noble Lords, but I offer to write in due course.

Lord Teverson: I do not want to prolong this, but will part of that be on supply chains and how the Government see they should be incorporated into carbon reporting?

Lord Henley: I notice exactly what the noble Lord says. It would be very difficult for these regulations to include supply chains, but it obviously is a relevant matter. If we close down one business and shift the thing overseas we do not achieve anything for the world as a whole. Obviously it needs to be considered how it could be done, but that is another matter. I will write in greater detail to the noble Lord.

I believe that what we are offering offers simpler, better energy and carbon reporting and will encourage compliance by companies and LLPs to support the transition to the low-carbon economy that we wish. It will deliver long-term benefits across the UK and throughout the world. I commend these regulations to the Committee.

Motion agreed.

Business Contract Terms (Assignment of Receivables) Regulations 2018

Considered in Grand Committee

5.38 pm

Moved by ***Lord Henley***

That the Grand Committee do consider the Business Contract Terms (Assignment of Receivables) Regulations 2018.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, this instrument has a simple aim. It seeks to free small and medium enterprises from onerous contract terms that currently restrict their ability to raise finance. The terms in question are found in many purchase contracts. They prohibit the supplier from assigning to a third party the value of amounts owed to them, referred to as receivables. The supplier is typically unable to negotiate any changes to these terms. Their bargaining position is weak. If they want the work, they had better accept the standard terms of purchase. The impact of such a contract term is to cut the supplier off from an option that would otherwise be open to them, which is to use invoice finance. The aim of this instrument is simply to restore that option.

There is some debate as to why these restrictive terms persist in ordinary purchase contracts. In some cases the intention is to prevent subcontracting, but the term is drafted so widely that it affects assignments of all kinds. Whatever the reason, the impact is the same: the denial of choice to suppliers, which may need to resort to expensive short-term credit to fund their working capital needs. There are, of course, legitimate reasons to prohibit assignment: for example, in financial services, in long-term project agreements and in contracts for the sale of a business. These cases are excluded from the scope of these regulations. Some of these exclusions were anticipated in the enabling Act and others have been added later, as I shall describe in a moment.

These exclusions ensure that the impact is focused, as intended, on invoice finance. This is an arrangement whereby a supplier receives an advance of funds on the invoices that they issue. The advance may be 80% or even 90% and is typically received within a few days. Invoice finance is not borrowing. The supplier is receiving advance payment for an asset—the receivable—that they already own. In this way, the supplier can pay their costs before the customer settles the invoice. Once this is paid, the finance provider deducts its fee and pays the remaining balance to the supplier.

There are currently some 40,000 businesses using invoice finance, of which the majority—38,000—are small and medium-sized enterprises. They account for roughly half of all advances drawn down, which is to say about £9.5 billion out of a total of £20 billion. There are 5.7 million businesses in the United Kingdom and your Lordships could be forgiven for thinking that this is a marginal issue. Yet that is precisely the point: the use of invoice finance is less than it might be, because of the restrictions to which I referred. In fact, the Government estimate that the number of businesses which could potentially use invoice finance is 10 times the current figure. The financial benefits have been calculated from survey evidence and follow-up research. In summary, this instrument brings both direct and indirect benefits, with a net present value to the economy of some £966 million—just short of £1 billion. This figure reflects savings to existing users of invoice finance and the additional growth and profit generated by new users. The underlying figures are available in the published impact assessment.

During the preparation of this instrument, concerns were raised about the impact on the attractiveness of English law. English law is one of this country's most valuable exports and forms the basis for contracts in areas as diverse as aircraft leasing, project finance and infrastructure. The Government are determined to ensure that there will be no adverse impact from these regulations and undertook extensive discussions with the City of London Law Society and others. As a result, the regulations were substantially amended. I am glad to say that the draft regulations before the Committee incorporate changes and exclusions that meet the concerns raised.

