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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

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

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House of Lords

Tuesday 20 November 2018

2.30 pm

Prayers—read by the Lord Bishop of Oxford.

Stalking

Question

2.36 pm

Asked by ***Baroness Gale***

To ask Her Majesty's Government what plans they have to introduce a national register of convicted stalkers.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Government do not have plans to introduce a national register of convicted stalkers. Dr Sarah Wollaston MP's Stalking Protection Bill would introduce stalking protection orders, which would require those subject to an order to give their name and address to the police.

Baroness Gale (Lab): My Lords, I thank the Minister very much for her Answer. I am disappointed that the Government are not taking this on board, although she mentioned the Private Member's Bill. Is she aware that the Home Affairs Select Committee report of 22 October recommended that a national register of serial stalkers and domestic violence perpetrators be introduced as a matter of urgency—as recommended by Paladin National Stalking Advocacy Service—and that individuals placed on the register should be managed through the Multi Agency Public Protection Arrangements, like registered sex offenders? The committee believes that more integrated strategies on violence against women and girls and on domestic abuse would support a better statutory response to stalking and a more joined-up approach to supporting victims and manging perpetrators' behaviour. Can the Minister rethink this, as we are now on the eve of White Ribbon Day? It would be a great thing for the Government to do; indeed, they would receive lots of praise for it, and I know such praise would please them this week in particular. I look forward to hearing what she has to say.

Baroness Williams of Trafford: I thank the noble Baroness for her question. We are all trying to achieve the same thing: ensuring that stalkers and perpetrators of other types of domestic abuse are brought to book, brought before the courts and made to pay for their crimes. As for a VAWG Bill, as I said to the noble Baroness yesterday, the domestic abuse Bill will be a specific Bill for a specific purpose. We should not try to widen it, which is not to say that we are not absolutely committed to the agenda on violence against women and girls. In terms of a national register, I spoke with the noble Baroness, Lady Royall, and John Clough, whose daughter was murdered; we tried to work through exactly how various databases capture stalkers. Of course, under the new stalking protection orders, names would also be captured on the national police database or the national police computer.

Lord Hogan-Howe (CB): My Lords, although I support the spirit of the proposal, I would challenge it. I wonder whether the Minister agrees with me about how practical it is to keep creating more registers. At the last count, the sex offender register had around 59,000 people on it. They are going on it quicker than they are dying off it. The realistic approach to controlling or monitoring them in society is very limited, partly due to resourcing and partly due to practicality. If there is to be a future in this, the solution will probably be a technological one. I am honestly not sure whether a register will help.

Baroness Williams of Trafford: I share the noble Lord's point. The more registers there are, the more propensity there is for people to fall through the gaps. The crucial thing is that the registers and databases that we have work effectively.

Baroness Barran (Con): My Lords, does my noble friend agree that it is crucial not just to manage the behaviour of serial stalkers and perpetrators, the majority of serial stalkers being domestic abuse perpetrators, but to engage with them to help them to change their behaviour? If she does, perhaps she could share what plans the Government have to build on some of the emerging practice in this area. In my experience from running the charity SafeLives, fewer than 1% of perpetrators got any intervention to change their behaviour. Without that we will never reduce the scale of the problem.

Baroness Williams of Trafford: I commend my noble friend on the work she did with SafeLives. I have seen some of its work at first hand and the emphasis it puts on addressing the problems of perpetrators. The proposed domestic abuse protection order would enable courts to impose positive requirements on abusers to challenge them to change their behaviour, such as requirements to attend a perpetrator programme or an alcohol or drug treatment programme. Through the police transformation fund and the VAWG service transformation fund, we have invested in a number of new approaches to manage perpetrators of domestic abuse. I thank her for all the work she has done to this end.

Baroness Corston (Lab): My Lords, the noble Baroness outlined the process of tracking or monitoring serious stalkers. The onus is then on the victims to report crime, leave their homes, change their behaviour, sometimes change their jobs and disappear themselves. Surely that is an unacceptable state of affairs.

Baroness Williams of Trafford: My Lords, a victim would certainly report crime to the police, but it is envisaged that the police would then take up the stalking protection order, because it is unrealistic and unfair that a victim would have to come forward with processing the stalking protection order. The point I have been making is that stalkers are listed on various databases, such as the police national computer, the PND and ViSOR. In addition, there is the domestic violence disclosure scheme, or Clare's law, which the noble Baroness will know about, as well as MAPPA.

Baroness Burt of Solihull (LD): My Lords, Dr Wollaston's Bill is very welcome indeed, but on the ground the police are dealing with unrelenting demand on stalking and domestic violence, despite the fact that only an estimated one in five victims will ever contact them. Whether we cover stalking in the forthcoming domestic violence Bill or in Dr Wollaston's Bill, can the Minister assure the House that the agencies tasked with dealing with stalking and domestic violence have the resources, otherwise any register or Bill will not be worth the paper it is written on?

Baroness Williams of Trafford: The noble Baroness is absolutely right to point out that it is not just a question of resources; it is a question of training as well. Everyone is aware of stories from past days when police might not have recognised what a victim of stalking or domestic violence looked like. Dedicated resources have gone in to the training of special operatives within the police, and I understand that the College of Policing will soon publish refreshed guidance for the police on investigating stalking and harassment.

Brexit: Food Security

Question

2.45 pm

Asked by ***Baroness Smith of Basildon***

To ask Her Majesty's Government what planning they have undertaken to ensure food security post-Brexit in the event of there not being any deal reached between the United Kingdom and the European Union.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, the UK has a high degree of food security built on access to diverse sources of supply as well as domestic production. Defra is preparing for exit alongside all relevant government departments, including through the cross-Whitehall Border Delivery Group, which is co-ordinating dialogue with ports, airports and their users. Defra has engaged closely with businesses and trade associations across the food and drinks sector at official and ministerial level and will continue to do so.

Baroness Smith of Basildon (Lab): My Lords, does the Minister understand that lack of confidence in the Government to deliver even a workable Brexit deal means that major supermarkets and food suppliers are already stockpiling and even now are running out of warehouse space? The Public Accounts Committee in the other place has warned the Government that their contingency plans that the Minister outlined could well lead to increased risk to food safety and of smuggling. Can the Government give any guarantees to food producers who operate a just-in-time business model—not unlike the Government, it has to be said—that they will be able to continue to produce and deliver high-quality, safe food?

Lord Gardiner of Kimble: My Lords, it is absolutely clear that we have been working on this matter of preparedness at the border for nearly two years. We have issued 106 specific technical notices to help businesses, citizens and consumers prepare. They are all available on GOV.UK. It is really important that there is confidence in our food supply—and there is. There always has been, because we have the supply chains. We are working with businesses and it is up to them: it is a matter of commercial decision as to what they do by way of their materials. But we are working extremely strongly with businesses so that there is a strong food supply.

Earl Cathcart (Con): My Lords, as a farmer I find the idea of food shortages if there is no deal both scaremongering and proven nonsense. Does my noble friend agree that domestic production plays a crucial role in our food security and that the high standards and quality of our produce is recognised both abroad and at home? Surely we should encourage people to buy British.

Lord Gardiner of Kimble: My Lords, I declare my interests as a farmer and my short reply to my noble friend is—yes to all three. It is very important to recognise that the UK's current production-to-supply ratio is 60% for all food and 75% for indigenous-type foods. This is why we have a very strong domestic supply and other sources. We have excellent food in this country, which we are exporting to the degree of £22 billion last year—and, yes, we should buy British.

Lord Cameron of Dillington (CB): Are all sections of government and all departments in Whitehall signed up to the principle that we will never import food into the UK that is produced by methods that are illegal for UK farmers?

Lord Gardiner of Kimble: My Lords, I have confirmed that a number of times at the Dispatch Box and I will do so again. On the specific issue of hormone-treated beef, the UK has transposed EU Council directive 96/22/EC. On chlorine-washed chicken, we already have provisions through the European Union (Withdrawal) Act 2018. We have a very strong record, in this country and abroad, for environmental protection of our food and high standards of animal welfare. That is how we are going to trade around the world and we are certainly not going to compromise that.

Lord Grocott (Lab): Perhaps the Minister can provide some reassurance on behalf of many of us in this House who remember life before we joined the European Community—the Common Market, as it then was. In those years there was no need for people to stockpile food. Supplies of medicines reached our hospitals and our pharmacists during that period. People could freely travel to the countries of the Common Market without great difficulty. It was even possible for planes to take off from British airports and land without hindrance at European airports. If we reminded ourselves of these facts about the past, it might enable us to make more rational decisions about the future.

Lord Gardiner of Kimble: My Lords, this great country is going to have a very strong future. It will be outside the European Union, but we will want to have very strong co-operation with our friends in the EU 27. The noble Lord is absolutely right. In a global economy we are trading around the world—as, indeed, is the EU. The EU is trading with countries that are not members of the EU. We all want to do trade together. That is why I very much hope that a successful deal will be concluded—because it is in everyone's interests. But the noble Lord is absolutely right: this country will prosper whatever the scenario.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, there is great concern that a careless Brexit will pose a threat to the UK's short-term food security, when it is vital that a genuinely sustainable food strategy for the whole UK should be developed. It is important for high food standards to remain at the heart of any trade deals. Is the Minister able to assure the House that the Government will provide clarity on their proposed migration policy and consider the contribution that non-UK citizens of the EU make to the quantity and quality of the UK's food supply and services?

Lord Gardiner of Kimble: My Lords, clearly, Defra and the Home Office will need to consider these matters because we need people to help us in the agricultural and horticultural sector. But I repeat to the noble Baroness that we have very strong domestic production. We also source food from around the world. As I have said from the Dispatch Box before, on the issue of disease or pests or whatever, we have a very sophisticated industry that has other sources of supply—but I am not anticipating that, because EU food producers want to bring their food here and we want to export our wonderful food to them.

Smart Meters

Question

2.52 pm

Asked by ***Lord Lennie***

To ask Her Majesty's Government what progress they have made on the roll-out of SMET2 smart meters.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, more than 12 million smart meters are operating across Great Britain, with more than 400,000 meters installed every month. As of Sunday 18 November—two days ago—industry information showed that more than 138,000 SMETS 2 meters were connected to the national smart metering network.

Lord Lennie (Lab): I thank the Minister for that response. Yesterday, Which?, the consumers' champion, published a report that stated that the Government's £11 billion rollout of smart meters to hard-pressed customers is seriously behind schedule. To meet their target of a smart meter in every household and small business would now require 30 smart meters to be installed every minute of every day between now and the end of 2020. Currently less than one-third of that figure is actually taking place. In addition, the Government's projected financial benefits to customers have been slashed from £47 a year to less than £1 a month. Can the Minister say what specific actions the Government are taking to both turn around the lamentable rollout performance and restore the projected financial benefits to customers?

Lord Henley: My Lords, I am aware of that report but, as I made clear in my original Answer, we are installing more than 400,000 meters every month and that figure is increasing. We are still confident that we will be able to ensure that by the end of 2020 every household in the country will have been offered a meter. That is the aim that we have set out. We are also still confident that we expect to see a net benefit of around £5.7 billion for the entire rollout—benefits for individual consumers as they get greater choice and the advantage of being able to monitor their electricity and therefore keep their bills down, and advantages to the companies themselves.

Lord Teverson (LD): My Lords, perhaps it is worth reminding the House that this programme of smart meter implementation will cost the country £11 billion. Sure, we need the customer benefits in savings from that but we also need to use them to create a properly distributed energy system in this country. Can the Minister explain to me how SMETS meters will achieve that?

Lord Henley: SMETS meters will allow the consumers greater benefits in that it will be easier for them to switch supplier and to monitor their use. Therefore it will be easier for them to cut their consumption of electricity and we will see a reduction in energy use, with benefits to the consumer in the cost, and benefits to the country in lower carbon use. As I said, there will be a net benefit overall after that cost of some £5.7 billion.

Lord Dubs (Lab): My Lords, will the Minister confirm that many if not all of the smart meters currently offered are such that they cannot work if the consumer switches from one supplier to another? That is a pretty good reason for not having a smart meter. I wonder whether the people organising Brexit are also organising the smart meters.

Lord Henley: My Lords, the companies have been installing the SMETS 1 meters and we are now moving on to SMETS 2. Changes happen when one moves from a SMETS 1 to a SMETS 2 but the same benefits will still be available when consumers switch supplier in due course, and they will be able to benefit from those. There will be a slight delay in that but by 2020, all those who switch will find that they have the same benefits on SMETS 1 as they have on SMETS 2.

Lord Watts (Lab): My Lords, when it is 2020 and everyone has the smart meters, it will be possible for those smart meters to choose the lowest cost provider. If they do that, consumers will all swap to one provider

[Lord Watts]
and that will put the rest of the companies into bankruptcy, meaning there will be no competition at all.

Lord Henley: My Lords, I know that noble Lords opposite do not like competition but the advantage of this system is that it offers choice to the consumer and, as the noble Lord quite rightly says, will offer the ability for people to move on to an app that will allow them to choose the cheapest supplier. Once there is competition, I think the noble Lord will find that the 60 or 70 supplier companies involved will compete among themselves to offer the best possible deals.

Baroness McIntosh of Pickering (Con): My Lords, will my noble friend confirm that, as in the question from the noble Lord, Lord Dubs, this is putting a lot of people off taking smart meters? At what stage should I take a smart meter when I know that if I switch when my present contract runs out, I will not have to have a new smart meter fitted?

Lord Henley: I do not know whether the companies have approached my noble friend but I hope that she will take the opportunity to have one installed when her supplier offers her a company. She will find that when she has the SMETS 2, she will have the benefit of being able to switch without any difficulty. That will be available for SMETS 1 meters in due course.

Lord Rooker (Lab): Can the Minister give a guarantee that the cybersecurity of the meters is absolutely 100%, and that they cannot be interfered with by any external force? Do the consumers get the knowledge that the pattern of their household living, on a minute-by-minute basis, is recorded by external powers which will later monetise that figure? I have refused twice and will continue to do so.

Lord Henley: It is entirely open to the noble Lord to refuse to have a meter, if he so wishes. All we are trying to ensure is that everyone is offered a smart meter if they should so wish, because we feel that to go on using metering technology that is somewhat over 100 years old is not the right approach and that new meters would be better. I can give him an assurance that GCHQ and other people have looked at the security of the smart meters and are satisfied that they are suitably secure.

Baroness Walmsley (LD): My Lords, is the Minister aware that if you have solar panels on your roof, you cannot have a smart meter? I know that because I have tried several times and have been told that I cannot have a smart meter if I have solar panels, which we are all encouraged to have. Does he agree that unless a smart meter is developed that can work with solar panels, we are never going to have smart meters in every household in the country?

Lord Henley: I am afraid that what the noble Baroness says is a myth, but I will look at her case. There is no reason why one cannot have solar panels feeding into a smart meter and being taken into account. If the noble Baroness is having problems, she can come to me and I will look at them.

Asia Bibi

Question

3 pm

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what response they have made to requests to assist in the (1) safe passage and resettlement of, and (2) granting of asylum to Asia Bibi and her family.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the release of Asia Bibi will be very welcome news to her family and to all those who have campaigned for her freedom. We welcome the ongoing assurances that the Government of Pakistan have given on keeping her and her family safe. As a matter of policy, and in accordance with our duty of confidentiality, the Government do not comment on individual cases. Departing from this policy may put individuals and their family members in danger.

Lord Alton of Liverpool (CB): My Lords, I am grateful to the Minister for that reply. Is it not passing strange that while other Governments, 200 parliamentarians and the leader writers of national newspapers have all spoken powerfully and clearly calling for asylum to be granted to Asia Bibi, we take Trappist vows of silence? Recalling that Shahbaz Bhatti, who was the Minister for Minorities, and Salmaan Taseer, who was the Muslim governor of Punjab, were murdered for insisting on the innocence of Asia Bibi, does the Minister share my huge admiration for Pakistan's Chief Justice Mian Saqib Nisar and Justice Asif Saeed Khan Khosa, both of whom I met recently in Islamabad, who courageously and with great integrity acquitted and exonerated Asia Bibi, who was wrongfully sentenced to death and incarcerated for nine years? Does not their refusal to be dictated to by lynch mobs while we fail to offer asylum because of what Tom Tugendhat, the chairman of the House of Commons Foreign Affairs Committee, says is a fear of reprisals, undermine our belief in justice, human rights, the rule of law and religious freedom, and endanger us falling foul of, and succumbing, to blackmail?

Baroness Williams of Trafford: I know the noble Lord will understand that I cannot comment on most of the points that he has made.

Noble Lords: Oh.

Baroness Williams of Trafford: I cannot, my Lords. Our primary concern is the safety and security of Asia Bibi and her family, and we want to see a swift resolution of the situation. A number of countries are in discussion about providing a safe destination once the legal process is complete. Therefore, it would not be right to comment further at this stage. The noble Lord also talked about religious freedom. I welcome the opportunity to say that we continue to urge all countries to guarantee the rights of all citizens, particularly the most vulnerable, in accordance with international standards.

Lord Anderson of Swansea (Lab): Does not the hesitation of the Government in this sense, either because of a fear of community backlash or because

of perceived dangers to our high commission staff, speak volumes about their human rights commitment? Surely as far as Pakistan is concerned, the deal reached with the extremists by the Prime Minister of Pakistan, Imran Khan, tells us something about his human rights credentials and those of the Government of Pakistan.

Baroness Williams of Trafford: Noble Lords can draw their own conclusions in this situation, but our prime concern is the safety and security of Asia Bibi and her family and we want a swift resolution of the situation. As I said earlier, I do not want to comment further because I do not want any individual or their family members to be put in danger.

The Lord Bishop of St Albans: My Lords, the Minister is in a very difficult position because the Government feel unable to speak. However, it is not just Christians who are suffering from these blasphemy laws but other groups of Muslims and other religious minorities. What efforts are Her Majesty's Government making to put pressure on the Pakistani Government to ensure that these blasphemy laws do not continue unjustly to affect these communities?

Baroness Williams of Trafford: My Lords, as I said to the noble Lord, Lord Anderson, we continue to urge all countries to guarantee the rights of all citizens in accordance with international standards. Our current position on minorities in Pakistan is set out in the Home Office country policy and the information note that we published, *Pakistan: Christians and Christian Converts*, which provides background, but it is important that each case involving asylum is considered on its individual facts and merits.

Lord Beith (LD): My Lords, while there may be things that the Government can do or say behind the scenes, and we hope they are doing so, surely the Minister is not trying to cast doubt on the fact that if someone arrived directly from Pakistan into this country who had been through the experiences that Asia Bibi has been through and faced the threat that she now faces, they would have an irrefutable claim for asylum under international law.

Baroness Williams of Trafford: I am not trying to cast doubt on anything. Obviously I will not talk about individual cases. Anyone who arrives in this country and seeks asylum is dealt with on a case-by-case basis. I make the general point that this country has been generous over decades and indeed centuries to people coming here to seek our asylum and take refuge. I do not think the attitude of this country towards people who need our refuge should be in any doubt.

Baroness Warsi (Con): My Lords—

Baroness Cox (CB): My Lords—

Lord Taylor of Holbeach (Con): My Lords, the Conservatives have not had a chance to ask a question on this subject so I think it is their turn.

Baroness Warsi: My Lords, I fully endorse the comments of the right reverend Prelate. I believe that it is not just time for those blasphemy laws not to be operated in a harsh way, it is time for those laws to be brought to an end. There have been press reports that Asia Bibi, if granted asylum in the United Kingdom, would potentially not be safe from some communities here. I wish to give my noble friend and this House full confidence. As someone who is deeply connected to British Muslim communities, I assure her that they are fully supportive of any asylum claim that Asia Bibi may have and that our country may afford her, and that she would be supported as she would be by all other communities in this country.

Baroness Williams of Trafford: I thank my noble friend for her point on the various differing media reports on what this country might or might not do. Clearly every asylum claim is treated on its own merits. As I say, and I am sure my noble friend will attest to this, we have a long and proud tradition of granting asylum in this country to those who need it.

Business of the House

Timing of Debates

3.08 pm

Tabled by ***Baroness Evans of Bowes Park***

That the debate on the motion in the name of Lord Callanan set down for today shall be limited to 5 hours.

Lord Taylor of Holbeach (Con): My Lords, on behalf of my noble friend the Leader of the House I beg to move the Motion standing in her name on the Order Paper.

In moving this Motion, I should remind the House about the reasons for the offer of time today, which I am delighted to see has been readily taken up by noble Lords. The provision of time this afternoon was a recognition by all parts of the usual channels that an additional 20 minutes for Back-Bench questions and answers last Thursday would not have been an adequate amount of time for noble Lords to discuss an issue of such importance as the draft withdrawal agreement. Last night we amended the Motion before the House to provide for five hours rather than the initial four that were proposed, which should ensure that noble Lords have four minutes each if all noble Lords observe it. I am grateful to the noble Lord, Lord Stevenson, and others for their understanding as we rearranged some of the business due to be taken today to make room for the debate.