In the debate in another place, the point was made that invoice financing is not the whole answer to the challenges of SME finance. I agree wholeheartedly; I also agree that invoice financing is no substitute for a culture of responsible payment. We should not expect suppliers to seek finance to subsidise their larger customers. That is why the Government have taken extensive and decisive steps towards eliminating late payment, including the appointment of the Small Business Commissioner one year ago and the requirement for all businesses to report on their payment performance. Earlier this month, we launched a call for evidence to invite proposals on further measures. It is not always appreciated that the value of late payments outstanding has halved in the past five years. The problem is obviously not yet solved but we believe that is a promising start.

These regulations will give businesses freedom to access invoice finance when they wish without being prevented from doing so by their customers. It will bring a worthwhile benefit to the economy with a net present value of just under £1 billion without imposing a burden of compliance or reporting and while preserving the attractiveness of English law. I commend these regulations to the Committee and beg to move.

5.45 pm

Baroness Burt of Solihull (LD): My Lords, these regulations address a problem that I did not know existed. The colloquial expression for "assignment of receivables" is factoring, and that is what I know it as. Why would companies build these terms into contracts, with the exceptions permitting, unless there was a question mark about their payment? I will be interested to hear the Minister's comments about that. It seems unjustified. I understand the importance of being able to get hold of money for your contract early on, but if companies paid in a more timely way, factoring would perhaps not be necessary. Those are just a couple of comments, but I wholeheartedly welcome the regulations.

Will the Minister explain paragraph 10.13 in the Explanatory Memorandum? It is headed "Additional Exclusion". It states that contracting parties need to be certain that they are dealing with each other rather than an assignee. Does the Minister understand that to mean subcontracting? If he does not, are there other examples of what could be meant by that? Other than that question, I welcome this legislation.

Lord McNicol of West Kilbride (Lab): I am grateful to the Minister for the introduction to this SI. This is my sixth week in your Lordships' House and it is a pleasure to be speaking on my first SI. If I make any procedural or other errors, please forgive me. I am still learning and have a long way to go.

Invoice financing as set out in paragraph 7 of the Explanatory Memorandum is one way of securing working capital. More simply, it is the ability to borrow money against unpaid invoices to improve cash flow. We on this side agree that invoice financing has its place, but it is not always the solution to the problem. When laying these regulations, Her Majesty's Government have missed a great opportunity to sort out the wider issue, which the Minister touched on, around payment culture. The recent consultation on prompt payment received some very good responses on the wider issue of late payment which simply must be addressed soon. In excess of £2 billion a year is owed to SMEs in late payments—payments past the agreed invoice payment date. Does the Minister agree that this is a far larger and more easily solvable problem?

I was general secretary of the Labour Party before coming here. The Labour Party led on this by example and had 30-day payment terms. More widely, there is the absurdity of having a voluntary prompt payment code. Many large firms are signatories but there is no enforcement, so in real terms the code is worthless, especially as many companies have 60-day terms.

What if a company breaches those terms? Let us not forget that Carillion was a signatory but then went on and changed its payment terms to 120 days. Does the Minister agree with me that a sensible term for the code, even in its voluntary state, would be 30 days? Why has the prompt payment code not been made compulsory? Why has consideration not even been given to making it so? These reforms would help to solve the problem that IF looks to solve.

The correspondence with the Secondary Legislation Scrutiny Committee touched on the question of implementation dates. I note the Government's response supporting the status quo, but do they still believe that there is any point in having common commencement dates? The CCDs of 1 October and 6 April each year are introduced to help businesses to plan for new regulations and increase awareness of the introduction of new or changed requirements, yet these regulations are to be introduced 21 days after they are passed. As the correspondence with the Secondary Legislation Scrutiny Committee reveals, it is not as if there has been a great rush to get these regulations in. As we can see from the Explanatory Memorandum, the first discussion paper was published in 2013, so I am sure that another few months' delay to ensure better regulation would not have hurt.

I congratulate the Business, Energy and Industrial Strategy team on their detailed and helpful work on the impact assessment and the Explanatory Memorandum. Having said that, I think the Committee has done a brilliant job of sorting out the documents before us and holding the Government to account for a certain amount of confusion. It might have taken time, but I believe it would have been better if the Government had issued new documentation following the consultation. As the Minister said, substantial amendments to the regulations were made, so was the impact assessment carried out after they were made or before, in 2013?

I turn to the substance of the regulation. Could the Minister satisfy me that no problems or unintended consequences of these regulations may arise in the accounting treatment following the introduction of these regulations? I am thinking particularly of when income from invoice financing is to be recognised in the accounts of a trading company when that is not done through factoring. If the Minister is unable to give me a direct answer today, I am more than happy for him to write to me.

Paragraph 7.4 of the Explanatory Memorandum states that this regulation will help diversify finance markets and encourage competition. Could the Minister expand a little on how exactly that will happen? The bit that confuses me is the exclusion of large companies from IF. Could the Minister explain why they have been excluded, especially as paragraph 10.7 of the Explanatory Memorandum, as he touched on earlier, outlines the problem with large commercial contracts, not large commercial companies or businesses per se? Paragraph 10.8 then outlines the solution of banning large companies from IF. This appears to be a completely different answer to a completely different question. Maybe the Minister could explain what the persuasive arguments by the legal profession were and how these led the Government to exclude large companies from IF.

In the Explanatory Memorandum, under the heading "Territorial Extent", the paragraph following Paragraph 10.14 is labelled 10.1. I think that this is just

[Lord McNicol of West Kilbride]
a typographical mistake but it should be picked up on. The serious point here is that the regulations appear to interact with powers devolved to the Scottish Parliament. Is that right? If so, did the Government consider seeking a legislative consent Motion? If not, why not?

As I said at the start, the Opposition will not oppose these regulations on invoice financing, but it is a shame that the Government missed the opportunity to bring forward legislation to improve invoice payment practices within these regulations.

Lord Henley: My Lords, I offer my welcome to the noble Lord, Lord McNicol, on his first appearance at the Dispatch Box. I look forward to many more in the future. He will know that it was during the opening of the batting, as it were, of my honourable friend Kelly Tolhurst that she brought these regulations before another place some weeks ago. She was probably grateful for the noble Lord's opposite number in another place for giving her a relatively easy run on them.

I think that I have broad agreement from both the noble Lord, Lord McNicol, and the noble Baroness, Lady Burt, that the regulations are doing the right thing, but obviously they have wider questions. Some of them are impossible to answer at this stage. For example, I think it was the noble Lord who asked whether I could give a guarantee that there would be no unintended consequences as a result of this. That goes slightly wide in that one never knows whether there will be unintended consequences until the unintended consequence hits one in the face. However, we certainly will, as with all matters, keep these under review as they develop.

I will start dealing with some of the more detailed questions. The noble Baroness, Lady Burt, asked a very sensible question as to why some companies have these contract terms. I think that I made it clear in my opening remarks that we were not absolutely sure. I think I quote myself in saying that there is some debate as to why these restrictive terms persist in ordinary purchase contracts. Some suppliers suggest that this is a deliberate attempt. I have to say that the evidence is mixed. Either way, these regulations will resolve this issue and those terms will be removed, but, to come back to the point that the noble Lord made about unintended consequences, and as the noble Baroness said with her detailed questions about I think paragraph 10.13, we consulted very carefully on these regulations and we want to make sure that we get them right.

On paragraph 10.13, there are situations where companies need long-term, trusting relationships. That is why, in that case, assignment can be undesirable. We do not know precisely and we will keep them under review, but we hope that these regulations will get to the heart of the matter.

However, that takes us on to the broader question that both noble Lords raised, particularly the noble Lord, Lord McNicol, about the wider problem of prompt payment. That is why I quoted the figures earlier. We have seen some improvement. The number of overdue debts outstanding has halved in the past five years, which is pretty good; it is down from 30 billion to 14 billion. I want to make it clear to noble Lords—this goes way beyond the regulations—that we are not complacent about this matter. Further action is under way to bring that number down further. We do not believe that companies having to make use of invoice financing is a substitute for prompt payment by those who owe them money.