I am probably stating the obvious to say that this afternoon's debate serves as additional time in lieu of extending the time for the Statement last week. This House will have a substantive debate on the deal itself when it is finalised, likely stretching over several days. I beg to move.

Motion agreed.

Civil Liability Bill [HL]

Commons Amendments

3.10 pm

Motion on Amendments 1 to 6

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

That this House do agree with the Commons in their Amendments 1 to 6.

1: Clause 3, page 4, line 17, at end insert—

"( ) The Lord Chancellor must consult the Lord Chief Justice before making regulations under this section."

2: Clause 5, page 5, line 27, after "injury" insert "or injuries"

3: Before Clause 11, insert the following new Clause—

"Report on effect of Parts 1 and 2

(1) Regulations made by the Treasury may require an insurer to provide information to the FCA about the effect of Parts 1 and 2 of this Act on individuals who hold policies of insurance with the insurer.

(2) The regulations may provide that an insurer is required to provide information only if it has issued third party personal injury policies of insurance on or after 1 April 2020 to individuals domiciled in England and Wales.

(3) The regulations may—

(a) specify the information or descriptions of information to be provided;

(b) specify how information is to be provided;

(c) specify when information is to be provided;

(d) require that information or specified descriptions of information be audited by a qualified auditor before being provided;

(e) make provision about the audit;

(f) require that details of the auditor be provided to the FCA.

(4) Regulations under subsection (3)(a) may in particular require an insurer to provide information, by reference to each of the report years, about—

(a) the amount paid by the insurer during the report period under its relevant third party personal injury policies of insurance in respect of personal injuries sustained by third parties, where the amount of damages for the injury is governed by the law of England and Wales;

(b) the amount that the insurer might reasonably have been expected to pay in respect of those injuries if this Act had not been passed;

(c) the mean of the amounts paid during the report period under those policies in respect of those injuries;

(d) what might reasonably have been expected to be the mean of the amounts paid in respect of those injuries if this Act had not been passed;

(e) the amounts described in paragraphs (a) to (d), determined by reference only to cases where—

(i) the amount paid by an insurer under a policy, or

(ii) the amount that an insurer might reasonably have been expected to pay under a policy, falls within one of the bands specified in the regulations;

(f) the amount charged by the insurer by way of premiums for relevant third party personal injury policies of insurance where the cover starts in the report period;

(g) the amount that the insurer might reasonably have been expected to charge by way of premiums for those policies if this Act had not been passed;

(h) the mean of the premiums charged for those policies;

(i) what might reasonably have been expected to be the mean of the premiums charged for those policies if this Act had not been passed;

(j) the amounts described in paragraphs (f) to (i), determined as if the references to a premium charged for a relevant third party personal injury policy of insurance were references to so much of the premium as is charged in order to cover the risk of causing a third party to sustain personal injury;

(k) if any reduction in the amounts referred to in paragraph (a) has been used to confer benefits other than reduced premiums on individuals, those benefits.

(5) The regulations may make provision about the methods to be used in determining the amounts described in subsection (4)(b), (d), (g) and (i), including provision about factors to be taken into account.

(6) The regulations may provide for exceptions, including but not limited to—

(a) exceptions relating to policies of insurance obtained wholly or partly for purposes relating to a business, trade or profession;

(b) exceptions relating to policies of insurance of a specified description,

(c) exceptions for cases where the value or number of policies of insurance issued by an insurer is below a level specified by or determined in accordance with the regulations, and

(d) exceptions relating to insurers who, during the report period, issue policies of insurance only within a period that does not exceed a specified duration.

(7) Before the end of a period of one year beginning with 1 April 2024, the Treasury must prepare and lay before Parliament a report that—

(a) summarises the information provided about the effect of Parts 1 and 2 of this Act, and

(b) gives a view on whether and how individuals who are policy holders have benefited from any reductions in costs for insurers.

(8) If insurers provide additional information to the FCA about the effect of Parts 1 and 2 of this Act, the report may relate also to that information.

(9) The FCA must assist the Treasury in the preparation of the report.

(10) In the Financial Services and Markets Act 2000—

(a) in section 1A (functions of the Financial Conduct Authority), in subsection (6), after paragraph (cza) insert—

"(czb) the Civil Liability Act 2018,";

(b) in section 204A (meaning of "relevant requirement" and "appropriate regulator")—

(i) in subsection (2), after paragraph (a) insert—

"(aa) by regulations under section (*Report on effect of Parts 1 and 2*) of the Civil Liability Act 2018,";

(ii) in subsection (6), after paragraph (a) insert—

"(aa) by regulations under section (*Report on effect of Parts 1 and 2*) of the Civil Liability Act 2018;".

(11) A statutory instrument containing regulations under this section is subject to affirmative resolution procedure.

(12) In this section—

"the FCA" means the Financial Conduct Authority;

"insurer" means an institution which is authorised under the Financial Services and Markets Act 2000 to carry on the regulated activity of—

(a) effecting or carrying out contracts of insurance as principal, or

(b) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's;

"qualified auditor" means a person who is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006;

"relevant third party personal injury policy of insurance" means a third party personal injury policy of insurance issued by an insurer to an individual domiciled in England and Wales;

"report period" means the period of three years beginning with 1 April 2020;

"report year" means a year beginning with 1 April 2020, 2021 or 2022; "third party personal injury policy of insurance" means a policy of insurance issued by an insurer which provides cover against the risk, or risks that include the risk, of causing a third party to sustain personal injury."

4: Clause 12, page 15, line 30, leave out subsection (1) and insert—

"( ) This Act extends to England and Wales only, subject to the following subsections."

5: Clause 12, page 15, line 35, leave out "This Part extends" and insert "Sections (*Report on effect of Parts 1 and 2*) (10) and 11 to 14 extend"

6: Clause 14, page 16, line 6, leave out subsection (2)

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, with the leave of the House—or as the House leaves—I beg to move that the House do agree with the Commons in their Amendments 1 to 6.

The Civil Liability Bill will provide effective measures to tackle the continuing high number and cost of whiplash claims, which will lead to lower insurance premiums for ordinary motorists. It will also create a better system for setting the personal injury discount rate.

I should like to take this opportunity to thank noble Lords for their contributions and insightful scrutiny, which have already shown during previous debates how the Bill can be strengthened and improved.

The Commons amendments we are considering today were all brought forward by the Government in the other place. Amendment 1 introduces a requirement for the Lord Chancellor to consult the Lord Chief Justice before setting the tariff. This amendment was introduced to meet a commitment made to this House and, in particular, to the noble and learned Lords, Lord Judge and Lord Hope, at Report.

It remains the Government's firm view that it is the Lord Chancellor who should set an appropriate and proportionate tariff through regulations. This enables the Government to ensure that damages remain proportionate and continue to disincentivise unmeritorious claims, but following reflection on the helpful points made by this House during debates in Committee and at Report, the Government agreed that there is merit in the Lord Chancellor seeking the input of the Lord Chief Justice before setting or amending the tariff. This will provide the judiciary with a formal route by which to comment on the level of damages for whiplash injuries. Consulting the Lord Chief Justice allows the views of the judiciary to be reflected in the setting of the tariff, as well as by way of the uplift in exceptional circumstances.

Amendment 2 corrects a drafting omission. The amendment clarifies, but does not change, our intent in regard to Clause 5. Clause 5 enables the Lord Chancellor to provide in regulations that the court may increase the amount awarded under the tariff in circumstances which it considers to be exceptional. The amendment adds the words "or injuries" to Clause 5(7)(a), and merely reflects that the amount of compensation specified in the tariff can relate to either a single injury or two or more injuries. This is consistent with the language used elsewhere in the Bill. This amendment makes no material change to the provisions of the Bill, but provides necessary clarification and consistency.

Amendments 3, 4 and 5 have arisen from previous debates, when noble Lords raised concerns about whether insurers would stand by their commitment to pass on the benefits arising from the Bill. Recognising the concerns raised by noble Lords and those in the other place, the Government amended the Bill in Committee in the other place to provide for an effective means for insurers to demonstrate that savings arising from the Bill have been passed on to consumers. This is the new Clause 11, as introduced by Amendment 3.

I am confident that Clause 11 allows the Government to hold insurers to account against their public commitment to pass on savings from the Bill in a rigorous but proportionate way, without risking anti-competitive or overly interventionist practices. The clause was developed after intensive and careful consultation with insurers, accountants, auditors and regulators.

3.15 pm

Motor insurance is a highly competitive market and the Government are confident that insurers will pass on savings from the important reforms set out in this Bill, as well as the associated changes to the small claims track limit. In the accompanying policy note published on 6 September, when this amendment to the Bill was tabled, there is a clear explanation of the approach taken and the expectations for subsequent regulations. That policy note should be read in conjunction with Clause 11.

This amendment allows the Treasury to introduce new regulations which impose requirements on insurers to provide information on claims costs, premium income and other factors to the Financial Conduct Authority. Firms will be expected to provide information to the FCA covering at least three years starting from 1 April 2020, and the regulations will specify that insurers must return their information to the FCA by April 2024. This timeframe captures the implementation of the whiplash reforms, together with the impact on the discount rate. I know that some noble Lords have noted that the drafting of this clause is permissive, as is the standard approach when referring to forthcoming regulations. However, I absolutely reassure the House that the Treasury not only may but will bring forward regulations requiring insurers to provide this information to the FCA.

As described in the legislation, the Treasury must then, with assistance from the FCA, prepare a report to Parliament that summarises this information and gives a view as to whether and how individual policyholders have benefited from the Civil Liability Bill reforms and the associated changes to the small claims track. I am confident that compelling insurers to provide information in this way will ensure that the industry does pass on savings to consumers, as it has already committed to do so. These are serious obligations and the industry stands ready to comply.

The FCA will assist the Government in preparing the report and will draw on its regulatory powers to ensure firms under its supervision comply. The FCA may take action against firms that do not do so. This is a serious matter for insurers. I will take a moment to describe the role of the FCA a little more precisely. Clause 11 makes the requirement on insurers to provide information a statutory requirement under Section 204A of the Financial Services and Markets Act, with potential for the FCA to impose penalties where this has not been done. This change, along with the change to Section 1A of that Act, describing FCA functions, means that the duties of monitoring insurers' compliance

[Lord Keen of Elie]
with, and requiring them to adhere to, their statutory obligations under this clause form part of the supervisory responsibilities of the FCA.

On this basis, the FCA will expect firms to disclose steps they have taken to comply with the requirement and may take disciplinary action in respect of any firm that does not comply with the new requirements to provide information. In addition, if a firm does not provide information, the FCA may use its full range of supervisory powers to bring about compliance. For example, it may impose a requirement or, if right and proper, use Section 166 of the Financial Services and Markets Act—which my noble friend Lord Hodgson referred to in Committee—to acquire information. However, without the change as drafted in the primary legislation here, the full range of FCA powers could not be used in such a scenario.

As I have explained, the legislation will allow the FCA to engage with firms under its supervisory powers. Failure to provide data would be noted on the firm's records and might lead to further investigation. The FCA is also able to consider whether the risk of serious harm to consumers and the market is such that enforcement action may be taken, in which case the FCA would be empowered to impose a penalty, publicly censure a firm, or suspend or vary its permission. Of course, as noble Lords would expect, any supervision or enforcement action would ultimately be determined by the facts of the case.

I assure the House that the legislation will ensure that the FCA will hold firms to account, and that the FCA will actively consider appropriate action if firms do not meet the new requirements. In addition, the FCA will, as always, take seriously any breaches that could give rise to consumer detriment and will seek to take action if they suspect serious misconduct.

Representatives of around 85% of the motor insurance market have publicly written, committing to pass on savings from the Bill. The Government believe that the statutory requirement on firms to provide information to the FCA, alongside the requirement for the Treasury to report on the impact of the reforms, will strengthen the existing incentive on firms to meet their public commitments.

I know, however, that some noble Lords still have concerns that insurers will not be fully held to account. In this context, I note that the FCA has a wider goal to ensure that the insurance markets deliver competitive and fair prices for consumers, and it is able to take action in this context. As a recent example, separate from the Bill, the FCA has published a series of documents relating to general insurance pricing practices, expressing concern that within the general insurance space some practices may have the potential to cause harm to consumers. It is launching further work to consider whether insurance pricing is fair and, if it is not, what action could be taken. The FCA has been clear that it will consider additional potential action where there is evidence that pricing practices are unfair.

The FCA also wrote to all insurance CEOs reiterating the importance of firms implementing appropriate pricing strategies and stating clearly that all firms are required to assess whether their pricing practices result in their customers being treated fairly; and that firms should also be able to demonstrate how they have reached this conclusion. More generally, the FCA has the continuing ability to employ the existing range of regulatory tools at its disposal in cases where firms are not treating customers fairly. For example, this could potentially include cases where firms went back on public commitments that had become part of policyholder expectations and were relied upon by consumers, to their detriment.

This amendment was developed to address the concerns that were raised in this House. I know that the proposals raised by noble Lords were carefully considered in developing the legislation and working out the necessary requirements to follow in regulations. In order to give sufficient certainty to insurers who will have to comply with the new rules, Clause 11 describes the type of requirements that they will face in a fairly detailed way. This is to reduce the legal risk of objection to the way in which the Treasury introduced the regulations and the FCA required compliance. However, the legislation deliberately leaves some flexibility to refine and develop the precise nature of the new requirements in an appropriate way.

For example, the legislation provides for the regulations to require that certain information is audited. As set out in the policy note published on 6 September, the Government expect that that information might include the total figure representing the claims cost for each year beginning 1 April; mean claims costs per year for comparative policies; total premium income per year for comparative policies; and mean premium income per year. However, the Government also recognise that some information might not be suitable for audit and that alternative means of verification will be necessary. This might be because by its nature counterfactual information cannot be audited and must instead be otherwise assured; or because in some cases for smaller firms the burden of providing audited information might genuinely be disproportionate.

The legislation enables certain exemptions to be given for insurers where the new requirements are not appropriate in this way. The policy note explains that the regulations will provide more detail about insurance classes in scope and will set minimum thresholds in relation to the level of personal lines activity and policies sold in England and Wales, which will minimise the risk that extremely small or specialist insurers will face a genuinely disproportionate compliance burden. Personal lines insurers that do not meet the threshold criteria will need to provide a short statement to the FCA confirming that they do not fall in scope of the reporting requirements. New entrants to the market will also be required to provide this information.

Clause 11 provides that the exact requirements on insurers will be set out in secondary legislation laid by Her Majesty's Treasury. I can confirm that, before regulations are brought specifying the exact requirements that insurers will face, the Treasury will carry out a further consultation exercise, including sharing draft regulations with all interested parties. This will ensure that the new rules work effectively and do not place disproportionate burdens on insurers. The regulations

will be subject to the affirmative procedure, meaning that the details of the regulations will be debated in both Houses.

The Civil Liability Bill is an important part of wider work to bring down the cost of living for ordinary consumers. This amendment will ensure that insurers are held to account for their public commitment. It will require firms to demonstrate how any savings from the Bill have benefited their customers.

Finally, Amendment 6 removes the privilege amendment inserted at Third Reading in the House of Lords. The removal of this amendment by the House of Commons makes the imposition of any charge resulting from the Bill its own act.

Before I conclude, I will note that I received a letter from the noble Lords, Lord Monks and Lord Bassam, and the noble Baroness, Lady Primarolo, asking three questions with regard to their understanding of the Bill as it entered Third Reading and Report in your Lordships' House. First, they asked what amendments had been made to the Bill; secondly, what changes had been made by the Government in respect of the Bill and the associated changes and who they will apply to; and, thirdly, when the introduction is anticipated of the statutory instrument regarding the small claims track limit. I hope that I addressed the first of those questions in my opening remarks, so I will turn to the second and third questions.

While increases to the small claims limit are part of the Government's overall reform programme, they are of course not included in the Civil Liability Bill, which, as noble Lords will know, is focused on making changes to the whiplash claims process and to the way in which the personal injury discount rate is set. The provisions of Part 1 cover all whiplash injuries, irrespective of whether the injured party was driving as part of their work or on their way to or from a place of work. We have made it clear that vulnerable road users—that is, cyclists, motorcyclists, horse riders and pedestrians—were never included in the Bill, and they will also be excluded from the rise in the small claims track that will support the wider reforms.

On the third question posed by noble Lords, the Government will be making changes to the small claims track limit through the Civil Procedure Rules in the normal way. We will work with the Civil Procedure Rule Committee to ensure that this change and the wider rule changes to support the reform programme are made in sufficient time to enable implementation in April 2020. We anticipate that the statutory instrument making the changes will be brought forward in the second half of 2019.

I hope that noble Lords will be content to accept the amendments from the House of Commons, and I beg to move.

Lord Sharkey (LD): My Lords, I thank the Minister and his officials for their continued engagement on the Bill, which has been very helpful.

The Bill transfers over £1 billion from whiplash claimants to motor insurers. This transfer is only justifiable if the insurers do not retain this gigantic windfall—and, of course, they have promised that they will not. They have promised in writing to pass on to motorists, in the form of reduced premiums, cost savings made by the provisions in the Bill. A huge amount of money is involved, and a significant promise. Without that promise, I doubt the Bill would have been brought to the House—and without it, it would certainly not pass the House.

On Report, we set out the case for checking that insurers keep their promise. The Government accepted the need for checking the insurers' compliance and committed to bringing forward in the Commons a mechanism for doing that. New Clause 11—Commons Amendment 3—is the proposed mechanism. I was pleased to see a mechanism in the Bill, but was surprised by its length and complexity. The new clause is very long and very complicated. The whole Bill, before this new clause, ran to only 16 pages, and the new clause by itself adds a further three pages.

When on Report we debated the issue of checking on pass-through, and when this was discussed in the Commons, there was an argument in favour of a much simpler approach. We saw the way forward as simply giving the FCA the power to demand whatever data it considered necessary for the purpose, and then to make an assessment of whether and to what extent insurance companies had in fact passed on the £1 billion to motorists via reduced premiums. I would be grateful if the Minister could explain why the complex approach taken in new Clause 11 is better than the simple approach I have just described. In particular, I would be interested in what influence any specific competition concerns may have had in producing the baroque structure of the new clause.

There are a couple more points where additional information would be helpful. The first is to do with anonymity. The Minister's officials have confirmed that the report on compliance mentioned in new Clause 11 would reference only aggregated data. It will not name companies that have broken their promise to pass through the savings made for them by this Bill. In a written note, the Minister's office said:

> "It would be an extreme step for the Government to identify firms individually and this type of action against a particular firm—as opposed to holding the industry to account as a whole—could leave the Government open to challenge, both on the argument that the Government has facilitated anti-competitive behaviour and further on human rights grounds".

3.30 pm

It seems odd to suppose that holding the whole industry to account is likely to have any practical effect, especially if most insurers are compliant with a few significant outriders who are not. Will the Minister explain the grounds for the concerns about naming these promise-breakers? How could naming a non-compliant insurer be anti-competitive? How can depriving customers of vital market information about the breaking of a financial promise do anything except promote competition? Whose human rights would be infringed by disclosing the names of the promise-breakers, and how?

Why this anonymity? Surely it is in the interests of policyholders and potential policyholders to know which insurance companies cheated. If they do not know this, then existing policyholders have no basis for claiming redress or changing suppliers. New policyholders will be buying products from organisations that have broken a serious and public financial promise.

[LORD SHARKEY]
Whose interest is served by not naming insurance companies who have broken these promises? Certainly, it does not serve the interests of the customer.

There is a related issue to do with the notion of redress. As the Minister has explained, the new clause goes into detail about the powers that the FCA will have to compel insurers to provide the data it needs to make an assessment of pass-through. There is no mention of any powers to impose a penalty if insurers are found to have welched on their promises. The Minister has assured us that the FCA's existing powers would allow it to impose penalties for breach of the insurer's promise, but I would be grateful if the Minister would confirm in particular that an insurer's substantive failure to keep its promise would be a breach of the FCA's requirement that customers be treated fairly, and that such a substantive failure would breach the FCA's TCF desired outcome 1.

The outcome in question is that consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture. This is particularly relevant when the fair-pricing practices of insurance companies are under question and being investigated by the FCA. I am sure that we are all familiar with stories about loyal, continuing customers paying more than new customers for the same product. This raises questions about whether fair treatment of customers is in fact central to the corporate culture of insurers and whether the insurance marketplace is as competitive as the Government have claimed.

Customers need to know whether their insurers have acted fairly and kept their promises; insurers need to know that they will be punished if they do not. I look forward to the Minister's reply.

Lord Hodgson of Astley Abbotts (Con): I raise a narrower point than that of the noble Lord, Lord Sharkey. I refer to the Government's Amendment 1 where, notwithstanding the heavyweight legal artillery from the noble and learned Lords, Lord Judge and Lord Hope of Craighead, I would like to probe the thinking a little further. What is proposed seems undesirable in a number of aspects, not least of which is that it may put the Lord Chief Justice into a conflicted and undesirable position.