6 pm

We have a number of specific measures in place to tackle late payment, such as the Small Business Commissioner, addressing small business complaints about late payment and fostering cultural change. Other noble Lords on the Committee will remember that we had a debate about this last year; there have been questions in this House and another place about this matter, which we will continue to press on. The payment performance reporting duty has also created more transparency in payment behaviour, while the Prompt Payment Code is setting standards and best practice in payment culture. Again, that makes a difference.

I remind the noble Lord. Lord McNicol, that earlier this month, on 4 October, my department published a call for evidence to assess what further steps and intervention may be needed to create a responsible payment culture. Now that he has been released from the rather intractable problems of his previous job, he may like to devote more time to that issue. Alongside that call for evidence, the Secretary of State announced further immediate measures he will take to tackle late payment but even without those measures, we welcome the views of the noble Lord and his colleagues. We have already appointed a Small Business Commissioner; the Secretary of State has appointed him to the Prompt Payment Code Compliance Board and wants to explore whether all company boards should give one of their non-executive directors responsibilities for prompt payment. Further ideas will come, including from the noble Lord, and I hope that the call for evidence will explore those matters.

As I said, invoice financing is not the sole answer, although it is very helpful for small and growing businesses. We hope that the instrument will allow them to seek the increased value of invoices outstanding, ensuring that they have the appropriate funds. It may be less suitable for long-term investment or asset purchases, but that is for the companies to decide. These regulations make that small change and deal with that small problem identified by the noble Baroness, Lady Burt, and the Government. We do not quite know why it is there. We think that we can deal with it through the regulations but because of potential problems—I spoke earlier about the attractiveness of English law and so on—the issue was one worth consulting on and one that I hope we have got right. As I said, we will keep it under review and note the points made by noble Lords, whom I thank for their contributions.

Lord McNicol of West Kilbride: There was a specific issue with larger companies. I am still struggling to understand why they were excluded. What was the reasoning behind that? The impact assessment was carried out with the inclusion of large companies. If we look at the bottom of its front page, the assessment was signed on 4 July 2018 although it took place earlier, in 2015. That is three and a half years out

of date. Is that normal? As I said, substantial changes were made; I would appreciate more information on that.

Lord Henley: Obviously with the larger companies there is less of the problem of what one might refer to as the imbalance of power between the two parties. For that reason, we thought it was easier for them to negotiate the appropriate terms. Whether we have got that precisely right in terms of the size, I do not know—again, these matters were consulted on—but I hope we have. There was the question of whether, where there is no imbalance, they might feel the need to keep these terms on those occasions. If I wish to add a little more to that, I will consider very carefully what I have said and write to the noble Lord.

Motion agreed.

Department for Transport (Fees) (Amendment) (EU Exit) Regulations 2018

Considered in Grand Committee

6.06 pm

Moved by ***Baroness Sugg***

That the Grand Committee do consider the Department for Transport (Fees) (Amendment) (EU Exit) Regulations 2018.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, these draft regulations would be made under the powers conferred by the European Union (Withdrawal) Act. They form part of the work being done to adjust our existing legislative framework in readiness for our leaving the European Union. The draft regulations, if approved, will make amendments to three Department for Transport fees orders to correct deficiencies in the orders arising from the withdrawal of the United Kingdom from the EU. This will be done by removing references to the Secretary of State carrying out functions to comply with EU law. Those functions will continue but under domestic law rather than EU law.

The fees orders themselves do not set fees, nor do they amend, raise or lower fees. They set out in secondary legislation the matters that can be taken into account when setting fees for delivery of the functions specified in the orders. For example, for any of the functions prescribed in the orders, account can be take of the proportion of the cost in providing staff, premises, equipment and facilities that are attributable to the carrying out of the relevant function. The actual fees for the functions listed in the orders, such as for driving licences, are contained in other secondary legislation. Generally, before any change can be made to the fee level in that other legislation, the Minister must first have the agreement of the Treasury, then conduct a consultation with representative organisations of those affected and consider the impact on stakeholders. The Minister must take account of that impact in deciding whether to proceed. Only after this process has been followed can the SI to change the fee be laid before Parliament.

The functions contained in the fees orders are all in the areas of road vehicles and drivers. They are carried out by three of the Department for Transport's executive agencies: the Driver and Vehicle Standards Agency, the Driver and Vehicle Licensing Agency and the Vehicle Certification Agency. The functions that are relevant to the draft regulations are: driver licensing, vehicle registration, international road haulage permitting, vehicle type approval certification, the approval of tachograph calibration centres, international road passenger transport authorisation, licensing to operate public service vehicles, licensing to operate goods vehicles and, lastly, enforcement against UK and non-UK drivers and vehicles that break the law on these matters. The fees orders relate to both EU and domestic law, and the regulations before the Committee are concerned only with amending the EU-related aspects of the orders.

In conclusion, the amendments contained in this instrument are to ensure that the fees orders recognise EU exit but otherwise maintain the status quo. I commend the regulations to the Committee.

Lord Berkeley (Lab): My Lords, I am grateful to the noble Baroness for outlining these regulations with such brevity and clarity. I have a couple of questions, though. As she said, they cover international agreements, driving licences, vehicle registration, public service vehicle operation and licences to operate goods vehicles. I believe we have added licences for trailer operation, or something, which we discussed in some legislation—I cannot remember its name now—a few months ago.

The Minister mentioned non-UK drivers. Does this change mean that the charges are going to go up? Did the European Union previously have any control or oversight or a role in setting these charges? It is always very easy to say that the costs of doing it are going up. There may have been some control or advice from Brussels as to how these things should be assessed and charged.

Lastly, the noble Baroness mentioned that there might be some changes to the licences of non-UK drivers. The impression I get is that licences from other member states will no longer be valid in this country. How do drivers get new licences and are they going to be charged a rate seen by most people to be reasonable—or is it going to be one of these Home Office ones that make you pay £500 to try to dissuade you from coming? I hope it is the former and not the latter. I look forward to the Minister's comments.

Baroness Randerson (LD): My Lords, I thank the Minister for her clear explanation. I believe this is the first in a very long line of statutory instruments on transport issues that are directly related to Brexit. I want to express my regret that the time and effort of the Department for Transport is being mopped up in this way when we face so many transport challenges. We would considerably appreciate its efforts being put to another use.

I want to ask a couple of questions that are not unlike those from the noble Lord, Lord Berkeley. I want to start with the Explanatory Memorandum. Paragraph 4.1 says:

"The territorial extent of this instrument is the United Kingdom".

Then it says that,

"the territorial application is either the United Kingdom, or Great Britain".

[Baroness Randerson]

I am concerned about whether the devolved Administrations have been properly and fully consulted. These SIs are really going to annoy and upset the Scottish Government in particular. Therefore, it is particularly important that the Government maintain clear and detailed discussions with them on these things.

In the policy background section in the Explanatory Memorandum, paragraph 7.4 says that fees orders lay out the costs that the Government can take into account when setting fees. Paragraph 7.5 summarises the sorts of things that can be taken into account. They are very logical: driver licensing, vehicle registration, international permits and so on. Paragraph 7.9 then makes it clear that the Department for Transport is responsible for this legislation. It contends that these changes are "minor" and simply recognise Brexit. It says that, as a result:

"Stakeholders will not be impacted".

6.15 pm

I query that statement because, as current fees are not set by the EU but take into account the framework to which the EU has given approval, there are limits and requirements set down by the EU which are taken into account in the costings. After Brexit, surely we will be free to take into account what we wish to when the fees are set. So, just as the Government can vary the level of fees, they can now start taking into account other things. That chimes with the concerns expressed by the noble Lord, Lord Berkeley, that the Government will be freer to change policy on this—to take an attitude which does not only cover costs but makes money, or to use it as a deterrent to people taking up these rights. My argument is that the fees could well change and that it is therefore not accurate to say that there will be no impact on stakeholders. I hope I am wrong and will listen with interest to the Minister's explanation.