Clause 3, to which the amendment applies, is entitled "Damages for whiplash injuries". The House will be aware that because of the difficulty of diagnosis—as we have heard from my noble and learned friend—whiplash has provided easy pickings for the fraudulent over several years; in the vernacular of our early debates, the phrase was "cash for trash". Millions of motorists' insurance premiums have been unnecessarily increased. The Government—sensibly, in my view—introduced the blanket figure to cover all injuries with a duration of less than two years. That was discussed extensively and amended during the passage of the Bill here and in the other place. It was not, and is not, an uncontroversial policy decision. It remains an issue about which different parts of the House and different political parties have strong views.

Clause 3 is about money and the compensation payable under the whiplash tariff in different circumstances. I invite my noble and learned friend and the House to look at subsections (1) to (5). In each of those, the key word is "amount"—the amount of damages due and payable in different circumstances. The clause provides that these amounts are determined and laid out in regulations by the Lord Chancellor. Under this amendment, as my noble and learned friend pointed out, there would be another hoop to go through, in that the Lord Chancellor would have to consult the Lord Chief Justice before making regulations under the clause. The discussion in the House of Commons was pretty threadbare. I am concerned that the Lord Chief Justice may find himself dragged into policy areas which are not to his advantage. The clause is about money, not process. I ask my noble and learned friend to consider the options available to the Lord Chief Justice when the Lord Chancellor turns up at his office and presents the new tariff. As far as I can see, he has only two. Either he can accept without demur, or he can say that he thinks the proposed new tariff is too high or too low. If he does the latter, on what grounds would he make that judgment? What expertise does a judicial figure, the Lord Chief Justice, bring to the determination of these monetary figures? What expertise is available to him that was not available to the Lord Chancellor in making his original determination?

I make it clear that this is not an attack on the Lord Chief Justice. Indeed, it is intended to draw attention to the difficult position that future Lord Chief Justices may find themselves in as a result of this amendment. They would either have to act as a cipher and simply tick a box, or require amendments to figures that will remain politically highly charged. That runs the risk of the role becoming politically tainted, and further involving the Lord Chief Justice in the determination of matters on which the courts and justice system would later, no doubt, have to adjudicate.

It is not desirable for the Lord Chief Justice of the United Kingdom to be seen either as a cipher or as a participant in political processes. I look forward to hearing from my noble and learned friend why I have so gravely misjudged the situation.

Lord Monks (Lab): My Lords, I declare an interest as a non-executive director of Thompsons, a leading personal injury firm. I have two or three questions for the Minister, particularly on Amendment 1. I thank him for the reply we received to the letter he referred to.

The House of Lords Regulatory Reform Committee advised that the key measures in this Bill, including the levels of compensation for claimants under the tariff scheme, should feature in primary legislation, not secondary. The Constitution Committee said that Ministers should follow this advice unless there were clear and compelling reasons not to. There seems to be a trend for the Government to seek wide delegated powers that permit the determination and implementation of policy. The Constitution Committee warned that the restraint shown by noble Lords towards secondary legislation might not be sustained—a serious warning to the Government that, if this trend continues, secondary legislation might be much more difficult to accomplish. I will be interested to hear the Minister's comments on that.

Secondly, given that the employer liability clauses will not be dealt with through the new online portal, which is being reserved for whiplash claims, can the Minister confirm that the courts will be able to cope with what will undoubtedly be an increased number of claims without the presence of expert legal representation? It is estimated that they could increase from 5% to 30% of the total number of cases. Can the courts manage that extra responsibility?

Finally, what is meant by "in the long term"? This relates to paragraph 5.66 of the whiplash impact assessment accompanying the Bill, where the Government state that, taking into account adjustments to pre-action protocols, they consider that

"in the long term the courts would operate at cost recovery".

I would be grateful for an explanation of what cost recovery means in this context.

The Earl of Kinnoull (CB): My Lords, I shall speak to Commons Amendment 3 and shall make a general point about all the amendments in the round. I declare my interests as set out in the register—in particular, those in respect of the insurance industry. I would very much like to add my thanks to the Minister, the noble Baroness, Lady Vere, and the Bill team, who have been very courteous and warm as they have engaged with me, particularly on Amendment 3.

We spent a lot of time discussing the area covered by Amendment 3 in Committee and on Report, and even slightly at Third Reading. The amendments suggested in this House—there were quite a few of them—had a common theme: they were short and clear, and they instructed the FCA to act, as it were, as the scorer and to work out how it would ascertain whether insurers had in fact handed the money back to customers.

The section of the policy note, which the Minister referred to, entitled "Context and overall approach to amendment" refers to an intent to:

"Hold insurers to account in a way that is sufficiently rigorous",

and to:

"Avoid intervening in an already competitive market or placing disproportionate burdens on insurers or regulators".

I am very grateful to the Minister for confirming that those should be the guiding principles for the FCA as it begins to consider the best way to discharge this duty. I find the three pages of new Clause 11 pretty difficult and they are potentially extremely onerous for insurers. I note that, depending on how you construe new subsection (2), insurers might also have to report on every single comprehensive household policy they have, because injury cover is possibly included in that. I could make other points on that too.

We now know that this amendment was drafted by a committee full of highly intelligent people, including insurers, obviously very intelligent lawyers, accountants and officials. Of course, we all know that when you put a committee together, you get a camel, and I am afraid that it is a bit of a camel. However, I say again that I am very grateful to the Minister for confirming that the policy note will trump what is in the legislation, as that is important.

That leads on to my general point about the Bill. In Committee I referred to the 2016-17 annual report of NHS Resolution. It stated that moving the discount rate from +2.5% to -0.75% meant that the cost of medical negligence in the UK every year would rise by an extra £1.2 billion. That means that every day £3.3 million is not being spent on the NHS front line. If the personal injury discount rate, which is in Part 2 of the Bill, went up—perhaps not all the way up to 2.5% but maybe to 1%, which is currently the case in France—that would release around £1.75 million a day to the front line of the NHS. In a nutshell, the quicker this Bill passes, the better. My one question for the Minister is whether he agrees with that point.

3.45 pm

Lord Hunt of Wirral (Con): My Lords, I declare my interests, having now been chair of the British Insurance Brokers' Association for the past five years and for the last 50 years having been a partner in the global legal firm DAC Beachcroft.

We need to remind ourselves that it is almost three years to the day that the then Chancellor of the Exchequer announced the coalition Government's plans to reform whiplash claims. What a long journey it has been. In welcoming the amendments made in the other place, I join the noble Earl in impressing on all noble Lords the need to avoid any additional delay. The figures on the costs to the National Health Service just given by the noble Earl are stark and revealing, and we need to speed up.

I congratulate the noble Lord, Lord Sharkey, on the way in which he proposed that we should speed up the review process of looking at the discount rate, which is a vitally important part of the Bill. We also removed the prospect of any delay between Royal Assent and the start of the review timetable. I trust that my noble friend the Minister will understand when I stress again how imperative it is that we proceed to Royal Assent without any further delay. There is now no need to return this Bill to the Commons and no need to let any more time pass before Royal Assent. Further, there is no need to further delay the start of the review and the return to a more realistic, viable and normal discount rate.

I welcome the new clause on reporting, although I can understand how, as a non-lawyer, the noble Lord might think it complicated. But it covers the full picture exceedingly well. I congratulate all those both in Government and in the insurance industry who worked so hard on the wording over the summer. I know that it is not perfect, but it strikes an appropriate and judicious balance. It introduces the necessary rigour into reporting, but at the same time it is workable for those who have to provide the data.

One vital element to the industry—passing on cost savings to consumers—has been slightly forgotten in the heat of the debate at earlier stages. For insurers to be able to pass on the savings, there must first be savings. That is the primary purpose of this Bill. Only if the Bill is implemented, as it is now with a tariff of low damages for whiplash claims up to two years in duration and the other measures planned alongside this, including raising the small claims limit to £5,000, will there be any prospect at all of savings being realised and passed on to consumers. That will be in the best interests of all consumers and all citizens.

I add my praise to the Minister and the noble Baroness for their diligence and patience and for making themselves so readily available and accessible to all

[Lord Hunt of Wirral]
and any Members of this House to discuss various matters of concern. The Minister has made this a better Bill. Now let us speed it on its way.

Lord Judge (CB): My Lords, in view of everything that has been said about the Minister, perhaps he does not need any help from me in addressing the concerns expressed by the noble Lord, Lord Hodgson, but I will offer him some comfort. Many people will want to make a contribution to the discussion with which the noble Lord, Lord Hodgson, has been concerned. They may not all have the same interest as the judiciary has in seeing that there is a fair balance between the way in which the whiplash injuries damages are to be assessed and the way that all other injuries are assessed—the process of assessing damages as it develops over the years.

I specifically asked that we should not have the concurrence of the Lord Chief Justice. We simply asked that he should be consulted. When he is consulted, like everyone else who has been consulted, he will be someone making a contribution to the final decision of the Lord Chancellor. As he will be merely consulted and not asked to concur, there is no danger that my successor many years down the line will find himself at the wrong end of a claim.

Lord Beecham (Lab): My Lords, I refer to my interest as an unpaid consultant with my old firm. I begin somewhat unusually by congratulating the Minister on having improved a pretty flawed Bill since it left us. I assume that he has played a significant part in that. In particular, I strongly endorse the provisions of Amendment 1, which are an improvement on the original wording. However, we would still have preferred the retention of the existing system which allows judicial discretion on the level of compensation to be awarded based on judicial guidelines. To answer the noble Lord, Lord Hodgson, that is how the system operates and there seems to be no good reason why the assessment of damages for this kind of injury should be different in those terms from any other form of injury.

Of course, we also continue to be opposed to the increase in the small claims limit by an amount higher than inflation, in accordance with the review carried out by Lord Justice Jackson several years ago of civil litigation costs. In fact, the increase is something like 100%, although I take the noble and learned Lord's point that that is not strictly within the scope of this Bill.

The Justice Select Committee warned that,

"increasing the small claims limit for PI creates significant access to justice concerns".

The Government's plans to increase the small claims limit will mean that more cases are allocated to the small claims track. That will leave tens of thousands of working people priced out of getting proper legal representation. These measures are a further gift to insurance companies which are already experiencing increased profits at the expense of people injured through no fault of their own.

What assessment have the Government made of the impact of the changes to the operation of the courts, given that increasingly claimants will be unrepresented? Within the last fortnight, the Permanent Secretary at the Ministry of Justice has told the Justice Select Committee that two of the main spending assumptions were fundamentally "unrealistic" and that even the Treasury recognised that the department was under "considerable strain". In these circumstances, how confident is the Minister about the ability of the courts to deal with an increase in unrepresented claimants from 5% to 30%, as predicted in the whiplash impact assessment? That of course relates only to that particular area; there will be another shortfall in relation to other claims. How long do they anticipate will be the "long term" envisaged before the courts operate at cost recovery level, as suggested in the whiplash impact assessment? To be clear, whiplash impact for this purpose is on the system, not on the unfortunate claimant.

It is estimated that insurers will gain £1.3 billion a year. I hope that the noble and learned Lord's confidence that the industry will ensure that those savings are passed on to policyholders will be proved correct. Why will it be six years before the Treasury reports to Parliament on the savings accrued to policyholders, as apparently will be the case? It seems an inordinately long time to assess the impact of this provision. Further, is it not ironic that the Government, who make so much of the need to protect policyholders from the impact of exaggerated or fraudulent claims, have themselves increased insurance premium tax four times in eight years, thereby currently collecting £2.6 billion a year more from the people they purport to be helping through this Bill?

While the commitment given at Third Reading in the Commons that vulnerable road users will be exempt from the changes is welcome, why are children and people injured at work not included in the exemption? Extending the change to those two groups would seem to be a reasonable move.

By sheer coincidence, today sees the publication of the report of the Constitution Committee. It is highly critical of the Government's increasing reliance on secondary legislation. The committee supported the views of the Delegated Powers and Regulatory Reform Committee earlier this year that key measures should be included in the Bill and not left to secondary legislation. Also, most tellingly, it said that judges, not the Lord Chancellor, should set the new tariff and that the Lord Chancellor should not be granting powers to make provision for damages relating to minor psychological injury. This accords with amendments debated during the passage of the Bill through this House but not enacted.

I hope that a review of this measure will provide an opportunity to return to this issue and adopt that approach in due course. I repeat that the Bill comes back to us in better condition than it was, but I remain convinced that it is not in as good condition as it should be.

Lord Keen of Elie: I am obliged to the noble Lord, Lord Beecham, for acknowledging that we have at least achieved a curate's egg, if nothing more.

The Bill makes important changes to our personal injury compensation system; it makes that system fairer, more certain and more sustainable in future for

claimants, defendants, motorists and the taxpayer. That builds on our wider reforms to cut the cost of civil justice claims and strengthen the regulation of claims management companies, which play such a big part in this. The first part of the Bill will deliver a key manifesto pledge. It will support the consumer by bringing down the cost of living through a crackdown on exaggerated and fraudulent whiplash claims that lead to higher insurance costs. The second part of the Bill will provide a fairer method for setting the personal injury discount rate and reviewing it so that it does not remain at one level, as it did for 16 years.

I am grateful for noble Lords' observations and careful scrutiny of the Bill. I want to touch on one or two of their points. The noble Lord, Lord Sharkey, commented on the complexity of the approach taken on Clause 11. That approach was carefully crafted after consultation with interested parties, including the FCA, to ensure that it is as effective as possible. At the end of the day, the Government's approach has been determined by the need for a rigorous and proportionate regime for insurers as far as savings are concerned. We have to remember that the FCA is an independent body. Clearly, we cannot confirm exact FCA action in respect of these matters but we assure the House that it will take very seriously any case where an insurer does not treat customers fairly. That could include a public commitment not being met if that formed part of a policyholder's or consumer's expectations.

The Government have taken a careful and considered approach to what is sometimes termed "naming and shaming", particularly with regard to the provisions in Article 6 of the European Convention on Human Rights. There are circumstances in which the FCA may decide publicly to censure a firm, but that would typically follow a detailed investigation. The idea of somehow naming and shaming a firm before such an investigation could raise questions about convention rights under Article 6. I suggest that we have taken a considered approach to this but, ultimately, those outliers—if I can call them that—who might seek to abuse the system will be open to censure, potentially publicly, by the FCA in due course.

In the context of the point made by the noble Lord, Lord Hodgson, I readily adopt the observations of the noble and learned Lord, Lord Judge. At the end of the day, consultation with the Lord Chief Justice will allow the judiciary some input into, or comment on, the setting of the tariff of damages against the background of its knowledge of the general level of damages awarded for personal injury in diverse cases. One would hope that this would ensure no material divergence in levels of damages as far as that is concerned.

The noble Lord, Lord Monks, raised a number of questions. Regarding Amendment 1, the primary legislation approach to setting the tariff is not considered appropriate because it should be amenable to review and flexibility. Setting it in stone would not allow for that. Regarding the question of employers' liability and employers' liability clauses, we consider that the courts are equipped to cope with such claims. On cost recovery, referred to in the impact assessment at paragraph 5.66, I note that the aim is ultimately to try to achieve cost neutrality so far as the court process is concerned, but I acknowledge that that is a long-term aim.

4 pm

On that point, I touch upon the observations of the noble Lord, Lord Beecham. Regarding access to the courts, we are introducing a digital portal for these whiplash-type injuries, which will be designed to be accessible for those without legal representation. It will lead them into the prospect of alternative dispute resolution of their claim in respect of the merits and quantum. That system is being developed by the MIB and will be stress tested. As I indicated, we would expect it to be available for operation by April 2020.

We debated the question of excluding others such as vulnerable road users before, and I will not revisit the point. We have taken a clear view on the scope of these requirements with regard to whiplash, and that is where we are.

On the matter of a six-year period for review, it will be necessary to collate data from at least three years so that we can produce a comprehensive review of costs and savings. Therefore, we do not consider the period for the report to be excessive in that context.

The noble Earl, Lord Kinnoull, alluded to Clause 11 and what he saw as the onerous obligations on insurers. It is only appropriate that obligations be placed on insurers regarding this matter when potentially very significant savings will be achieved. We make no apology for that, but I observe that these provisions were developed after consultation with insurers and the FCA. However, I readily acknowledge the point that he made about the cost to, among others, NHS Resolution regarding the present discount rate. It seems unfortunate that we have moved from a regime where the discount rate remained at 2.5% for 16 years, only to be subject to what might be termed a cliff-edge change due to the long period that it remained at that level, and was brought down to minus 0.75%. We intend to bring Part 2 into effect at Royal Assent with the two time limits—debated before—of 90 days and 140 days, so that this matter can be brought under control sooner rather than later.

With those observations, I hope the House will accept that the Bill will work to improve the present position. We believe that we now have a much stronger Bill that will ensure that consumers see the benefits that arise from these reforms.

Motion agreed.

Crime (Overseas Production Orders) Bill [HL]

Third Reading

4.04 pm

Clause 1: Making of overseas production order on application

Amendment 1

Moved by ***Baroness Hamwee***

1: Clause 1, page 2, line 16, at end insert "and it has been ratified in accordance with that section"

Baroness Hamwee (LD): My Lords, I want to raise two areas of questioning of which, I hope, the Minister has had notice. We have had correspondence and I am

[Baroness Hamwee]
grateful to her and her officials, but I am keen to get the explanation in *Hansard*. Clause 1 provides for the making of overseas production orders, and Clause 1(8) provides for a treaty to be laid before Parliament under the Constitutional Reform and Governance Act 2010. I tabled an amendment covering this question on Report and I regret that I am still not entirely clear about the answer. Can we not provide for a reference to ratification on the face of the Bill? It would deal with Parliament's involvement in the process and I think it is important that legislation is as clear as possible to the reader.

The Act provides for a two-stage process. One is the laying of a treaty; the other is Parliament's role in ratifying it—or perhaps not ratifying it. I have asked the Home Office what the problem would be. I understand from the Minister that there may be operational timing reasons why one would want to designate an agreement after it had been laid before Parliament but before it has been ratified, and the Minister has also told me in correspondence that an agreement that came into force on ratification would impose that obligation immediately, which would be a problem. I am a little puzzled as to why one cannot provide, in the parliamentary process, either that a designated agreement comes into force at a future date linked to the designation, or that the designation is linked to ratification. I would be grateful if she could help me and the House as to the need not to include a reference to the second stage of the process.

The importance of this is that Clause 1 deals with designation of an agreement under Section 52 of the Investigatory Powers Act. That section relates to the interception of a communication in the course of transmission, as I understand it, not to other data. My noble friend Lord Paddick raised this in the debate and we would be grateful if the Minister would explain how all data is covered, not just data intercepted in the course of transmission. That phrase implies data intercepted before or at the same time as it reaches the recipient, so would it not include itemised phone bills, geolocation data and internet connection records?

Communication, the word used in the relevant section, is defined in the Investigatory Powers Act and the term "communications data" is also defined: they are different. The great importance of this is that at the previous stage your Lordships inserted a requirement for death penalty assurances—or to put it the other way around and more accurately, that an agreement should not be designated without death penalty assurances in the case of an agreement where it is possible that a person may receive a death penalty as a result of, or in connection with, the provision of data under that agreement. I hope that those two separate but closely linked areas of questioning are clear and I beg to move.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank the noble Baroness for her explanation of her amendment. The powers in the Crime (Overseas Production Orders) Bill will work only if a relevant international agreement is in place. The effect of the amendment would be that an international treaty could not be designated under the Bill until it had been fully ratified. Ratification is the process by which relevant parties signal their consent to be bound by a treaty, contract or agreement. I hope I will be able to reassure the noble Baroness as to why it is not needed, and that she might be persuaded to withdraw it.

There may be operational reasons why a Government would want to designate an agreement under the Bill before the process to ratify a relevant treaty is finalised. If we had to wait until the agreement had been ratified before making the regulations that designate the agreement under the Bill, and the agreement came into force on ratification, there would be a delay, as the noble Baroness said, in respect of our use of the agreement. We may want the regulations to be in place when the agreement comes into force so that officers in the UK can immediately start applying for overseas production orders. I am concerned that we should not unnecessarily delay their access to vital evidence. I make it clear that designating the agreement under the Bill prior to ratification will not permit applications to be made until such time as the agreement has been ratified and is in force.

I will give a practical example of this. An example of an operational reason to designate an agreement under the Investigatory Powers Act prior to ratification arises in the context of the development of an agreement with the US. One of the core obligations of the agreement with the US will be the removal of any legal barriers that would prevent a UK company complying with a request from the US. The IP Act itself contains one of those barriers, in that it criminalises the interception of communications, save for where a person has lawful authority.

However, Section 52 of that Act provides lawful authority to carry out interception where it is at the request of,

"the competent authorities of a country or territory outside the United Kingdom",

and the request has been made pursuant to an agreement which has been designated by regulations under that section. In effect, the designation of the agreement under Section 52 will be the removal of the legal barrier, thereby fulfilling our obligation. As the US agreement will come into force immediately upon ratification, regulations under Section 52 must have been made and laid before that point so that we can fulfil our obligations from the moment the agreement enters into force.