Finally, paragraph 13.1 states:

"The legislation does not apply to activities that are undertaken by small businesses".

Really? A significant slice of the haulage market is in the hands of small and medium-sized businesses with just a handful of employees. In addition, the haulage industry moves the products of a range of producers and is used to import components, ingredients and so on into this country. This involves both small and large businesses. Surely the Government should have given some consideration to the impact of this on small businesses. My concern is that if the Government decided to charge another £50 it probably would not mean make or break to large haulage businesses—it would be passed on to their customers, of course—but if they start to charge another £50 or £100 to small businesses, it might well make them uncompetitive in an already difficult situation. Our hauliers would be put at a disadvantage internationally, and anything in addition which makes life more difficult for them should be avoided. I would welcome any assurances the Minister can give on this.

Lord Berkeley: This SI refers to goods vehicle licensing in the UK—or England, Great Britain, whatever—and as about 80% of the trucks crossing the channel are now driven by Romanians or Bulgarians or people from other member states, where the trucks may also be registered, what happens to the licensing of the vehicles from these member states if they come in here? Will they be subject to the same arrangement or is there another arrangement that would require them to be registered? If so, will they have to do that at the frontier and so on? I hope not.

Baroness Randerson: The noble Lord has found an ingenious way of adding an extra question and I will pass it on to the Minister.

Lord Rosser (Lab): I thank the Minister for explaining the purpose and content of the SI, which we will not oppose. In the light of concerns that have been expressed about the possible effect on fees in future and other possible impacts, will the Minister gives us some clarification on the consultation? Paragraph 10 of the Explanatory Memorandum states:

"A consultation is not considered necessary as the amendments are minor and technical in nature and do not impact upon either business or the individual".

Does that mean that there has been literally no consultation, or have some bodies or organisations been consulted? If so, which organisations or bodies have been consulted about this SI and its contents?

As the Minister said, the regulations amend the Department for Transport's fees orders covering the road traffic field. Fees orders do not set fees but specify functions and their costs which may be taken into account in setting fees. These regulations amend those orders by removing references to the Secretary of State having functions to carry out to comply with EU obligations or requirements on the basis that we are withdrawing from the European Union. Those functions referred to in the fees orders will no longer be carried out under EU legislation but will continue to be carried out by the Secretary of State under domestic law as provided for by the European Union (Withdrawal) Act 2018. As the Minister said, the functions currently carried out by the Secretary of State under EU legislation are those relating to international road haulage permits, type approval certification, tachograph calibration centres, international road passenger transport authorisations, driver licensing, vehicle registration, licences to operate public service vehicles and licences to operate goods vehicles.

The SI relates to a situation where we have withdrawn from the European Union. It would appear that it covers a no-deal situation and our intended departure on 29 March next year. What is the position if there is a deal approved by Parliament and that deal entails a transition period with continued membership of the customs union and/or the single market for an unspecified of time or other provisions that do not provide for a clean break on 29 March next year? What is the need for this SI in that scenario? We may not in reality have withdrawn from the EU because we would still be bound to accept that some or all of its legislation applies to us. We would not be able to alter it unilaterally and we would also be bound by any subsequent amendments made to that legislation by the European Union pending our full withdrawal.

What then would be the relevance of an SI, such as the one we are now considering, coming into effect on

29 March next year, which asserts in paragraph 2.4 of the Explanatory Memorandum:

"The relevant EU related functions specified by the Fees Order will, after EU exit, no longer be carried out in pursuance of EU legislation",

when, if there is a deal, these functions could have to be, including to the extent, for a possible period of time unknown, that we would also have to abide by EU legislation that was further amended by the EU without our agreement? Would it not be better, with a decision on a deal apparently close, to withdraw this SI and wait until we know whether there is a deal and, if there is, produce an SI which reflects the reality and terms of that deal? It is, after all, not the fault of this House if the Government are having difficulty adhering to their intended timetable for progress in negotiations with the EU, as appears to be the case. It would be helpful if the Minister could spell out what the impact of a deal with a transition period could be on the provisions and relevance of this SI, and whether during the transition period agreements could be reached or arrangements made that could have an impact on the terms and relevance of this SI.

I turn to one other point. The Haulage Permits and Trailer Registration Act gave the Secretary of State the power to introduce regulations to charge fees for international road transport permits if a new permit scheme is required, as UK-issued Community licences will no longer be valid in the EU if we leave unless an agreement is reached otherwise. The Government have previously said that any permit fees would only cover the cost of any new scheme and that the detail on fees would be consulted on later in 2018 when the outcome of the negotiations was clearer. Has the consultation started, or has the lack of clarity at the moment over how the negotiations with the EU will end precluded the commencement of the consultation?

Since an issue of concern is that hauliers or taxpayers will incur additional costs if a new scheme is required, does that not underline the importance of continuing with the Community licensing system? Once again, would it not therefore be better to be discussing this SI once the outcome of the negotiations was clearer and the SI itself could reflect that outcome? The SI is not intended to come into force for another five and a half months, yet we are being asked to agree to it now when it is not clear to what extent we will or will not be continuing to follow EU legislation, including any subsequent amendments to the legislation, after the SI is intended to come into effect on 29 March 2019.

Baroness Sugg: My Lords, I thank noble Lords for their consideration of these draft regulations. As the noble Baroness said, I am afraid they are the first of many EU exit transport regulations. The purpose of these regulations is indeed to make minor and technical amendments to the three pieces of legislation that we are discussing, by amending the language used to take account of EU exit, but otherwise to maintain the status quo.

As I said in my opening remarks, the regulations themselves do not set, raise or lower fees. The fees orders are supplementary to existing powers that the Secretary of State has in other legislation, and that other legislation sets the fees. The regulations do not in any way extend the powers of the Secretary of State or relate to a change in the fees.

I turn to the questions that were asked. The noble Lord, Lord Berkeley, mentioned the Haulage Permits and Trailer Registration Act, as did the noble Lord, Lord Rosser. We have consulted extensively with the industry on that and we will be discussing the regulations under that Act soon. There is a government response to the consultation, which I will forward to the noble Lord, explaining where we are on fees. We will be discussing that soon.

As I said, the regulations do not set or change the fees themselves but merely set out what can be taken into account, so charges absolutely will not go up. There has been a role for the EU Commission in setting the charges in the past but there will not be after exit.

For the non-UK driver—an issue raised by the noble Lord, Lord Berkeley—EU driving licences will continue to be recognised in the UK post Brexit, as set out in some of our recent technical notices, so the charges for getting a GB driving licence will not change.

On the question of devolved Administrations, which the noble Baroness, Lady Randerson, mentioned, we are working closely with them throughout our entire SI programme—obviously more so on some which are directly relevant than on others, but on every one we are working closely with them. Some of the fees orders' functions are GB-wide—for example, driving licences, as Northern Ireland has its own regime and its own legislation to set its own fees—while others relate to the whole of the UK.

Lord Berkeley: The Minister mentioned that driving licences from EU member states will still be valid. That was in the technical note and I should have mentioned it; I am sorry. What about licences for vehicles? Are we involved in quotas and the like? If so, how would that work? Will a Bulgarian vehicle need a licence to operate in the UK?

6.30 pm

Baroness Sugg: That is very much subject to negotiations. We hope to agree a mutually beneficial deal with liberalised access to continue as it is for haulage firms. Bilateral permits exist. In the event of no deal, we will work bilaterally with the countries involved to agree permit systems. We are very keen to pursue continuing the access that we have at the moment, which would be reciprocal. That is what we are working towards.

The noble Baroness is quite right that many of our goods are moved by small businesses and we are reliant on them for that. I agree that an increase in charges would adversely affect them but, as I said, the regulations do not change the fee or regulate businesses. The fee orders determine what the Secretary of State can consider rather than regulate small businesses. That is why it is noted as such.