I stress that making regulations designating an agreement prior to it being ratified would not permit UK communications service providers to intercept communications in response to requests by foreign law enforcement authorities. Such activity would be permitted only once those regulations and the agreement came into force, which would happen on or immediately after ratification. This in no way changes or undermines the process of ratification or the scrutiny that Parliament is afforded of a treaty. Indeed, if Parliament resolved that the treaty should not be ratified, what is provided for in any agreement and the powers in the Bill could not be used. I hope that the noble Baroness is reassured on that point.

The noble Baroness's second point was about how Section 52 of the IP Act covers all data, not just data intercepted in the course of transmission. As I said on Report, Section 52 can authorise obtaining stored as well as intercepted communications. Section 52 should be read alongside Section 4 of the IP Act, which outlines the definition of "interception" and related terms. According to that section, "interception" refers to the interception of a communication,

"in the course of its transmission by means of a public telecommunication system or a public postal service".

A person intercepts a communication in the course of its transmission if the effect is to access any content of the communication "at a relevant time". It is the meaning of "relevant time" that is significant. It can mean a time when the communication is transmitted but it can also mean, as Section 4(4) of the IP Act says,

"any time when the communication is stored in or by the system (whether before or after its transmission)".

4.15 pm

It is clear that where, as in Section 52, the IP Act refers to the,

"interception of a communication in the course of its transmission",

this includes accessing stored communications from the relevant telecommunications system, such as messages stored on phones, tablets or other devices, whether before or after they are sent. By way of an example, this would include an email that has been sent and is stored on an email server or a voicemail message that has been stored on a telecommunications system to be retrieved later. It would also include an unsent, draft email that is stored on a server.

I hope that this explains it adequately to the noble Baroness but I would also direct her to the Explanatory Notes for Section 4 of the Investigatory Powers Act. To briefly sum up, I hope that I have made it clear that Section 52 of the IPA not only covers material intercepted in the course of transmission but can authorise obtaining stored communications as well.

Baroness Hamwee: My Lords, obviously I am not going to challenge the Minister on that but I will comment, if I may, on her latter point. The distinction between the definitions of communication, which is the subject of Section 52, and communications with data, which is defined as data held or obtained, including what relates to the provision of the service or is,

"logically associated with a communication",

as it relates to the use of a telecommunication service, still defeats me, I am afraid. Why is it worded in that way? I see in the definitions the distinctions between communication and communications data, and the Minister referred to "the relevant time". On the parliamentary process, there are two parts to it: laying regulations, which is the Executive's job, and ratification, which is Parliament's task. I was seeking to be quite clear that those are both covered.

It also baffles me that there cannot be conditional arrangements, with the laying of regulations which are conditional on designation or designation which is conditional upon the whole process under the Constitutional Reform and Governance Act. It may be that American practice would not allow it, although I am sure that I have dealt with American arrangements which are conditional. But because of the importance of the death penalty issue, I felt it was important to air these to the best of my ability, which may not be as extensive as it might have been. At least it will all be there in *Hansard* for others who may be exercised to satisfy themselves. I beg leave to withdraw the amendment.

Amendment withdrawn.

4.18 pm

Motion

Moved by ***Baroness Williams of Trafford***

That the Bill do now pass.

Baroness Williams of Trafford: My Lords, in moving this Motion I thank all noble Lords who have participated in debate on the Bill, in particular the noble Lords, Lord Rosser and Lord Kennedy, the noble Baroness, Lady Hamwee, and the noble Lord, Lord Paddick. Of course we can never do anything without our fabulous Bill team, who have been on hand to explain some quite complex and technical matters. I always think that your Lordships' House improves a Bill as it passes to the other place, and I hope that it will agree when it has time to consider it. Thank you.

Lord Rosser (Lab): I too take this opportunity to add to what the Minister has said. Despite the reality that the Bill has not exactly held this House in rapt attention, judging by the number of people who decided to participate in our debates, I thank the Minister, the noble Baroness, Lady Manzoor, and the Bill team for their help and their willingness to meet to discuss the important issues that have been raised during the passage of the Bill. I also thank the members of our team who have provided such invaluable and vital support to me and to my noble friend Lord Kennedy of Southwark.

Lord Paddick (LD): My Lords, I too thank the Minister. I do not know whether I am speaking out of turn in saying that I think at times she has shared some of our concerns over the implications of the Bill, if not over the Bill itself. I thank the Bill team for engaging with us so that we got a better understanding of the formulation of the treaty, the process of negotiating the treaty and what the possible implications of that might be. Clearly we are now alerted to the fact that both Houses need to be very concerned in scrutinising any treaty that is developed that this Bill relies on. I also thank my noble friend Lady Hamwee, without whom I would be lost.

4.21 pm

Bill passed and sent to the Commons.

Tenant Fees Bill

Committee (2nd Day)

4.22 pm

Schedule 1: Permitted payments

Amendment 27

Moved by ***Baroness Grender***

27: Schedule 1, page 25, line 8, leave out from "exceeds" to end of line 13 and insert "£50, the amount of the excess is a prohibited payment."

Baroness Grender (LD): My Lords, I shall speak also to Amendments 29 and 30 and in support of Amendment 28, tabled by the noble Lord, Lord Kennedy. I thank the Minister for all the meetings with him and his officials and for the meeting today on guidance. I look forward to continuing to meet to make sure that we do what the noble Baroness, Lady Williams, described and make sure that the Bill is beautifully polished before it receives Royal Assent.

Amendment 27 would cap the change of sharer charge to £50 and Amendment 29 would avoid exorbitant charges to end a tenancy. Amendment 30 would avoid what I hope is an unintended consequence, which is that paragraph 6 of Schedule 1 allows landlords to insist on all the rent for the remainder of the fixed term. It aims to make the provision a little more tenant friendly by limiting the tenant's liability for the rent to the point at which the property is relet.

Regarding a change of tenant, if a sharer moves out, it is normally their and the remaining housemates' responsibility to find a replacement. The alternatives are for the remaining housemates to pay rent on an empty bedroom or for them all to move out, with the associated costs. Currently the fees associated with changing a tenant are comparable to those of starting a new tenancy. Indeed, Generation Rent recorded an average of £248 in its research. This reflects the limited options available to tenants rather than the actual costs involved. As the tenants tend to do all the marketing though sites such as Gumtree and SpareRoom, the landlord's costs are limited to the referencing process. Even then, the existing tenants have an incentive to find a new housemate who will pass the referencing process and whom they can rely on to pay a regular rent.

If there is to be a fee, it should reflect the landlord's or the agent's reduced cost in that circumstance. The Bill as drafted says that the charge is capped at £50, but it still allows landlords to charge more than that—so it is not really a cap but more of a floor. The possibility remains that landlords would charge as much as they could. A true cap would not permit fees above a specified sum.

I turn to Amendments 29 and 30. People will always need to move unexpectedly in circumstances where their personal or professional life changes. The Government have recognised this through their proposed longer-tenancies model, which we welcome, giving tenants the flexibility to exit the tenancy without penalty before the fixed period ends. However, paragraph 6 of Schedule 1 allows landlords to insist on all the rent for the rest of the fixed term, which is unnecessary if they are able to relet the property, has the potential to create financial hardship for tenants and could even see some people trapped in difficult relationships. The amendments would limit the tenant's liability for the rent until the point when the property was relet, which should take place within a reasonable timeframe. I very much appreciate that there is a little more clarity in terms of the draft guidance at the moment, but that is of course draft guidance and I am seeking to probe what can be in the Bill regarding this issue.

Regarding costs at the end of a tenancy, no one makes the decision to move lightly. To end your tenancy early would mean that you face significant changes in your personal or professional life. The Bill should therefore limit the cost of this where possible. As it currently stands, my understanding is that it would appear to make a tenant leaving a tenancy liable for the rent for the remainder of the fixed term, plus the costs of remarketing the property. A tenant moving out could pay all of this and the landlord could still get a new tenant within a month of the tenancy. The landlord therefore could possibly receive several months of double rent through sheer luck. To make it more of a level playing field and limit the departing tenant's liability, the Bill should apply a reasonableness test. As soon as the property has a new tenant, the former tenant's liability should end, and the landlord should have an obligation to deal reasonably with any request to leave. I beg to move.

Lord Kennedy of Southwark (Lab Co-op): My Lords, as this is my first contribution to the proceedings, I draw the attention of the House to my relevant interest as a vice-president of the Local Government Association.

This group of amendments covers Schedule 1 to the Bill, specifically around issues of changing or terminating the tenancy agreement. Amendment 28 is in my name and I have also put my name to Amendments 29 and 30, while I support the intention behind Amendment 27 in the names of the noble Baronesses, Lady Grender and Lady Thornhill. Amendment 27 would cap the amount that could be charged for a change in tenancy to £50, and that seems very reasonable. As the noble Baroness, Lady Grender, said, otherwise the £50 becomes a floor rather than a ceiling. The problem with the clause as worded is that it leaves the way open for a large amount to be charged. I think that that is unfair and not reasonable.

My Amendment 28 seeks to ensure that in a situation where the only change is that of a tenant, a charge cannot be made. I hope that the Government will agree that there is no loss of rental income if you are just replacing one name with another, and to allow a charge to be made in that situation seems very unfair.

Amendment 29 would require the landlord to react reasonably to any request for an early exit, including when taking steps to relet the property. If they do not do so, this payment would be a prohibited payment, for all the reasons that we have heard in this short debate. Amendment 30 seeks to provide better clarification than is provided by the schedule as presently worded.

4.30 pm

The Earl of Lytton (CB): My Lords, I rise to speak to Amendment 29. I entirely understand the points made by the noble Baroness, Lady Grender. A number of individuals collectively forming "tenant" particularly occurs in London and other metropolitan areas. Those of us who inhabit the countryside tend to have single tenants in a building, rather than a system of sharing.

I have absolutely no problem with the idea of ensuring that landlords are not overcharging beyond reasonable cost. My concern is that this is beginning to look like micromanagement of the letting process. The question is, "reasonable" by whose standards? For instance, a group of tenants—perhaps four of them—decides to take on a property on a two-year

term. Let us suppose they collectively decide that they want to finish the tenancy after one year and want to move out in the run-up to Christmas, which is known to be a difficult time for the letting market because things tend not to get going again until into the new year. By whose standards would "reasonableness" be measured? Would it be by reference to the tenants, who, after all, have agreed to take on the property on a two-year basis and wish to terminate after one year; or by reference to the reasonable costs the landlord would run up in that process? All sorts of things hang on that—for example, rent voids and running costs such as heating and security while the place is unoccupied, were that to happen.

I appreciate that things get more difficult when you have a number of tenants and one wants to go, because that creates a dynamic which, as the noble Baroness rightly said—and has said previously—affects the other occupants. It would be really undesirable if landlords responded by simply deciding not to agree to early termination. That would be the worst of all possible worlds. As a private sector landlord, I have never used that other than when someone wants to terminate at short notice and before the property can reasonably be re-let. That tends not to happen in the high-pressure circumstances of inner-London shared residential, but with a freestanding property in the countryside, where things are quite different. The Bill will apply across the nation.

I counsel a little caution here, and perhaps the Minister would care to comment. If the culture creeps in whereby no early termination of a lease is possible or will be agreed, we will be back here later with another measure to say that landlords must provide that facility. I do not see this as necessarily being the endpoint, and I should like to tease out that issue to give some closure on what we are doing with residential landlord and tenant. Hopefully, the situation can stabilise so that everyone will know where they are for, at any rate, the reasonably foreseeable future.

Lord Best (CB): My Lords, it is worth underlining that this part of the Bill is an important measure to prevent what is a pretty common abuse, which is, when there is a change of tenancy, at little or no cost to the landlord, the agents involved making serious amounts of money, which the Bill would prevent them doing in future.

At Second Reading, I cited an illustration from my last intern, whose sister was taking her place in a flat share of three. Each of them, on entering the flat, needed to pay the agent a fee of £275 for the privilege of signing up. When one of the occupiers left and was replaced by her sister, the outgoing one was charged £250 for termination of the tenancy agreement and her sister, who was moving in on the same day with her packed suitcase, was charged £275 as a new tenant. The agents got £525 for this transfer from one sister to another. The landlord received exactly the same amount of rent, because there was no discontinuity in the rent paid.

In such circumstances, paying £50 as a takeover fee for the privilege of signing a photocopied document when one person moves in in place of another sounds quite enough. The guidance may be the best place to put this, but the test must be whether the landlord has suffered a loss of rent. If there is no such loss, surely the £50 should kick in as the maximum which the agents can take. One can understand the need to compensate if there has been a loss of rent because of a gap when one tenant has moved out and no new one has arrived. Otherwise, £50 sounds like a maximum not a floor.

Lord Young of Cookham (Con): My Lords, I am grateful to all noble Lords who have taken part in this short debate relating to the charges that can be imposed for variation, assignment, novation or termination of a tenancy where these are requested by the tenant. We have previously set out that it is not fair to ask landlords and agents to pay reasonable fees where these arise from the action or request of a tenant. Following pre-legislative scrutiny, we clarified that both early termination and change of sharer costs were permitted, so long as these were fair. As a result, the Bill provides that a landlord or agent can charge a tenant in these circumstances, but such fees are capped at £50—one-tenth of the fee charged in the case cited by the noble Lord, Lord Best—or reasonably incurred costs if higher.

Amendments 27 and 28 seek to impose a hard cap on the amount that can be charged and to prohibit this charge in relation to a change of sharer. When considering how to manage these amendments, we share the caution mentioned by the noble Earl, Lord Lytton. We want to ensure that landlords and tenants can agree reasonable requests to vary a tenancy. Although we do not expect this charge to exceed £50, it is only fair that, where it does so, landlords and agents are able to recover their reasonably incurred costs. For example, if a landlord is required to undertake a search, conduct reference checks and amend tenancy deposit protection arrangements for a new tenant with no help whatever from the outgoing tenant, those costs may be higher than normal. Landlords and agents will need to be able to demonstrate, if challenged, that their costs are reasonable. They will have to justify them and, if they cannot do so, trading standards officers may have a case to investigate.

Crucially—this point was mentioned by the noble Earl, Lord Lytton—we do not want to create a situation where landlords are reluctant to agree to a change of sharer because they do not believe they can recover their reasonable, justifiable costs. This would not help tenants, who would be required to break their contract if they wanted to leave, nor would it help those hoping to move in to replace the sharer moving out. This matter was discussed during pre-legislative scrutiny and tenant representative bodies recognised the need for the ability to charge in such circumstances, provided that the risk of abuse was mitigated, which we have done by imposing a cap of £50 and requiring any additional costs to be reasonable. In its report, the Housing, Communities and Local Government Committee said that:

"We welcome the Government's intention to clarify the legislation and to permit charges related to a change of sharer where these are requested by the tenant".

Amendments 29 and 30 would place an obligation on the landlord to take reasonable steps to re-let the property where they have agreed to terminate a tenancy

[Lord Young of Cookham]
early. These amendments would also limit the loss a landlord can recover to the period reasonably required to find a new tenant, even if he was unable to find one.

An assured shorthold tenancy is a contract where a tenant commits to pay the landlord rent for a given period of time, the fixed term. The landlord is entitled to the rent for the entirety of that term. If the tenant seeks to leave the tenancy before the end of it, then they would need to seek agreement of the landlord to do so. Where possible, landlords should agree to this, and can ask the existing tenant to find a suitable replacement. We encourage them to do so through our guidance.

Turning to the amendment introduced by the noble Baroness, Lady Grender, paragraph 6(2) of Schedule 1 says:

"But if the amount of the payment exceeds the loss suffered by the landlord as a result of the termination of the tenancy, the amount of the excess is a prohibited payment".

In other words, the landlord can only recover any loss they incur in permitting a tenant to leave early. They cannot double-charge for the same period of time. They are entitled to recover only the sum of any rental payments which would not be met by the start of a new tenancy. If a replacement tenant is found and there are no void periods, we would expect no early termination charge to be levied to the outgoing tenant. This has been reiterated in the consumer guidance for tenants and landlords, and we welcome the constructive comments made by the noble Baroness on our draft guidance.

However, looking at the amendment, we cannot necessarily expect landlords to know how long would reasonably be required to find a replacement tenant. This depends on several factors, including the rental market in the local area. Therefore, we expect landlords and tenants to consider on a case-by-case basis the likely void period and any reasonable charge for early termination. Again, we do not want to harm tenants by disincentivising landlords agreeing to a reasonable request to end a tenancy early or to a variation of a tenancy. That is not what this Bill is seeking to achieve, but there is a real risk of this if the amendments are agreed to. On that basis, I hope that the noble Baroness will withdraw her amendment.

Baroness Grender: My Lords, I thank noble Lords who have spoken about these amendments. When the noble Earl, Lord Lytton, talks about how one defines "reasonable", a good look through the guidance will drive him in the direction of asking that question quite a lot, because quite a lot hinges on "reasonable" on both sides of the argument. The idea that we do not expect landlords to charge more than £50, rather than that they should not charge more than £50, is the issue here. I am trying to ensure a proper balance between tenant and landlord when a tenancy ends. I will seek to discover if there is a better way of drafting my amendment for Report or if there is a better way of clarifying this in guidance, and with that in mind I beg leave to withdraw the amendment.

Amendment 27 withdrawn.

Amendments 28 to 30 not moved.

Amendment 31

Moved by ***Lord Kennedy of Southwark***

31: Schedule 1, page 26, line 3, at end insert—

"( ) In the case of a payment to a landlord, such a payment is a permitted payment only if the landlord is required by the tenancy agreement to review the contract or contracts annually and make arrangements to switch tariffs or suppliers if this would be beneficial to the tenant."

Lord Kennedy of Southwark: My Lords, Amendments 31 and 32 in my name seek to add two new sub-paragraphs to paragraph 8 of Schedule 1. The schedule is concerned with permitted payments and paragraph 8 is concerned with payments in respect of utilities. Amendment 31 seeks to place a requirement on the landlord to review the various utility contracts and switch tariffs or suppliers to one that would be the most beneficial to the tenant.

We are all aware that the utility market is competitive and that there is a whole range of offers and deals. If the landlord or letting agent is able to make a charge for utilities, it is not unreasonable to require them to do something about getting the best deal and the best value for the benefit of their tenant. Looking at the market to see what is available is not too onerous a task and a reasonable obligation.

Amendment 32 proposes that the amount charged to the tenant must be the reasonable costs incurred, and any excess would be a prohibited payment. This amendment seeks to close a potential loophole by restricting what can be charged to reasonable costs incurred. I beg to move.

4.45 pm

Lord Shipley (LD): My Lords, I support the noble Lord, Lord Kennedy, in these two amendments, which would help to tighten up the Bill. As he said, paragraph 8 of Schedule 1 is very open-ended, and he referred to a loophole potentially lying within it as it is worded. I think his amendment will tighten it and will do so partly because it is in the interests of the tenant, who may secure a cash saving in the amount they pay for a utility even though they may have to pay a fee to achieve it. I therefore hope the Minister might be willing to look at that carefully. As paragraph 8 of Schedule 1 is currently drafted, it simply refers to the fact that the tenancy agreement may require the payment to be made, but it does not define why it would have to be made. That is why the amendment in the name of the noble Lord, Lord Kennedy, is so helpful.

The Earl of Lytton: My Lords, I have great sympathy with this amendment but I would have more were it possible to ensure that utility providers themselves acted reasonably. While I will not name any names, one particular well-known supplier of electricity, with what is generally regarded as an extremely cheap and competitive tariff, has gained for itself an extremely poor reputation because of what happens when one wants to change to another supplier. Indeed, so tortuous are its processes—of which I have had direct experience—that many landlords specify in their agreements that the tenant may not change to that supplier, and with good reason.

I had a situation myself concerning the commercial supply of electricity to an agricultural building. My wife and I were faced with a demand from this company for over £30,000 for a period of some 15 months, when the only thing that happens in this shed is that for a period of about three weeks a series of low-wattage lights are used to assist with lambing, and for a period of about 10 days in another part of the year they are used for a sheep-shearing operation. By no stretch of the imagination could the fee have totalled that amount. When, finally, the company rang up my wife and said, "We're going to take you to court", her answer was, "Make my day". It was not until the matter was referred to its lawyers that it became apparent that there had been a complete muck-up. It had simply not got an initial reading and was trying to steamroller that payment through in the hope that we would crack and pay it. I know that other landlords in the private rented sector are sometimes faced with the same situation.

These people run up the most appalling costs. While I have great sympathy that this should not be laid solely at the door of tenants, it is none the less an occupational hazard that afflicts both parties to this arrangement. That is the only reason why I have a reservation about the amendment in the name of the noble Lord, Lord Kennedy—because there is another dimension to this, where certain suppliers are acting utterly unreasonably and unconscionably.

Lord Young of Cookham: My Lords, the Countess of Lytton is clearly even more formidable than the noble Earl.

I too have a lot of sympathy with these amendments, but I believe there are already sufficient existing protections—not in this Bill but in other legislation—which address the concerns raised by noble Lords. Landlords who resell energy to their tenants for domestic use are governed by maximum resale price provisions set by Ofgem under Section 44 of the Electricity Act 1989 and Section 37 of the Gas Act 1986. This prevents landlords from overcharging tenants; they cannot charge the tenant more than the landlord has paid. If the landlord does overcharge, the tenant is entitled to have the charge lowered and overpayments refunded. The tenant can also bring a claim against their landlord to the small claims court for the amount that has been overcharged plus interest. In addition, on other utilities, landlords are prohibited from overcharging tenants for the resale of water under the maximum resale price provisions set out in the Water Resale Order 2006. If the landlord does overcharge, the tenant can take legal action through the small claims court to recover any overpayment and the tenant is eligible to recover interest at a rate of twice the average base interest rate of the Bank of England for the period they have been overcharged.

Amendment 31 would specifically require landlords to review any contract held for the provision of utilities and to consider switching provider if this would be beneficial to the tenant. In the majority of cases, tenants will be responsible for paying their own energy bills; they will pay them direct to the supplier and not to the landlord. So in most cases, tenants will already have the right to choose their own supplier. The tenancy agreement will set out who is responsible for paying these charges. Where the landlord is responsible for paying the bills, they may seek to recover these costs through the rent or directly from the tenant but, as I have already explained, they are already prevented from overcharging for this for energy and water.

Through, for example, the *How to Rent* guide, we encourage tenants to speak to their landlord or agent if they think their utilities payments are too high or if they want to request a change of supplier. In many cases, it may be in the interest of the landlord to move to a more competitive supplier as that may help to market their property in the future.

In addition, the Government's Domestic Gas and Electricity (Tariff Cap) Bill received Royal Assent on 19 July. This requires Ofgem to implement a price cap on standard variable and default tariffs, which will guarantee protection for the 11 million households currently on the highest energy tariffs.

Against that background, I hope the noble Lord will feel able to withdraw his amendments.

Lord Kennedy of Southwark: I thank all noble Lords who have spoken in this short debate, and particularly the noble Lord, Lord Young of Cookham, for his very helpful response. I will withdraw my amendment shortly, but I would like to check something. He helpfully set out the legislation which will prevent people from being overcharged by landlords, but I cannot recall off the top of my head whether this will be clearly laid out in the guidance so that people will be very much aware of their rights and obligations. That would go some way to allaying the fears that are behind these amendments.

Lord Young of Cookham: Before the noble Lord sits down I would like to say that that is a very helpful suggestion. We will indeed look at the guidance to see whether that suggestion can be incorporated.

Lord Kennedy of Southwark: In that case, I am happy to withdraw the amendment.

Amendment 31 withdrawn.

Amendment 32 not moved.

Amendment 32A

Moved by ***Baroness Gardner of Parkes***

32A: Schedule 1, page 26, line 29, at end insert—

"Payment in respect of identity and immigration status checks

11 (1) A payment for or in connection with the costs associated with carrying out identity and immigration status checks on the tenant is a permitted payment.

(2) But, in the case of a payment to a landlord, if the amount of the payment exceeds the reasonable costs incurred by the landlord for or in connection with the provision of the identity and immigration status checks, the amount of excess is a prohibited payment.

(3) In sub-paragraph (1), a check on the immigration status of the tenant means the conduct of checks by the landlord pursuant to ensuring compliance with section 22 of the Immigration Act 2014."

Baroness Gardner of Parkes (Con): My Lords, I have moved this amendment simply because it is essential for people to know what they can be charged and what they cannot. The noble Lord, Lord Kennedy, commented at the end of his speech on just that fact: that people need to know. If something was in the guidance that would indeed be very valuable, but at the present time people have no idea what they will be charged.

A lot of people have no idea that they have to prove they have a right to be in this country. I am sure most of us remember the embarrassing start of this whole problem, when a very impressive member of the Government at the time found that she had not checked on someone she employed. That is where all this started. As I understand the situation, there is now a fixed amount that people would be asked to pay for such an official designation of their nationality and the rights they have here. People are often totally unaware of this.

I understand that overcharging should not take place—I am not for a minute suggesting that—but people will need to know that, to rent a property, they have to prove that they are an ordinary person entitled to live here and not limited in what tenancy they can undertake. That is the purpose of this amendment. I claim no expertise in the wording of it, as the Public Bill Office very kindly helped me. I would be interested if people have comments on that. The principle behind it is to enable people to know what is and is not legitimate. Whether it is the agent, the prospective tenant or anyone else who provides that necessary information, it costs. You do not get it for nothing; that is the problem. I feel that the Bill is rather restrictive at the moment. I beg to move.

The Earl of Lytton: My Lords, the noble Baroness has made a valid point. I recall some years ago having to check the identity of an applicant for a business tenancy, who produced a passport from a Commonwealth country which was in date but did not contain the crucial words in the out-of-date one, also presented, which described the bearer as having the right to remain in the United Kingdom. I have always felt very nervous about trying to sift through this, because of the penalties that can be visited on one professionally—in this case, it would have been on a client landlord—in connection with letting. Getting these things right and carrying out identity and immigration status checks cannot be left to the tea boy. They need to be done by somebody who knows what they are doing and can take responsibility.

This takes us back to the question of where the two-way street between landlord and prospective tenant should lie and whether it is right that the landlord provides a property that he has warranted as clean and tidy, fit for purpose, not unsafe and so on, and the tenant is responsible for the cost of verifying their bona fides, as the noble Baroness says in her amendment. It seems that that is fairly unarguable, particularly in London where there are people of so many different nationalities. A further issue that needs to be addressed, assuming that eventually this country will leave the European Union, is European citizens' right to remain here. The noble Baroness raises a valuable point, and I look forward to hearing what the Minister says.

Lord Best: My Lords, I take an opposing view. I am sad to do so on the noble Baroness's amendment, since she does so much good work in this sector. I declare my interest as a co-chair of the Home Office's right to rent consultative panel, which looks at the right to rent that people require before taking up a letting.

For sure, somebody has to pay for the identity and immigration status check which now has to happen. The question is whether tenants should pay the agent for this—they would do so whether British citizens or not—or whether the landlord should ultimately expect to pay, getting their agent to do it on their behalf. It is one of the functions of an agent to check whether the tenant is an illegal immigrant or has the right to be in this country. That task is for an agent to perform, just as they need to make sure that the landlord's property has a gas safety certificate or an energy performance certificate. This is part of the process that an agent is paid for. There is a fundamental principle that the landlord is ultimately responsible for the letting, along with the agent who acts for that landlord, and they and not the tenant should be the ones who pay. In the same way, the tenant does not have to pay for their own reference—that is something that the agent takes up. This is part of the process taken on by an agent and it justifies the fees that agents charge their landlords. What else do we want agents to do but look after the landlord's interests in cases of this kind?

Therefore, I think that the Government have this right. This is not an area where the tenant should be asked to make a supplementary payment to the agent, and the agent may well charge the landlord a good deal already. As the Bill spells out, it is a matter on which no fee should be payable by the tenant.

5 pm

Lord Shipley: My Lords, I agree with the noble Lord, Lord Best. It is important that we are able to discuss this matter through the amendment moved by the noble Baroness, Lady Gardner of Parkes, but there is an issue of principle here, which is that it should be a charge not on the tenant but on the landlord and the letting agent, who is not mentioned in the amendment.

The principle is that, if a service is contracted for formally between a tenant and a landlord, a payment can be required. However, that should not be required for either reference checks or identity checks, where the responsibility lies with the landlord or the letting agent. The basic problem here is that the Bill attempts to eliminate up-front tenants' fees but the amendment might reinstate some tenants' fees that would not be justified as a charge on the tenant.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): I thank noble Lords very much and particularly my noble friend Lady Gardner for bringing forward this amendment. She does much work in this area.

I cannot accept the amendment because, as the noble Lord, Lord Shipley, has just indicated, it would fundamentally undermine the policy intention of the

Bill, which is to ban letting fees paid by tenants and to ensure that the party that contracts a service pays for that service.

This issue was dealt with under Section 22 of the Immigration Act 2014. It was very clear then that this was to be a liability for the landlord, not the tenant, to discharge. Therefore, the amendment would effectively drive a coach and horses through the intention of that legislation. I am not sure what the collective term for a coach and horses would be. It would probably be a stampede or possibly a cavalcade of coaches and horses, but it is clearly not the intention.

Despite the very good arguments put forward by my noble friend and the noble Earl, Lord Lytton, on this point, I very much agree with the noble Lords, Lord Best and Lord Shipley. A landlord should be responsible for the costs associated with these checks. As I have indicated, they are required under the Immigration Act to undertake these checks to verify that a tenant has the legal right to reside in the United Kingdom before progressing with any tenancy agreement.

The Home Office produces detailed guidance for landlords and agents carrying out these checks, and I will certainly ensure that it is circulated to my noble friend and the noble Earl, and indeed to everybody who has participated in the debate.

Although the onus is on the landlord to verify a tenant's right to rent, we have made provision in the Bill that, where a holding deposit is sought and a tenant fails a right-to-rent check, landlords and agents will not be unfairly penalised if the tenant is at fault. I hope that that gives some comfort to my noble friend and the noble Earl. With those assurances, I respectfully ask my noble friend to withdraw her amendment.

Baroness Gardner of Parkes: My Lords, I was very interested in the comments that were made and I will certainly take them on board. I heard people talking about how easy it is to get the right of abode and that is exactly what I have had here for 40 years. Every time my passport comes up for renewal, I have to send in the original documents, which after 40 years are beginning to disintegrate. Why can the Home Office not keep a record of these things? I have only one marriage certificate; it is turning into a bit of old rubbish now because it is getting so worn out although I have always valued it.

I am sure noble Lords know about the Member of your Lordships' House who made the mistake of employing someone who had no right to be in this country. It is not a light remark to say, "They will just produce that". You have to reproduce things every time you get a new passport and, as I said, the original documents are insisted on. It is a pretty major thing and I will face it again next year.

The position in this House is that you can be here provided that you are deemed domiciled; you have to prove that you are paying full taxes, which is one of the big factors. But a lot of people may not be aware that you have to have any proof of who you are at all in anything. If the time comes when people want to rent a place and are asked, "How can you prove that you are entitled to be here?", they will not have the documentation, whereas they would if that requirement were set out in the guidance.

The Minister said that this issue is included in immigration law, but it needs to be mentioned in some way in this legislation, which affects people's lives on an everyday basis. When they want somewhere to live and find a place they like, they do not suddenly want to lose it because it takes so long to get the correct papers. That should be in a guidance document prior to wishing to rent something. It should not be part of the rental process.

Doing this yourself, as has been suggested, presumably means meeting the costs yourself as well. This whole thing seems to be a little muddled. I do not accept the view of the noble Lord, Lord Best, that we should not burden ordinary people with these things—perhaps I am wrong in asserting that—when they are burdened by them every day in their own living standards. But I appreciate the Minister has given a good answer and I beg leave to withdraw the amendment.

Amendment 32A withdrawn.

Schedule 1 agreed.

Schedule 2: Treatment of holding deposit

Amendment 33

Moved by ***Lord Kennedy of Southwark***

33: Schedule 2, page 27, line 27, leave out paragraph 7

Lord Kennedy of Southwark: My Lords, all the amendments in this group are in my name except Amendment 37, although I support that amendment as well. They seek to amend Schedule 2, which concerns holding deposits. Amendment 33 would remove from the Bill the ability for a holding deposit to be withheld if the prospective tenant is prohibited from being granted a tenancy due to the restrictions of the Immigration Act and has failed the right to rent check. It is of course a probing amendment and I look forward to the Government setting out their case to justify this part of the Bill.

Amendment 34 would strengthen paragraph 8 of Schedule 2 by adding the word "knowingly". That is a reasonable bar to have to reach for a deposit to be lost. Otherwise, it is unfair on the prospective tenant. If you knowingly provide false and misleading information, fine, but if it is unintentional, it seems harsh that the deposit can be withheld.

Amendment 35 would allow a tenant to decide not to proceed with a tenancy by notifying the landlord or letting agent before the deadline. It gives the tenant a reasonable period in which they can change their mind and not lose the deposit. I hope the Government can respond positively to that amendment.

Amendment 36 seeks to put into the Bill a requirement, where a holding deposit is withheld, that the landlord or agent say why they are doing so; that they set out the information they believe is false or misleading and which has been relied upon to withhold the deposit; and that they explain how the tenant can challenge the decision, including how to get advice on doing so, to ensure that the decision is sound. Again, I hope that

[Lord Kennedy of Southwark]
the Government can respond to this amendment because people should be able to understand why a decision has been made and be clear on whether there is anything they can do. If your deposit is withheld, it must be right that you be told why and that the reasons be set out. If you do not like the decision, you should be told where you can go to get further advice and challenge it.

The final amendment in the group, Amendment 37, has been tabled by the noble Baronesses, Lady Grender and Lady Thornhill. It looks sensible and I look forward to hearing the explanation behind it. I beg to move.

Baroness Thornhill (LD): My Lords, I rise to speak briefly to the final amendment in this group, Amendment 37. I thank the noble Lord, Lord Kennedy, for his remarks and I should say that we support his amendments.

If the Bill is rightly concerned with redressing the balance of power a little more towards tenants, this modest amendment would surely do that. Its purpose is to ensure that on payment of a holding deposit, which can sometimes be a significant amount of money, the tenant actually gets to see the tenancy agreement and therefore knows the terms of the contract that they will be asked to sign and abide by. The real question is whether there is a good reason for tenants not automatically and always being given this right. I am at a loss to understand this. In life, if we buy a product or a service, we see all the terms and conditions. We tick the "I agree" box online, while on paper we sign on the dotted line—although, like me, I suspect that we do not actually read all of the small print. The situation we are discussing would not arise in any other consumer transaction, so the amendment seeks to ensure that the same applies when people rent their home.

It is impossible for tenants to spot and negotiate out of the tenancy agreement any unfair terms if they have not received it before signing or moving into the property, the more so as they might ultimately incur default fees. Even if they receive the agreement in good time, they do not have much power to negotiate the terms because they stand to lose their holding deposit if they walk away. The ability of tenants to negotiate unfair terms out of a contract would be made just a little easier through the provision in this amendment.

It is equally important that the Bill makes it clear that the draft tenancy agreement must meet a certain universal standard. Thus the amendment refers to the Consumer Rights Act 2015, the legislation that would form the basis for the standard. The rationale is that if the tenancy agreement contained unfair terms, the tenant could ask for those to be removed. If the landlord refused to remove them, the tenant could pull out of the tenancy and claim the holding deposit back on the basis that the draft agreement did not comply with the Consumer Rights Act.

Existing government guidelines for the Act on what are and are not "unfair terms" are quite clear. They talk about transferring risks to consumers—in this case the tenant—that cannot be controlled. The tenancy agreement might be the first time the tenant gets to see what default fees the landlord is setting, and sometimes, even more significantly—and perhaps horrifically—it does not specify the level of default fees they might subsequently wish to apply. Efforts elsewhere in the Bill to define default fees more tightly might help to address these concerns, but surely it is both fair and reasonable for tenants to have some ability to negotiate the terms of their contract before signing it.

5.15 pm

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords for their contributions and the noble Lord, Lord Kennedy, for moving his amendment.

This set of amendments deals with the treatment of holding deposits under Schedule 2 to the Bill. As I have set out on previous occasions, the purpose of a holding deposit is to enable both the landlord and the tenant to demonstrate their commitment to entering into a tenancy agreement while reference checks are undertaken. It is important that there is earnest from both parties to the agreement. As I have said on a previous occasion, it must be wrong for a landlord to have more than one agreement with a tenant; there can be only one on both sides. So that we have a case of what is sauce for the goose is sauce for the gander, we have to be careful in looking at the amendments.

Amendments 33 to 35, in the name of the noble Lord, Lord Kennedy, seek to make changes to the circumstances in which landlords and agents can retain a holding deposit. From the outset of this policy, landlords and letting agents have expressed concern that tenants speculating on multiple properties might be a side-effect of the ban. That is why we are allowing a landlord to ask for a holding deposit so that tenants can demonstrate that they are sincere in their application—as I am sure they are, in the vast majority of cases. It is a pledge from the tenant to a given property. This mitigates the risk of landlords and agents being out of pocket if a tenant registers an interest, only to withdraw if something better comes along. I therefore cannot agree to Amendment 35.

We also want to ensure that landlords do not take an overly cautious approach and preselect tenants that they perceive as the most likely to pass a reference check. Permitting landlords to retain holding deposits in circumstances where a tenant fails a right-to-rent check—which I referred to in discussion on the previous amendment, moved by my noble friend Lady Gardner of Parkes—is a key mitigation against such behaviour. I therefore cannot accept Amendment 33.

Amendment 34 suggests that a landlord or agent should refund the holding deposit only if the tenant "knowingly" provides false or misleading information. Again, I am afraid I cannot accept such an amendment, although I appreciate the spirit in which it was moved. Requiring the landlord to refund the holding deposit in these situations would be near-impossible because the landlord is unlikely to have the necessary evidence to prove whether a tenant has done something knowingly. It would simply be one party's word against the other. Given that the landlord is liable for a significant financial fine, we believe that the inclusion of a "knowingly" test is more likely to lead to them taking

a risk-averse approach, which would not help tenants. I firmly believe that the approach set out in the Bill with respect to holding deposits is the fairest to both landlords and tenants.

As I have said, I recognise the desire expressed by noble Lords for greater transparency regarding the treatment of holding deposits; I have previously indicated that I will look at that. I understand the rationale behind Amendments 36 and 37. Without a commitment on where we will end up, I am happy to look at this issue ahead of Report. I appreciate the valuable points made during the debate on these amendments and the importance for tenants of understanding how their holding deposit is handled and why it may not be returned. That seems entirely fair. I have listened to noble Lords' concerns on these issues and will be happy to return to them on Report. I listened to the point made by the noble Lord, Lord Kennedy, and the points made by the noble Baroness, Lady Thornhill, on Amendment 37 in relation to sight of the agreement ahead of entering into it. Again, that seems to have some strength in it and I am happy to look at it.

I should say that we are making great progress; I believe that noble Lords who have looked at the guidance notes will acknowledge that. The notes, which will set out the procedures for, and the rights and obligations of, landlords and agents will provide great assistance in this area. That will support tenants in understanding how to seek appropriate redress if they are dissatisfied, including through provision of draft letters to help tenants raise concerns with their landlords and agents around the treatment of their holding deposit. As I have indicated, I am very happy that noble Lords from around the Committee should engage in this process with officials to help us to clarify points made in the guidance notes to improve them in the interests of landlords and tenants. I acknowledge that we have made some important strides in the process of making sure it is much more lucid and transparent, and less riddled with jargon.

Landlords and agents should give tenants sufficient time to understand the terms of any agreement before signing. I am clear on that. That is why the period before the deadline for agreement is there; it is intended to allow that. I will also ensure that a link to the consumer guidance on the Bill is included in the *How to Rent* guide. That will also help. Landlords are of course required by law to give their tenants these guides to help raise awareness. I hope those assurances enable the noble Lord and the noble Baroness not to press their amendments.

Lord Kennedy of Southwark: My Lords, I thank the noble Lord, Lord Bourne, for that thoughtful and helpful response to this short debate. I will happily withdraw my amendment shortly. Of my four amendments the most important was Amendment 36, which the noble Lord responded to in detail. I was pleased that he did so, because it is only right and fair that if your deposit is withheld you should understand why and how you can challenge that. I will certainly look at that and I hope to bring something back on Report. I thank him very much for that.

I also listened very carefully to the noble Baroness, Lady Thornhill. I thought she made a very strong case for her amendment. Again, I am very pleased that the noble Lord will look at that. I hope we will have something on Report that we can all agree on. At this stage, I am very happy to withdraw my amendment.

Amendment 33 withdrawn.

Amendments 34 to 37 not moved.

Schedules 2 and 3 agreed.

House resumed.

Bill reported without amendment.

Brexit: Negotiations

Motion to Take Note

5.23 pm

Moved by ***Lord Callanan***

That this House takes note of the statement by the Prime Minister repeated by the Lord Privy Seal on 15 November relating to the European Union exit negotiations.

Baroness Goldie (Con): My Lords, this will be an extremely interesting and important debate. It is a long one and time constraints are very restrictive. I ask your Lordships please to observe the speaking limit for Back-Benchers of four minutes. If the Clock shows four and the noble Lord or noble Baroness shows no sign of sitting down, I may have to attend to that physical exercise for him or her.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): I am sure that nobody wishes to incur the wrath of my noble friend Lady Goldie.

My Lords, as the Prime Minister set out in her Statement last week, we have now agreed the provisional terms of our exit from the European Union, set out in the draft withdrawal agreement. We have also agreed the broad terms of our future relationship, as set out in the outline political declaration, also published last week. Both the UK and the EU are now preparing in earnest for a special European Council taking place this Sunday 25 November, where we hope to be able to agree the full political declaration on our future relationship.