The noble Lord, Lord Rosser, asked about consultation. We are working closely with all our transport stakeholders on the Brexit regulations. We have spoken to them about all the different SIs. This SI will not affect

[Baroness Sugg]
stakeholders. All it will do is remove the obligation on the Secretary of State to take note of the European Union.

On the impact of a deal, which we are all working hard to achieve, the SI will come into force on exit day, which is defined in the withdrawal Act as 29 March 2019. Ultimately, the coming into force of the SI will depend on the outcome of the EU negotiations and any new legislation arising from that outcome. If the UK reaches a withdrawal agreement with the EU, that agreement is expected to provide for an implementation period. We have announced that in that event, we will introduce to Parliament a European Union withdrawal agreement Bill as a primary means of implementing the agreement. Exit day would remain as 11 pm on 29 March 2019 but the coming into force of the SI may be reviewed and delayed until the end of the implementation period. The SI may not be needed, but it is part of our readiness work, as are the SIs to come, which we strongly believe we should be doing as a responsible Government. Noble Lords are aware of the number of upcoming SIs and the limited parliamentary time, so we will spread them out between now and exit day to get through them. Obviously, if a deal is reached and an implementation period is agreed, that will affect that.

Lord Rosser: Can the Minister say something about what is said in the regulations under "Citation and commencement"? She said that the regulations will come into force on exit day. We have been told repeatedly by the Government that we will exit the European Union on 29 March next year, but I sense from what she just said—I am sure that she will correct me if I am wrong—that the reference to exit day may not apply to 29 March 2019 if a deal is done, so the Government accept that we may not withdraw from the European Union on that day. Is that the Government's position?

Baroness Sugg: As I said, exit day will remain 11 pm on 29 March 2019. When this SI comes into force is currently defined in the withdrawal Act but should a deal be reached where we get a withdrawal agreement, the implementation day of the instrument could change through the subsequent Bill that the Government will bring forward to implement the withdrawal agreement in UK law.

Lord Rosser: I am not sure whether the Minister has responded to my point, but I asked whether there was any possibility that during the transition period, agreements could be reached or arrangements made that could have an impact on the terms and relevance of the SI. Is it the Government's position that even if there is a transition period, nothing will happen then that could have an impact on the relevance of anything in this statutory instrument?

Baroness Sugg: The expectation is that with the withdrawal agreement we will have an implementation period. During that period we would be covered by current EU laws and therefore this secondary legislation would not come into effect. Obviously I cannot give a guarantee of that because we do not yet know the outcome regarding the withdrawal agreement and it has yet to pass through Parliament, but the expectation is that during the implementation period we would continue as we are and the SI would not come into force until the date agreed through the withdrawal agreement Bill that will be coming through the House.

Lord Rosser: Is the Government's position that in any discussions during the transition period nothing would be agreed that might have an impact upon the relevance of this SI and necessitate it being altered, other than its effective date?

Baroness Sugg: I am afraid I am not able to give a definitive answer to the noble Lord's question. As I said, we have yet to agree a transition or implementation period with the EU. As we do not know those terms, I am not able to answer the question. However, our expectation is that throughout that period we will continue as we are so this SI would not come into effect until a date set out in the EU withdrawal agreement Bill.

I take the noble Lord's point that the negotiations and discussions on that agreement are ongoing, and the outcome of that may of course affect what we do in future. However, due to the number of regulations that will have to be discussed in order to ensure that our statute books are fit for 29 March should we not reach an agreement, we think it is the responsible thing to do to keep going with this programme and start these discussions between now and exit day.

I reiterate that the detail around the delivery of the specified functions and the prescription of the fees that can be charged for delivery are set out in other legislation. Making this proposed instrument would merely enable the continuation of the current fee-setting process by removing references to the EU after we leave, so things would absolutely continue as they are.

Motion agreed.

Committee adjourned at 6.37 pm.