Before I speak further about the draft withdrawal agreement, I am sure that noble Lords will have noted the appointments last Friday of my honourable friend the Member for North East Cambridgeshire as Secretary of State for Exiting the European Union and of my honourable friend the Member for Spelthorne as Parliamentary Under-Secretary of State in the Department for Exiting the European Union. I look forward to working with both colleagues as the whole Government deliver on a Brexit deal that honours the result of the referendum and takes the country from strength to strength, but I must add that both the UK and the EU have reiterated, time and again, that nothing is agreed until everything is agreed. To that end, we will not sign a withdrawal agreement without a full political declaration

[Lord Callanan]
and we will ensure that Parliament can make an informed decision and that business and citizens have a clear understanding of our future relationship.

What we agreed last week is a draft treaty that means that we will leave the EU in a smooth and orderly way on 29 March 2019 and sets the framework for a future relationship that delivers in our national interest. It takes back control of our borders, our laws and our money; it protects jobs, security and the integrity of the United Kingdom; and it delivers in ways that many said could simply not be done. The outline political declaration sets out an arrangement that is superior for our country than options such as Canada-plus, Norway-minus or even Norway-plus—a more ambitious free trade agreement than the EU has agreed with any other country. On security co-operation, the outline political declaration sets out a breadth and depth of co-operation also beyond anything the EU has agreed with any other country.

I shall now set out the details of the agreement. First, the full legal text of the withdrawal agreement has now been agreed in principle. It sets out the terms on which the UK will leave the EU on 29 March 2019. We have secured the rights of the more than 3 million EU citizens living in the UK and around 1 million UK nationals living in other countries in the EU. We have agreed a time-limited implementation period that ensures that businesses have to plan for only one set of changes. We have agreed protocols to ensure that Gibraltar and the sovereign base areas in Cyprus are covered by the withdrawal agreement and we have agreed a fair financial settlement, estimated to be far lower than the figures many mentioned at the start of these negotiations.

As the Prime Minister has made clear since the start, we have been committed to ensuring that our exit from the EU addresses the issue of the border between Northern Ireland and Ireland. We believe that this issue can best be solved through our future relationship with the EU, but the withdrawal agreement provides an insurance policy, meaning that should the new relationship not be ready in time for the end of the implementation period, there will still be no hard border between Ireland and Northern Ireland. As noble Lords will know, the original suggestion from the EU was not acceptable, as it would have resulted in a customs border in the Irish Sea and cast doubt upon the integrity of our United Kingdom, so last month the Prime Minister set out for the House the four steps we needed to take. This is what we have now done, and the EU has made a number of concessions towards our position.

First, the EU proposal for a Northern Ireland-only customs solution has been dropped and replaced with a new UK-wide temporary customs arrangement that protects the integrity of our precious union. Secondly, we have created an option for a single, time-limited extension of the implementation period as an alternative to bringing in the backstop. As we have said many times, we do not want to extend the implementation period and we do not believe that we will need to do so. This is an insurance policy, but if it happens that at the end of 2020 our future relationship is not quite ready, then the UK will be able to make a choice between the UK-wide temporary customs arrangement and a short extension of the implementation period.

Thirdly, the withdrawal agreement commits both parties to use their best endeavours to ensure that this insurance policy is never used. In the unlikely event that it is needed, if we choose the backstop the withdrawal agreement is explicit that the backstop is temporary and that the Article 50 legal base cannot provide for a permanent relationship. There is also a mechanism by which the backstop can be terminated. Finally, we have ensured full continued access for Northern Ireland's businesses to the whole of the UK internal market.

Lord Howard of Lympne (Con): I am very grateful to my noble friend for giving way. Under Article 50, the United Kingdom has a unilateral, untrammelled right to leave the European Union. Under the backstop provisions of the withdrawal agreement, the United Kingdom can leave only with the consent of the European Union. How can that be described as taking back control?

Lord Callanan: There are mechanisms to bring the backstop to an end but my noble friend is right that they would need to be mutually agreed. A joint committee has been set up and independent arbitration is foreseen within that, to which we can apply the solutions. They are set out in the agreement. I would be happy to write to my noble friend with further details but I understand the point he is making.

The Brexit discussions have been about acting in the national interest and that has necessarily involved making what we believe to be the right choices, not the easy ones. By resolving this issue, we are now able to move on to finalising the details of an ambitious future partnership. The outline political declaration we have agreed sets out the basis for these negotiations, and we will negotiate intensively ahead of the European Council this weekend to turn this into a full future framework.

Under the future relationship we will see an end to free movement. As the Prime Minister stated yesterday at the CBI conference, we will have our own new skills-based immigration system, based not on the country people come from but on what they can contribute to our United Kingdom. We have worked hard to deliver for the economy—to deliver a deal that puts jobs, livelihoods, prosperity and opportunity first. This is what Brexit should be about: getting a good deal that unlocks the opportunity of a brighter future for this country and all our people.

Lord Forsyth of Drumlean (Con): I am most grateful to my noble friend. Just going back to the point about the position of Northern Ireland, given that the backstop in the agreement provides for a different regulatory regime in Northern Ireland, why is this not creating a border down the Irish Sea?

Lord Callanan: This is only within the backstop itself. As I said, we hope that the backstop will not be required and that we will be able to put in place future arrangements that will render the backstop unnecessary. There are some regulatory differences now between Great Britain and Northern Ireland. But it is true that under the backstop, if it comes into operation, Northern

Ireland will align with many parts of the single market acquis that are necessary for the creation of a borderless Ireland.

The declaration reached common ground on services and investment, including financial services. It also ensures that we will be leaving the common agricultural policy and the common fisheries policy. The UK will become an independent coastal state once again.

We have been able to agree on key elements which will help keep our people safe. These include effective extradition arrangements, as well as mechanisms for data exchange on passenger name records, DNA, fingerprints and vehicle registration data. We have also agreed a close and flexible partnership on foreign, security and defence policy.

Lord Davies of Stamford (Lab): I am very grateful to the Minister for giving way. What precisely are the arrangements on financial services that have been agreed? I have failed to find any concrete measures in the large amount of paper in front of us.

Lord Callanan: I have a copy of the document here. There are three paragraphs on financial services in the outline declaration. The noble Lord will find them on page 2. I could happily read them out but time is short. Obviously, we will be fleshing out the future partnership document this week and we hope to publish more details on that shortly.

Lord Davies of Stamford: That document does not contain any specific measures at all.

Lord Callanan: It contains measures for protecting financial stability and market integrity, and for the commencement of an equivalence assessment, which is extremely important to many in financial services. But, as I said, this is one of the things that we are fleshing out. This is an outline declaration and the final details are being negotiated as we speak.

Lord Liddle (Lab): Will the Minister give way again?

Lord Callanan: I am happy to give way but this is all subtracting from the time that is available for the rest of the debate.

Lord Liddle: The Minister suggested to his noble friends that the Northern Ireland arrangement was temporary. Why then is it said in the political declaration that what is set out in the backstop is the basis for the future economic relationship between Britain and the EU? Can the Minister explain that inconsistency?

Lord Callanan: It is actually stated in the withdrawal agreement that the backstop is intended to be temporary and is not intended to be a basis for the future relationship. But it says in the future partnership document that the future relationship will build on the customs arrangements that are outlined within the backstop facility. I will let the noble Lord make his own interpretation of those words.

We have worked hard to deliver the result of the referendum and to ensure that the UK leaves the EU on 29 March 2019. We have made a decisive breakthrough. Once a final deal is agreed, we will bring it to the Commons for what is being called a meaningful vote, and of course there will be an opportunity in this House for extensive further debate. The Government understand that the British people want us to get this done and to get on with addressing the other issues they care about: creating more good jobs in every part of the UK; helping our NHS provide first-class care; and focusing our efforts on building a brighter future for our country.

The choice is clear: we can choose to leave with no deal or we can choose to unite and support the best deal that can be negotiated—this deal. It is a deal that ends free movement; that takes back control of our borders, laws and money; that delivers a free trade area for goods with zero tariffs, to benefit our manufacturers; that retains the security co-operation to keep our people safe; and that protects jobs in the United Kingdom. This deal honours the integrity of our United Kingdom. It delivers on the referendum result. It delivers the Brexit that the British people voted for. I beg to move.

5.36 pm

Baroness Hayter of Kentish Town (Lab):

"Oh, what a tangled web we weave
When first we practise to deceive!"

I am not talking about the figure on the bus but the Brexiteers'—and the Government's—mantra that withdrawing from nearly half a century of an alliance would be "smooth and orderly"; this has even been repeated today. Indeed, so often did Ministers—the noble Lord, Lord Bridges, at the time—repeat "smooth and orderly" that my then researcher Chelsey Mordue got to writing "S.A.O." every time she heard it. Smooth and orderly it has not been.

The other deception was that a deal could be negotiated by the Government alone, without business, the Opposition, trade unions—or Parliament itself. I do not usually quote my own speeches but, on 10 October two years ago, I warned Ministers that negotiating without an agreed mandate would lead to trouble. I asked for Parliament to be able to,

"vote on their negotiating objectives",

since the referendum did not,

"give the Government a blank cheque",

and said that,

"the national interest—not just the Conservatives' interests—must come first".—[*Official Report*, 10/10/16; col. 1704.]

If only the Government had agreed to work with Parliament on the objectives for the future framework. Instead, they did everything wrong. The Prime Minister laid down red lines in January 2017, before she even understood the task, and without the involvement of Parliament. She refused to agree a mandate—as requested by this House in the Monks/Lea amendment—which would have won her the necessary buy-in at the start of the talks. She appointed Brexiteers to this challenging task—men who refused to heed any evidence which countered their blinkered view, and who then walked away when neither was able to negotiate a deal that either of them could live with.

Sir Simon Fraser, who saw it at close quarters, wrote:

"David Davis was a terrible Brexit Secretary. He could hardly be bothered to go to Brussels and rapidly lost respect there".

[Baroness Hayter of Kentish Town]

We now learn that he still does not understand the basics, writing just yesterday:

"If we need to leave with no deal and negotiate a free trade agreement during the transition period, so be it".

No, Mr Davis: without a deal, there is no transition period. We will have crashed out by the early hours of 30 March. No wonder Elmar Brok, a leading MEP, characterised the Government's negotiating approach as "disarray and disaster" if our lead Minister does not understand the basics.

The clock is ticking. The European Parliament will disappear in April, yet it has to endorse any deal. Business is desperate to know where we are heading and certainly wants to know that we are not facing no deal. As the City of London, which serves not just our economy but those of our trading partners, says, no deal "would be in nobody's interests". Terry Sargeant, the head of thyssenkrupp UK, said that the Conservatives were putting their survival ahead of industry, describing negotiations as,

"a complete shambles … The Tory party aren't making decisions for business, they are making decisions to prevent an implosion in their own party".

Business, the Opposition and even the Prime Minister's former aide, Nick Timothy, judge the results a disaster—the latter accusing Ministers of dishonesty and saying it is now clear that no one,

"believes the proposal can win a majority in the … Commons".

Given this, Parliament must have a bigger role over our future with the EU. First, we must state—in this House as well as in the Commons—that no deal is unacceptable. We must have the transition allowed for in the heavyweight document that we have. Not only is no deal unacceptable for the country but the Government's technical notices indicate that 15 quangos would either have to be created or have their remits expanded; 51 bits of legislation are needed by the end of March; and 40 new international agreements and 55 new systems have to be set up. Even that is not as bad as the gridlock at Dover, Folkestone and Holyhead, the uncertainty for UK citizens abroad or EU citizens here, supermarkets lacking fresh produce and hospitals lacking vital equipment and medicines, along with vehicle manufacturing at a near stoppage, the end of data sharing and European judicial co-operation. We even read that there are "army plans for troops" on the streets.

The Government have shown a dereliction of duty in getting us to November with no acceptable deal. They must now face up to their responsibility and avoid a no-deal crash. One way is to rethink their blind Brexit—a veritable "dance with chance". It is simply no good throwing all the possibilities up in the air to watch which way they fall or we risk another "Groundhog Month" in December 2020, when we again will not know the future. More seriously, the Government's six and a half pages provide none of the requirements for a future close economic and security relationship with our allies and near neighbours. Indeed, it contains a mere three pages on our economic relationship with the EU—our major trading partner, market and supplier. As it stands with that future outline, we would be completely out of any customs union in 25 months' time. England, Wales and Scotland would be out of the single market and with no alternative; it contains no aspiration for frictionless trade, no assurance on common security or the European arrest warrant and no undertakings on agencies. Worryingly, it allows for the hardest of hard Brexits.

That is a future which the Opposition will not countenance. We have always prioritised a close economic relationship with the EU and thus cannot accept a political declaration with no aspiration, let alone guarantees, about this—especially as there is an alternative on offer. Sabine Weyand says that the agreement, as we have just heard,

"requires the customs union as the basis of the future relationship".

That is a welcome starting point but more is needed. The future framework must plan for a comprehensive and permanent customs union, a strong single market relationship giving frictionless access to European markets for goods and services, continued close involvement with agencies, clarity on immigration, full future safeguards for Gibraltar and, vitally, a robust security arrangement. Instead, we are faced only by an outline of the political declaration while:

"Negotiations on the full Political Declaration continue".

These are promised,

"by the end of November",

and with an undertaking that next year they will "negotiate expeditiously the agreements" concerning the future relationship. We are meant to trust to that.

The Government must sit down now with business, unions and consumer reps, who have been excluded so far, to find a way forward. They must also heed the objectives outlined by the Opposition. This House will not need reminding that 28 years ago today, Mrs Thatcher lacked sufficient votes to defeat her challenger. Of course, that was in the days when assassins knew how to be assassins; judging from last night, perhaps the DUP MPs still do. We look forward particularly to the maiden speech of the noble Lord, Lord McCrea, later this evening. Today Parliament, and the Opposition, warn this Prime Minister: take us with you over these negotiations and build a proper consensus, for the sake of the whole country, at this highly momentous time.

5.46 pm

Baroness Ludford (LD): My Lords, the package the Prime Minister has come back with is a bad deal: it would make Britain poorer, weaker and less secure. That does not mean that no deal is better—far from it. Only remaining in the EU is a good deal and that is what the people must now have the opportunity to choose. It was inevitable that leaving the EU would put the UK at a disadvantage compared with staying in. As for saying in a cavalier fashion, as so many Brexiters do, that leaving to trade on WTO terms would be a superior arrangement, that is like saying that Interpol is better than Europol. However, the extent of the damage has been made worse, without any shadow of a doubt, by the conduct of this Government. The following are my seven deadly Brexit sins, though speakers in this debate will no doubt add more.

First, incompetence has permeated the handling of Brexit. The most egregious example was the early imposition of red lines about no membership of the

single market or customs union and the demonisation of the Court of Justice. These placed extreme and unnecessary constraints on negotiations. Then there was the triggering of Article 50 without a strategy, which meant that everything since has been done backwards, with successive retreats from the bombast of the Prime Minister's October 2016 Tory conference speech and the hubris of her Lancaster House speech. This has led to contradictory assertions too numerous to mention. Out of many examples, I would just mention the almost total neglect of services—cited by Jo Johnson as a major reason for his resignation—which account for 80% of our economy.

Secondly, the Brexit proposition has been riddled with deceit. This started with the lies and alleged fraud by the leave campaigns, in which a variety of Cabinet Ministers are implicated. But it has fully permeated the subsequent conduct of the Brexit path as the Prime Minister grappled with turning fantasy into some semblance of reality, while trying to pretend to her party that she was not doing so. This habit of deception and dishonesty has endured through to the package deal. The Government's note on the state of play of negotiations says that the:

"Outline of the Political Declaration … records the progress … in reaching an overall understanding on the framework for the future relationship".

It does nothing of the kind. It is barely more than a shopping list of matters to be covered.

As for the mantra—repeated ad nauseam—of taking back control, the Prime Minister proposes in fact that we hand it over completely, as we will have to follow all EU rules and regulations for at least four years and effectively on a permanent basis, if we are to get anything like decent access to the EU single market, safeguard the interests of our manufacturers and of course keep the Irish border open. In the language of the European Commission, during the transition period,

"the EU will treat the UK as if it were a Member State, with the exception of participation in the EU institutions and governance structures".

That is rather a large exception. This is the very opposite of taking back control. The British people were lied to big time about this. I see Nadine Dorries MP recently bemoaned the fact that the UK would have no commissioner or MEPs during the transition period—you could not make this up.

That reminds me of another piece of dishonesty. As the noble Lord, Lord Bridges, has often reminded us, the withdrawal agreement is a bridge to nowhere. Not only is there is no implementation period, as there is nothing yet to implement, but that is also true of transition since we still have no idea what type of long-term relationship we might be transitioning to.

I see that Boris Johnson accused others of peddling lies, attempting deception and having tragic illusions in his latest *Telegraph* column. That is as gross an example of pot and kettle as one could imagine. As his brother Jo indeed wrote on Saturday:

"For May to maintain that we're delivering Brexit when we're actually giving away control will gravely erode trust in politics and imperil the future of the Conservative Party".'

Just rewards, some of us would feel.

Thirdly, ignorance has been on permanent display. Of course, Mr Raab's recent statement that he had no idea that the port of Dover was so important to Britain's trade took the biscuit, but there have been many other examples of Brexiters showing that they have no idea how our economy works or of the importance of rules of origin and smooth customs procedures to our businesses. Many Ministers embarked on the negotiations betraying absolutely no visible knowledge of the EU's legal and constitutional structure, competences or policies. They seem to think it is just a diplomatic club where everything is up for bargaining and cherry-picking. The "they need us more than we need them" boast is born of such ignorance. Ignorance is of course a fertile ground for its siblings, delusion, fantasy and petulance. Boris Johnson maintains that all that is needed is,

"confidence and enthusiasm and belief in this great project".

Fourthly, complacency—a close cousin of ignorance—has been hard to overlook. The House will, of course, recall Liam Fox saying that the free trade agreement that we will have to do with the European Union will be one of the "easiest in human history", and David Davis, on the prospect of new trade deals with non-EU countries ready to sign on Brexit day, saying:

"We can't actually sign until the day we leave. But I've got a very strong suspicion there will be a lot of things to sign that very next day.'

I expect the Minister can confirm that that is not the case.

Fifthly, hypocrisy has been much in evidence. Brexiters hate EU freedom of movement, except when they want residence in another EU country and find they can get—or buy—a passport from another member state in order to retain free movement rights for themselves, at the same time as working hard to deny those very same rights to millions of their fellow countrymen or the businesses that want and need to recruit EU workers. We have the spectacle of Jacob Rees-Mogg securing a licence in Dublin for his investment fund to trade across the EU, while snatching the advantages of passporting from other financial firms wanting to trade from their base in London. We have seen Brexit donor hedge fund bosses boast about the fortunes they made speculating against the pound as it had a rough time on the foreign exchanges, caused by the Brexit they back. Meanwhile, ordinary citizens taking a well-earned break abroad have taken a hit they can ill afford on the value of their holiday money. We also saw the rallying cry of Westminster parliamentary sovereignty exposed as the Government fought tooth and nail for six months through the courts to stop Parliament having any say in decisions about Brexit.

Sixthly, xenophobia has been woven though the Brexit motivation. Brexiters are fond of protesting "we might hate the EU but we love Europe", but what we have heard from Prime Minister May in recent times is a veritable torrent of hostile environment xenophobia. In her Tory conference speech two years ago, there was the notorious condemnation of her countrymen who believe in liberalism, openness and internationalism as "citizens of nowhere". Then there was the otherwise inexplicable failure to give a unilateral

[Baroness Ludford]
guarantee to EU citizens here—with a reciprocal assurance from the EU 27 to Brits in their countries practically guaranteed—of their future rights as acquired to date. Yesterday, she accused EU free movers of being "queue jumpers". Is she seriously saying that they prevented her opening the doors to Indian IT workers or Bangladeshi curry chefs? In fact, it was her intransigence on work visas for Indians that scuppered the EU-India trade agreement.

Lastly, Brexit has been a project not of construction but of destruction. One sometimes hears the term "destructive technology" used of new business ideas. Personally, I have never understood how the bright young things who use this term expect to get support from the wider community for projects which are intended to destroy their livelihoods, but the Brexit project does not even have the figleaf of "creative" to justify its destructiveness. Its negativity is just a game to many of its sponsors. It will kill off jobs. It threatens peace in Northern Ireland. It rips us away from our best friends and allies. It imperils the stability and coherence of Europe. It puts Gibraltar at risk of encroachment by Spain, and the Falklands at renewed risk of Argentinian scheming as we seek that country's agreement to a rewriting of the WTO schedules. Many EU trade partners are getting the chance of more bites at the cherry as we ask them to roll over those agreements. And despite the Prime Minister's declaration of devotion to "our precious Union", Brexit imperils the unity of the United Kingdom. The disdain and contempt shown by some Brexiters for the Good Friday agreement will not be easily forgotten in Ireland, south or north.

Nothing can make up for the way these sins have infected the past two and a half years, but the Government and the Prime Minister have a last chance to redeem themselves in a display of unaccustomed honesty, courage and decency by putting the country first instead of Tory party unity, which did not work out very well. The Prime Minister had a flash of such honesty when she said last week that there are three possibilities: her deal, no deal or no Brexit. So she should tell the public that they cannot have the "exact same benefits" of the EU while being outside it, and that the only fair and honourable course of action is to give them the final say, so they can choose to remain in the EU. The Government should immediately and transparently begin contingency planning for a people's vote in parallel to contingency planning for a no-deal Brexit. Let us have an end to deceit and hypocrisy and give the voters the final say.

5.57 pm

Lord Dykes (CB): My Lords, I thank the noble Baroness, Lady Ludford, for her excellent remarks. It is very heart-warming to see that the Liberal Democrat group is unequivocally in favour of the option of remaining in the EU. We are glad that there is at least one group. In comparison, for the first time in post-war Britain the Conservative Party has become anti-business and adopted a far-right ideology in pursuit of a crazy scheme, and the Prime Minister has made so many huge and needless mistakes in these faulty negotiations that all options have to be on the table now.

I agree that there has never been any explanation by British politicians of how the European Union actually works. It is a collection of sovereign countries. None of the other countries is worried about losing its sovereignty. Why is Britain worried about losing sovereignty by being a member of the EU? Individual sovereignty is strengthened and reinforced every time collective sovereignty is agreed in treaties or by whatever mechanism. The whole union gets stronger, as does each member state. Even small counties recognise and understand that more than this country, with our proud history.

We took 12 years, with two French vetoes, to get in, and then suddenly we started grumbling about things. That was the whole pattern, including from many Conservative politicians of a particular ilk over the years. That is very important, too.

I shall make just a couple of very quick but, I hope, profound remarks—they will have to be quick because of the time. The priority surely must be to think about the younger generation in this country—the people who are now beginning to think about voting in these matters if they get the opportunity and, whether or not there is going to be a general election, are considering that. That is a major matter for them. There are new, younger voters coming on the roll for the first time. Sadly, older members of our national electorate have died since the previous referendum. So the picture is changing. The diehards might want to stay with the so-called instruction of yesteryear, but that instruction is increasingly out of date and in reality they cannot.

By the way, there is one crucial element of our membership of the European Union that is applicable in particular to the younger generation: EU citizenship and the protection of the European Court of Justice. Our comics—called "newspapers"—in Britain have never mentioned that at all. Not even the BBC mentions it, but people are beginning to realise as time goes on that if we were to leave the European Union, we, particularly the younger members of our society, would lose the essential protection of European citizenship, which was granted by a sagacious Government, working with others, in the Maastricht treaty. We thank John Major again for doing that. He dealt with his recalcitrant colleagues—the word begins with "b" but I will not say the rest of it—better than Theresa May has done in the sad, dreadful episode of the gradual perdition of this country as this daft scheme goes on and on.

That means too that the media have to report these things properly. There is a huge amount of dismay about the BBC and how it is reporting this. It is the national broadcaster of this country, much loved by us all, quite understandably, and we hope it has a prosperous future, not least because there are some menacing Tory Peers who would like to do away with the BBC in its present form and with its present financing system. However, the BBC, newspapers and others must mention all the options. There is no question of the remain option being less important than the others. If three options are the present deal, trying to make the present deal better and no deal, the fourth is remain. Going by the latest figures that we have, the polls are showing that more and more people want to remain in the European Union. That is the nature of the body

politic that we are now confronted with, and this House and—even more so because it has the greater power—the House of Commons have to realise that and decide what is right for the country in recommending that the people now have another say.

6.01 pm

The Lord Bishop of Leeds: My Lords, only four months remain before we walk arm-in-arm to the sunlit uplands where the easiest deal in history will have been made and everybody will be happy—except we know that this is not the case.

Other noble Lords will concentrate on the details of the deal—a word I loathe because it reduces an existential question simply to a matter of trade and transaction—and the position in which it leaves us. I want to pick up on one line of the Prime Minister's Statement to the House last week, which I questioned in the short debate on Thursday:

> "If we get behind a deal, we can bring our country back together and seize the opportunities that lie ahead".—[*Official Report*, Commons, 15/11/18; col. 1982.]

I asked if the promise to bring our country back together was credible and achievable and, if so, how it was to be done. The answer was simply a repeat of mantras about the deal.

I thought I was being helpful to the Government by inviting a response such as, "The country is split down the middle and the language and behaviour around Brexit have become toxic even in this Parliament, so it is not going to be easy to reconcile people and parties in the wake of such a divisive issue—but, in acknowledging the size of the task, we intend to pay attention in due course to the language, symbolism and mechanisms of reconciliation". Because this is the challenge here. The Government, by virtue of being the Government, have a primary duty to pay attention to such reconciliation: to the healing of relationships that have been fractured by this process and the restoration of trust as a public value.

I am not making a case for leaving, remaining, wishful thinking or dreaming. The referendum happened and the rest is history, or at least history in the making. However, the factual phenomenon of Brexit—its language and behaviours, its polarising aggression and its destructive reductionism—will not be addressed by statements about getting behind a deal and people romantically falling back into line. That line has been crossed in our public discourse and I think two things have exacerbated it: first, the repeated implication that the "will of the people" is immutable and clear; and, secondly, the fact that the nature of the split down the centre of the United Kingdom is being ignored.

This raises a question of honesty—honesty with the people of this nation. To ask for honesty is not to accuse anyone of dishonesty, but we hear little or no acknowledgment of the fracture that polarises our people: a fracture that will be neither addressed nor healed by the repetition of mantras about a glorious future. This is not about Brexit as a choice; rather, it is about Brexit as a cultural phenomenon and what has happened as a consequence of the referendum. Social media is not the most edifying place to seek enlightenment and calm reflection—you have to wade through acres of muck to find any gems. But where the gems are to be found is precisely where adults behave like adults: they face reality, whether or not reality reflects their own preferences; they moderate their language in order to prioritise relationships and values over conflict; and they show a willingness to listen before speaking and an ability to look through the eyes of their interlocutor.

I admire the committed resilience of the Prime Minister and the remarkable expertise of our civil servants, but I appeal again for those engaged in this debate to take seriously the language of the discourse, not least in how we speak of those in the EU with whom we deal. I appeal again to the Government not to dismiss with easy words the crying need for an honesty in discourse that sets people free to grow up and own the truth about the deep challenges that we face, and to offer the people to whom we are accountable, and whom we are called to serve, a model for reconciliation and hope.

Whatever happens, the Church is committed to stand with and serve those who suffer, especially the poor, marginalised and disenfranchised people in our communities, but we need an articulation of political vision that goes beyond economics and trade. So what will those in power do to offer language and symbols of reconciliation and hope in practical ways that recognise the divisions and take seriously the need to bring our country and our union back together?

6.06 pm

Lord Morrow (DUP): My Lords, my party, the DUP, wants to see an orderly withdrawal from the European Union. The United Kingdom, which of course includes Northern Ireland, joined as a single entity and on the same terms and conditions. It is therefore important that we leave in the same manner. However, it is quite clear that this is not the way that it is planned. It is patently clear that Northern Ireland is to be treated differently from the rest of the UK.

Furthermore, the draft deal fails to deliver the referendum result in every part of the UK. It leaves Northern Ireland subject to the rulings of the European Court of Justice. It creates a democratic deficit whereby Northern Ireland would become subservient to EU legislation with no representation at all. The draft agreement would establish significant differences between Northern Ireland and the rest of the UK, as set out in annexe 5 to the protocol. It means Northern Ireland remaining in the EU single market rules for goods, including food standards, while Great Britain does not.

In terms of the settled constitution of the precious union, I shall make it very plain: the draft agreement, if implemented as printed, will ultimately threaten the future of the union, something that the Prime Minister continually repeated would not happen. Furthermore, any risk of differentiation or division between the component nations should be avoided, irrespective of how low the chance is of the backstop taking effect.

The very fact that Northern Ireland is singled out for special treatment should ring alarm bells even at this stage. If the concept of regulatory divergence and continued membership of the single market exists in the embryo of the withdrawal agreement then it is

[LORD MORROW]
quite possible that the architects of the EU project, driven by the historic pro-republican agenda of the EU bureaucrats, will ensure that this embryonic prototype of an all-Ireland converged economic entity will be nurtured to the point of birth, and then rescuing the political union with GB will be well-nigh impossible.

The wording of the draft withdrawal agreement also ensures that Dublin and Brussels hold an active veto on whether the backstop ceases in Northern Ireland in future. Both options—the review mechanism or an extension to the transition period—fail to allow the UK to unilaterally move away from the arrangements should it wish to do so. This could leave us in an indefinite limbo and make it harder to leave the backstop than to leave the EU itself. The ability to supersede the backstop in whole or in part also expresses a danger that Great Britain may be able to leave the backstop but Northern Ireland has to remain. We would be handcuffed to the EU with Brussels holding the keys. That is not taking back control, in my opinion.

We are not alone in our resolve to oppose the risk that this deal presents to the union. Departing Cabinet members hold to our view that this agreement would break up the United Kingdom. Labour has described it as a de facto border in the Irish Sea. The parliamentary debate in the coming days should not be framed as a binary choice between a bad deal or no deal. We believe that there is widespread Cross-Bench support for a deal with the EU, but not this one. We will not, as some have suggested, step back from our commitments to defend the security of the union and protect the long-term economic interests of Northern Ireland. Ultimately, that cannot be guaranteed by this deal, and for that reason, my party cannot in good conscience support it.

Convergence of the political structures and economic alignment has been a cornerstone of Sinn Féin/IRA for decades. Strip out all symbols of British and unionist culture and replace it with "shared space" and "shared future", which of course is just political speak for cultural and economic assimilation of the pro-union people. This strikes me as a modern day Trojan horse.

6.11 pm

Lord King of Bridgwater (Con): My Lords, I entirely understand the strength of feeling of the noble Lord, Lord Morrow, having devoted a few years of my life to ensuring the right of Northern Ireland to be part of the United Kingdom by virtue of the democratic wish of the people of Northern Ireland. Clearly, the issues we are discussing now are of great concern to them.

I start as a remainer. With many others, I felt the shock of that referendum result: unplanned, unexpected and coming with various promises and assurances which had no justification, as has now been proved to be the case. Having recognised that, we in this House now have a responsibility to decide the right way forward. There is a great nation out there which is bemused, confused and does not understand most of the issues involved but is deeply unhappy about the way in which personal hostility and argument is springing up within families in all different parts of our kingdom.

I agree with the Prime Minister that there are three options. One is to remain, one is to have no deal and the third is somehow to find our way through to a deal that can be acceptable to the greatest number of our people.

Although I am a remainer, I simply do not think that it is realistic to have a second referendum. The referendum stands. I look at our history in the European Union, when our position was as leader of the "larger but looser" brigade, the people who were not looking for ever-closer union within Europe. That position would now be completely undermined if we were to reappear, when it was always felt to be part of our strength that we warned them that if we did not get a sensible outcome, we would probably leave. If we came back begging to be part of the Union again, it would be very difficult. Our arguments have taken place against the background of some evidence in the European Union, not least from President Macron, of a determination to establish a much closer union in the field of defence as well. That is not an easy or acceptable option.

The second option is no deal. Of course, there have been masses of scare stories: the risk that Dover will be locked solid, that planes will not fly, that there will be food and medicine shortages and that the Army will be guarding petrol stations. They may be scare stories, but if you read the explainer document, it brings home very clearly the enormous number of issues that must be covered which, if we had no deal, could give rise to various serious difficulties. That is before one even discusses the impact of no deal on the City of London; on industry, especially the just-in-time industry; and on postponing decisions, either cancelling new investment or otherwise delaying it. I know about that personally. How can a sensible board of directors, with all the uncertainty, embark on major investment at this time?

The third option is to continue to work on the deal. As the Prime Minister found to her cost, everyone can find something wrong with the deal. She learned that over three hours of parliamentary exposure of the different items therein. Against that, some of us had the opportunity to read the explainer document, if not the major, massive tome. I was impressed by some of the things in it. I thought that the paragraphs on the common foreign and security policy, on security-related sensitive information and on participation in the transition period showed evidence of sensible negotiation between two sides trying to find a way forward. It is against that background that I do not suffer from the same neuralgic reaction that every mention of the ECJ must be very bad news. We have lived with it for 40 years, and a year or two more I do not find totally unacceptable if it leads to a successful outcome and final independence.

The noble Lord, Lord Morrow, talked about the problem of the backstop, and the only other issue that I raise is exactly that raised by my noble friend Lord Howard: the lock-in and not having the option. That is obviously the issue that must be tackled—I hope that the Minister will tackle it in winding up—because, in the end, we are an independent nation. In the end, we could take the law into our own hands, but that is the last thing one would want. One would want sensible arrangements in which our position could be recognised.

6.16 pm

Lord Reid of Cardowan (Lab): My Lords, I will say this for the Minister: he has an enduring self-confidence at the Dispatch Box, even if it is totally unrelated to reality. Every time he speaks, I am reminded of the 19th-century general who telegraphed his headquarters saying, "Our left flank is completely lost, the right flank is being overrun and collapsing. Situation satisfactory. I shall attack".

Despite the confidence, the reality is that after two and a half years of division, discussion and debate—sometimes acrimonious—we now have arrived at an impasse. We have an impasse in Brussels: despite everything that is being complained about, there is nothing more to be gained there. There is an impasse in the House of Commons, which we can ignore if we like, but there is gridlock there and no majority for anything, in my view. There is an impasse inside the Government and the Conservative Party, with a staunch minority wanting to get rid of the Prime Minister but not staunch enough to get 48 people to write a letter.

How did we get here? I think we got here for one simple reason. Among the many—I will not call them lies—fake news items during the referendum, there was one central self-delusion. That was that we could have all the benefits of the membership of the European Union without paying the price in obligations. Everybody in every land knows that that is a nonsense. That is why there is the expression, "You cannot have your cake and eat it", but we were told we could. In France, I think it is having, "le beurre et le prix de beurre". No doubt there are similar expressions in German and other languages.

It is the common sense of Europe that you cannot have all of those rights without the obligations, yet that was the delusion that was perpetrated for two and a half years. That is why we ran through this gamut of Brexits: the hard Brexit, the soft Brexit and the blindfold Brexit, and ended up with a sort of hokey-cokey Brexit, with one leg in and one leg out, shaking it furiously about to the bemusement of Brussels and the humiliation of the country throughout the rest of the world. It is not going to be changed.

How do we get out of this impasse—this gridlock? I disagree with the noble Lord, Lord King, who spoke passionately on this. There is only one way and that is to put it back to the people. If Parliament is incapable of reaching a decision, as I predict will happen over the coming months, then the people who made the decision must be allowed to revisit it. Why is this? It is not because I am a remainer who automatically assumes that they will change the decision. They may or may not, I do not know, but I know one thing: democratic decision-making—meaningful votes as they call it in the House of Commons—depends on meaningful information. We now know legal, political, social and economic and fiscal information that was not known at the time the decision was taken. In almost every other contract in Britain, from buying a washing machine to going through a divorce, a preliminary period for reflection is allowed if further information comes to light. Let us do the right thing: admit that this has been a mess and will continue to be so as long as we deprive the people of their democratic right, in the light of all the information known now, to make that decision. It should be a people's vote and a people's decision.

6.21 pm

Lord Steel of Aikwood (LD): My Lords, only a week ago one of the Prime Minister's close aides told a journalist that he should just wait a minute until we got a deal, then everything would be all right: the pound would rise, and the momentum behind it would persuade wavering Tory MPs to support it with their votes. It has not worked out that way. The pound has fallen and more Ministers have resigned, some campaigning openly to replace the Prime Minister. I was first elected to serve in this Parliament way back in 1965. In all those years I cannot recall a time of greater chaos in Government than we see today. I do not blame the Prime Minister; I actually feel rather sorry for her, although I find her reiteration of the phrase "national interest" rather grating, as she appears to conflate it with her own.

Most sane people regard the prospect of crashing out of the European Union without a deal as devastatingly damaging, which leaves us with this defective deal where we remain substantially under European Union rules at great expense but without any say over the policies, as we shall have left. That does not seem to me an attractive proposition. Until recently, I considered a second referendum to be a forlorn hope, but it now seems to have gathered support, not just because of the march in London, nor the growing number of voices for it, but for another reason not so far mentioned. This month we have seen a remarkable number of ceremonies commemorating the centenary of the end of the First World War. People have seen the German President lay a wreath at our Cenotaph. They have watched the handshake of Macron and Merkel leading France and Germany, and they have therefore been reminded why the nations of Europe decided to form a cohesive alliance. This was never referred to during our referendum when all that seemed to matter was the duplicitous slogan on the side of a bus.

Last month, the Royal and Ancient Burgh of Selkirk —the small town where I live—celebrated 20 years of its twinning with the small German town of Plattling close to the Austrian border. I went for the first time, with about 50 others, and at the official dinner sat with the Bavarian Minister who was representing their Government. Both towns lost men fighting in both wars, but Plattling suffered something we in Selkirk did not—the loss of over 400 civilian lives in one night in an allied bombing raid on its railway station. The Minister pleaded with me that we should not pursue Brexit. Yes, the European Union is not perfect; yes, it needs to be less bureaucratic and more accountable; yes, we made a poor deal on fisheries when we joined. But these are all matters we should stay to sort out and which we cannot alter if we just walk away.

That is why I now believe that the noble Lord, Lord Reid, is right: to escape from the current shambles it is vital that we go for a people's vote.

6.24 pm

Lord Hennessy of Nympsfield (CB): My Lords, the European question has long vexed us, as a people and a country. When the wind from Europe blows through

[Lord Hennessy of Nympsfield]
the corridors and Chambers of the Palace of Westminster, it scars our politics and sears our national conversation to a degree unmatched by any other issue. It can chill premierships—occasionally fatally. It is the great disrupter of post-war British politics; a story of showdowns punctuated by sometimes fierce parliamentary set-pieces.

The Prime Minister's Statement on the draft withdrawal agreement last Thursday was just such an occasion. As I watched the debate from the Gallery, two thoughts crossed my mind. One was very fanciful: I could almost sense the hovering wraiths of Prime Ministers past who had faced their own version of Euro torment at that very same Dispatch Box. Secondly, I felt a pang of sympathy for Mrs May. Why was this? It was because, listening to the Prime Minister, I was struck by how heavily freighted her Statement was by multiple capital Q questions, all of which swirl and entwine one with another in the circumstances we face. There are more than any previous Prime Minister encountered and they all require considerable feats of statecraft. By my calculation, there are now seven in play.

The European question itself has reopened the "Britain's place in the world" question with which we have grappled since the Suez crisis of 1956. The Irish question is revived in a new form. The union of the UK question is also in play, because a brutal Brexit would surely inflame the likelihood of a second independence referendum in Scotland in the 2020s. The condition of Britain question has also been re-posed by the inequalities of life and life chances across the kingdom, thrown into sharp relief by the 2016 referendum. The standard model of our left/right politics is also under serious pressure. It has never been able to handle the European question, which fissures parties from within, rather than between.

Since we debated the Government's post-Chequers White Paper in July, I would add a seventh question: Parliament. Parliament itself is being seriously stress-tested in its primary function of being "the grand inquest of the nation", to use the venerable term. In passing, I commend the report of the House of Commons Procedure Committee, published last Friday. It suggests ways in which this might be done in next month's debate in the Commons, so that every part of the spectrum of opinion on Brexit can feel it had its moment on the Floor of the House of Commons. This is important because, as all noble Lords know, Europe is a great arouser of grievance politics.

I hope that the draft withdrawal agreement makes it to treaty form. A harsh exit would generate the rawest of capital Q questions in the short term, stretching the public's faith in government as a protector and provider. Somehow, we must rediscover that political genius in which we once took such pride and draw deep—very deep—on our wells of civility and tolerance. The first people we need to get on with when we are through all this are ourselves.

6.27 pm

Lord Pearson of Rannoch (UKIP): My Lords, I know this will not be popular, but I find myself having to say to the Government, "I told you so". I told them so in my speeches at Second Reading of the EU withdrawal Bill on 30 January this year, and at Third Reading on 16 May. I refer anyone who is interested in this sorry history to those speeches. The Government did not listen and now they, their civil servants and our political media—none of whom have ever done a deal in their lives—have come to resemble a huge flock of headless chickens. Except that headless chickens do not squawk and there is an awful lot of squawking about Brexit these days. Perhaps the analogy should be the Gadarene swine; presumably they squealed and snorted quite a bit on their way to destruction. The only trouble with that analogy is that, this time, the swine are taking the country down with them.

I suppose I should briefly repeat the obvious way forward, which every businessman who knows how to do a deal and who understands the EU can see. We should stop negotiating with the European Commission, whose only interest is to keep its project of European union afloat. We should make an offer directly to the people of Europe, through the Council of Ministers. That offer should include continued mutual residence for a period of time, and continuing free trade on our present terms but under the World Trade Organization instead of the Luxembourg court. That gets rid of the so-called Irish border problem. We should continue to offer them security through the Five Eyes and Cheltenham, and only when all that has been accepted should we agree on how much money we will give them, if any. All of those offers are much more in the interest of the people of Europe than they are of ours, so why should they not be accepted?

In conclusion, I ask the Minister not to repeat the misleading answer he has given me before when I have suggested this way forward: that we cannot resile from paragraphs 2 to 5 of Article 50, which are what force us to deal with the Commission, because we are a law-abiding country. In other words, we would be breaking the law if we did so. However, there have been some 225 unilateral withdrawals from international treaties since 1945, including by the UK, so we can do it if we have the political will and the common sense. I fear that the Minister will not agree with me, so the best that I can hope for is that we might return to this concept if the Commons votes down the present proposal and we all go back to square one. That might be the best that we can hope for now.

6.31 pm

Lord Browne of Belmont (DUP): My Lords, this is a most significant moment for our nation. It is vital that everyone's right to debate and examine the draft deal is respected. My position on the proposed deal and that of my party—the Democratic Unionist Party—is in line with what we have previously said in your Lordships' House, in the other place and in private conversation with Her Majesty's Government.

In its current guise, the text of the draft withdrawal agreement would establish fundamental differences between Northern Ireland and the rest of the United Kingdom. Indeed, as my noble friend Lord Morrow has already pointed out, Annexe 5 in particular would mean that Northern Ireland remains in the European Union single-market rules for goods, including food standards, while Great Britain would not. In practical terms, this would mean increased checks on food and

agricultural products entering Northern Ireland from Great Britain, which would create new barriers for businesses, including supermarkets. In our eyes, such a solution is unthinkable and cannot be described as anything other than a border in the Irish Sea.

The deal that has been negotiated by the Prime Minister and the Government is much different to that described in speeches and announcements during the course of the past two years. Indeed, if we take Lancaster House as one example, one would have expected that any draft before us would have freed the UK from the customs union, the single market and the diktats of the European Court of Justice. This is not the case and in our opinion the draft agreement fails to deliver the referendum result across the United Kingdom. It leaves Northern Ireland subject to the rulings of the European Court of Justice. It creates a democratic deficit whereby Northern Ireland would become subservient to EU legislation with zero representation. In real terms, Dublin legislators would have vast influence over swathes of rules governing us, while elected representatives in Belfast or London would have none. This violates the principle of consent. It also extends the role of devolved institutions and grants a joint committee a significant input into local affairs. This collectively amounts to a breach of the Belfast agreement.

The precise wording of the draft agreement also ensures that Dublin and Brussels hold an active veto on whether the backstop ceases to apply in Northern Ireland in the future. Both options—the review mechanism or the extension to the transition period—fail to allow the United Kingdom to unilaterally move away from these arrangements should it ever wish to do so. This could leave us in a state of permanent limbo and make it difficult to leave the backstop. The ability to supersede the backstop,

"in whole or in part",

also expresses a danger that Great Britain may be able to leave the backstop but Northern Ireland has to remain. That is not taking back control.

Under the plans before us, Northern Ireland would be locked into an arrangement whereby a substantial number of our laws will be made elsewhere. Regardless of how damaging they are to our economy, we will have no choice as to whether they should be implemented, nor will we be in a position to amend them. The extent of the barriers between Northern Ireland and our main market in Great Britain will be dependent on what the EU deems necessary. We are not alone in our resolve to oppose the risks that this deal presents to our precious union. Departing Cabinet members hold the view that this agreement presents a real threat to the United Kingdom. The Labour Party Front Bench has described it as,

"a de facto border in Irish Sea".

My party—the Democratic Unionist Party—will not step back from its commitments to defend the security of the union and protect the long-term economic interests of Northern Ireland people alongside those in Great Britain. Ultimately, neither of these things can be guaranteed by this withdrawal agreement, and for this reason I cannot support it in its present form.

6.35 pm

Lord Bridges of Headley (Con): My Lords, I share many of the concerns that have been expressed about the backstop, but I will focus my remarks on the political declaration. As the noble Baroness, Lady Hayter, and others have remarked, I argued back in January that the political declaration that sets out the future framework of our relationship with the EU had to be a clear heads of terms, so that the transition that we will enter into is a bridge to a fixed destination, not a gangplank into thin air. My fear is that, at the moment, the document that we have before us is very long on aspiration but rather short on hard, copper-bottomed commitments.

I realise that the Prime Minister is negotiating this document further this week, but if it remains in its current situation, this matters greatly, because once we sign this agreement, we will lose much of our negotiating leverage; we will have signed the cheque. The backstop will then become legally binding as a treaty and it will also become the EU's baseline in its negotiating position. So it is absolutely mission critical that the Prime Minister sticks to the pledge given by Downing Street a few weeks ago that,

"there can be no withdrawal agreement without a precise future framework".

If it is precise, the chances that we will fall into the backstop obviously begin to recede. We can, however, as has been said, be pretty sure about what the final destination is. The political declaration states that our long-term relationship should,

"build on the single customs territory".

What does that mean? We have been told what it means by the EU's deputy chief negotiator. It means:

"This requires the customs union as the basis of the future relationship".

The UK,

"must align their rules but the EU must retain all controls".

I hope that the Government will have the honesty to say clearly in the days and weeks ahead whether this is or is not the case.

The fact that the UK might be trapped in a single customs territory by the backstop or might enter into the customs union under the political declaration is why some in this House and many in the other place argue that the agreement should be opposed. My hunch is that Parliament will not allow us to leave without an agreement. So, although entering into a transition period would avoid the possible chaos of a no-deal Brexit, I fear that without clarity—real clarity—in the political declaration, we will not have solved the underlying, fundamental problem that we have faced for months.

The problem is this: ever since the general election, the Prime Minister has effectively been in office but not in power. She has been unable to negotiate with the confidence that her strategic aim in the negotiations has the support of the majority not just in Parliament but also, crucially, in Cabinet. That weakness has largely led us to where we are now. So if we are to sign an agreement, unless there is this clarity in the political declaration, that uncertainty will continue. We will continue to twist in the wind as the interminable

[Lord Bridges of Headley]
debate about our future relationship continues. Worse, the EU will be able to dictate the terms in the next phase of the negotiations.

If we want to avoid this, we will have to do what we have failed to do so far. That is to be honest about the situation that we are in and find the courage to compromise among ourselves here at Westminster. The challenge is not to come up with new policy approaches: we know all the options. The challenge is to settle on an option and an approach that commands a clear parliamentary majority and to present it honestly to the British people.

Let us wait to see whether the political declaration contains the precise, clear position around which we as a Parliament might coalesce. I somehow doubt it. If it does not, while I believe that we must honour the referendum result and leave the EU, the Government must confront the reality of the parliamentary arithmetic and compromise to find a position that commands a guaranteed parliamentary majority. Only then can the Government try to retrieve the situation and negotiate in the next phase of negotiations with real force and conviction.

6.40 pm

Baroness Smith of Newnham (LD): My Lords, the noble Lord, Lord Bridges, has just given the Prime Minister an even greater challenge than she already had. For months she has been listening to the European Research Group, which has set out what effectively became her red lines. However, to find an agreement that the whole of Parliament will agree with will be somewhat difficult.

I had planned to start my speech along the lines of my noble friend Lady Ludford, and I quote Nadine Dorries:

"This is a very sad place to be. But unfortunately, the future of the country and of our relationship with Europe is at stake. This deal gives us no voice, no votes, no MEPs, no commissioner".

In the words of the noble Lord, Lord Pearson of Rannoch, "I told you so". Or rather, some of us suggested that leaving the European Union and ending up with an arrangement that left us somewhere with a Norwegian perspective would leave us with paying, obeying, and no saying. Therefore, rather than expanding the discussion about chickens, swine and groundhogs that we have heard over the past two and a half years, I will focus a little on some of the other questions that have been raised in the withdrawal agreement.

If the Government are really proposing that this should be voted on by the other place, does the Minister—I believe that the noble and learned Lord, Lord Keen, will reply—agree with the noble Lord, Lord Callanan, who suggested that this agreement will secure the rights of 3 million EU citizens and 1 million UK nationals? Yesterday, I was talking to a group of young people who said that they are still concerned about their rights; they included British students who are currently studying at other European universities. At the moment, the United Kingdom has guaranteed the rights of European students studying in the UK, so that if they are already here, their rights will be guaranteed until the end of their courses. Will that be true for British students studying elsewhere? As far as I can see, the 585 pages are unclear.

Will people currently living in the United Kingdom, exercising their rights as EU citizens, be able to continue to reside here without any retrospective requirements for comprehensive sickness insurance? This is one of the issues that many people residing in the UK were not aware of, yet they discovered that they could not get residency because they had not had CSI. There is a range of questions which this very comprehensive document does not include. If the Government propose that the comprehensive and thorough agreement is to be accepted, does it guarantee the rights of citizens, as we were told?

Looking forward, this agreement would give us no say. Almost every page says that there are ways in which the UK will be beholden to the European Union and subject to its laws. Very occasionally, we might be allowed to send an expert or a representative to sit at the table—they might even be allowed to speak, but certainly not vote—and on many of these issues we will be required to pay.

Have the Government worked out how much this transitional withdrawal agreement would cost the United Kingdom? Looking forward, if this is the model and the starting point for a future relationship, what is the cost likely to be? Will it in any way enable us to take back control? If not, and no deal is not an option, is it not time for us to think again, or perhaps to ask the people of the United Kingdom to think again?

6.44 pm

Lord Kerr of Kinlochard (CB): My Lords, it did not have to be like this, and the drafters of Article 50 did not think it would be. The article makes no mention whatever of a political declaration. It mentions a framework. It says that the divorce treaty negotiators must take account of the framework for the future relationship. Where is that framework? You cannot take account of something that does not exist. The sequence has been reversed, and all we have is this seven-page checklist of issues and aspirations for future negotiation, no doubt now being fleshed out with added adjectives. Where are the agreed architectural blueprints, the agreed struts and girders of the future relationship? Where are the concrete mutual commitments? They do not exist, as the noble Lord, Lord Bridges, elegantly pointed out.

In order to avoid further government defections, the language now being written will no doubt remain sufficiently loose to cover options we well know the 27 will not look at. Maybe we will see the Chequers common rulebook come back again, or the magical thinking about technological frontiers. The 27 know that, once we have left, each of them has a veto. The divorce terms need only a qualified majority in Council, but the forward-looking treaty, when it is written, will require unanimous approval and 27 EU countries national ratification. So their hand is much stronger, and our negotiating capital drains away the moment we leave.

How we got into this mess is a subject for another day. Suffice to say that this is what happens if you continually kick the can down the road, avoiding

honest debate on the real trade-off between sovereign autarky and economic well-being. This is what happens if you table no framework proposals and start the Article 50 clock disunited as to destination and strategy. Decisive only in indecision, this is where you end up, offering the country only a blind Brexit and the certainty only of many more years of uncertainty, damaging investment, growth, jobs and incomes.

The incentive for the 27 ever to end that uncertainty is not obvious. At least until late 2020, perhaps 2022, we would apply all EU rules and ECJ rulings, although we would have no say in their making. If the backstop then kicks in, it gets much worse. Still unable to conclude third-country deals for trade in goods, but now with regulatory and fiscal checks on our trade with the 27, we get the friction without the freedom. Why would the 27 rush to end an arrangement so unbalanced in their favour?

We need to stop and think. Crashing out would be crazy, but the Prime Minister has acknowledged that this humiliating treaty is not the only alternative. Continental Europe would willingly stop the clock if Parliament were to decide to put the question back to the country now that it is clear what leaving would mean. The polls show that the people want to be asked, and that two out of three believe that the deal on offer would be bad for them.

If the Government believe in their divorce treaty and that sufficient certainty about the future can be found, without any agreed load-bearing framework whatever, but simply in a vague declaration cobbled together in a week, let them put that case to the country. If the country agrees and accepts the risks and the likelihood of a protracted period of economic pain, we leave. The greatest risk of social division and constitutional disruption would lie in denying the country the final say it now wants while our destiny is still in our hands, and before we hand back control.

6.48 pm

Lord McCrea of Magherafelt and Cookstown (DUP) (Maiden Speech): My Lords, I am pleased and honoured to make my maiden speech today. I thank your Lordships for the kindness and support that I have received since entering this House. I particularly wish to thank my noble friends Lord Morrow of Clogher Valley and Lord Browne of Belmont for introducing me to the House. I am deeply grateful for the guidance and advice offered by all the officers and staff whom I have met, and I appreciate their helping me to learn the workings of this House in such a professional and gracious manner. I acknowledge the encouraging and welcoming words of noble Lords from across this House, many of whom I recall from my years in another place.

As a young man I had the privilege of entering local government in Northern Ireland, and served there for 37 and a half years. For 25 years, I enjoyed the thrust of public debates in the other place and several years in the Northern Ireland Assembly. However, I confess to finding this a daunting experience, having listened carefully to the richness of the contributions of noble Lords in this House today and in previous debates. Each brings a wealth of knowledge and experience, from so many walks of life.

I believe it is also important that I nail my colours to the masthead. For 50 years I served as a Christian minister in Magherafelt and only recently stepped down from my responsibilities there. With deep humility, I thank God for all the years He has given me as a preacher of the Gospel of the Lord Jesus and, by His Grace, I will seek to take my stand for Him in this House.

I am humbled to be given this honour of speaking in such an important debate today, sitting among your Lordships and contributing to the deliberations. This take-note debate on the Statement by the Prime Minister has great relevance and importance to the people of Northern Ireland; it has major implications for the future, regarding not only our exit from, and relationship with, the European Union, but the future of our precious union of Great Britain and Northern Ireland. I come from a Province that has endured years of IRA terror; many of our fairest and bravest men and women were murdered defending the union. For over 30 years, bombs and bullets bombarded us, seeking to break the spirit of our people and our determination to remain part of the United Kingdom. It is true that on many occasions these terrorists broke our hearts, but they never broke our resolve.

We are proud to be a part of the United Kingdom but I believe the deal presented by the Prime Minister threatens the integrity of that union. If these proposals were implemented, we in Northern Ireland would have to take rules from a body without any representation, governed by laws which, even if they damaged our economy, could not be changed and on which we would have no say. These proposals drive a coach and horses through the devolution settlement and our constitutional practices to suit the European Union. The nominal excuse for this is to avoid a hard land border. They have not resolved it; they have moved it and plan to implement a sea border inside our own country instead.

The Government's claim of a United Kingdom customs solution is simply untrue. Northern Ireland will be in the EU customs territory while Great Britain will not. If Great Britain were to leave then the EU would have the right to impose a customs border. Northern Ireland is the hostage to prevent GB leaving or the sacrifice if it does. In the past week, a European customs expert has made it clear that the hard land border is a "fictitious problem" but, based on this fiction, Northern Ireland is to be pushed further away from Great Britain. Even the Prime Minister of the Irish Republic says there will be no hard border. For a backstop that is never to be used, it takes up a substantial chunk of the withdrawal agreement. The backstop is never to be used, they say, but if it were, it would be only temporary. Then we are told it is a wonderful thing—that long-term investments could ultimately be made upon it.

The people of Northern Ireland have a respect for straight talking. They do not stand anyone seeking to pull the wool over their eyes. There are those who have called for another referendum. The people have spoken. Had the people voted the other way, I wonder how many would be calling for a second referendum. The United Kingdom of Great Britain and Northern Ireland

[Lord McCrea of Magherafelt and Cookstown] must leave the European Union on equal terms. The present proposals are not a good deal for the United Kingdom and should be rejected. My party, the Democratic Unionist Party, will do the honourable thing and vote against them.

6.54 pm

Lord Cormack (Con): My Lords, it is always a great pleasure to be able to welcome a new colleague to your Lordships' House, and I am delighted to follow the noble Lord, Lord McCrea, in a very rumbustious maiden speech. He made some very gracious comments about his reception here, and then he gently forgot that maiden speeches are normally non-controversial. I do not look down upon him in any way for that but I am disappointed in him, because he is famous in Northern Ireland for his wonderful singing voice. How much better it would have been if he had sung to us. He is as well known in the recording studios of Nashville, Tennessee, where he has cut many disks of country and western music, as he is in the pulpits of Northern Ireland. Although I cannot tonight sing from the same hymn sheet, I do hope that he will enjoy many happy years in your Lordships' House.

I would just say, on Northern Ireland, that those who come from the Province—which I know well and love dearly, having done a stint as chairman of the Northern Ireland Affairs Committee—must remember in all humility that the people of Northern Ireland voted in the referendum by a significant majority to remain in the European Union. Therefore, those who purport to represent them should always remember that.

I want to make three very simple but important points. First, whenever one leaves an institution, club or association—any gathering of people or nations—one cannot retain the advantages that membership brought. When Members retire from your Lordships' House, they will be able to sit on the steps of the Throne and they will have dining rights and some rights in the Library, but, for the rest, they will not. I am sorry that we are leaving the European Union. I accept the result of the referendum. I am sorry we are leaving because I think whatever deal we have cannot be as good as what we are letting go of.

I appeal to everyone in this House, as in the other place, to consider very carefully what the Prime Minister has negotiated. She has shown enormous resilience and great stamina and, although there is room for tweaking and improvement, she has probably got as good a deal as she could. Before we dismiss it, we ought to think carefully about the abyss into which we would be plunging with no deal. Although I greatly respect those who call for a second referendum, I ask them just to think for a minute about the divisiveness and bitterness that has been brought to this nation by the first one and to be careful what you wish for.

If the Prime Minister is to have a proper opportunity of presenting her position to the other place, I would appeal to her to adopt the precedent of Edward Heath when we went into the European Community as it then was. I think she should grant a free vote. There is a lot to be said for a free vote, where Members are voting according to their consciences and beliefs but having to take into account the risks and advantages to all their constituents. I think she should also do one more thing: she should speak to the nation on the television, in the course of the next two or three weeks, and explain, face to face, as previous Prime Ministers have done, just what the issues are and how we can best face them together.

The one thing that must happen is that, when all this is over, we must be together as a nation. We have a great past; we can have a great future. We have made a terrible mistake, but we can get over that as well. I hope and pray that we will.

6.58 pm

Lord Hain (Lab): My Lords, especially as a former Secretary of State for Northern Ireland, I warmly welcome the noble Lord, Lord McCrea, to this Chamber.

The Prime Minister's deal is a bad one for Britain, primarily because the Tory Brexiteers imprisoned her in a negotiating straitjacket which meant it could not be otherwise. They never did have a plan of their own but merely a set of slogans. On the Irish border—always the Achilles heel of their dogmatism—they promised to keep the border open with nothing other than yet-to-be-tested, fanciful, back-of-an-envelope notions, as Iain Duncan Smith and Owen Paterson breezily wrote about in the *Sunday Times* on 11 November. They suggested that existing national systems of reporting trade, such as for VAT or the Intrastat data collection system, could be expanded. But you cannot simply add on to those a whole new function, such as the intricate and huge task of customs declarations. Moreover, three-quarters of businesses that trade across the Irish border are small and operate below the Intrastat reporting thresholds of £250,000 for export and £1.5 million for import. So that plan simply will not work.

There is no point in having a national system that might manage exports without ensuring that the country on the other side can facilitate the entry of those same goods as imports. The systems on either side must seamlessly connect on a legally certain foundation—either as EU member states, members of the single market, members of a customs union, members of a free trade agreement, or on WTO terms. Each step down that ladder brings more friction in trade.

The rules that currently keep the Irish border open are the rules of the European Union's customs code and the single market acquis, which Brexiteers dogmatically reject. How can they, on the one hand, point to the logic of continuing participation in existing systems, such as the EU's VAT information exchange system, yet, on the other, insist that the UK leaves them?

Duncan Smith and Paterson claim that, even for third countries, only a small proportion of agri-food products need to be physically inspected. But this is a result of rigorous means of ensuring compliance by food producers with the very strict EU rules that Brexiteers reject. They suggested that, because all products of animal origin must enter via specified border inspection posts, these could be located some 25 miles from the border-line itself. But that would mean a serious diversion, plus an addition of time, cost, and risk—for example, to food expiry dates. How

would this work on the island of Ireland, where fully two-thirds of cross-border supply chains are in agri-food products, such as in the meat and milk-processing industries? The latter alone requires 30,000 crossings annually, over 80 daily. There are currently no checks for agri-food products on the island of Ireland, because it is a single sanitary and phytosanitary zone. Imports from Britain are subject to checks at sea and air entry ports—checks that the DUP has long accepted pose no threat to the territorial integrity of the United Kingdom.

The problem for the hard-line Brexiteers is that their frictionless trade requires adherence to EU rules and systems underpinned by a legal foundation that they wish to tear up. They want to maintain all the benefits of the EU that keep the Irish border open, with none of the obligations of the EU. Perhaps that is because breaking completely free from the EU is more important to them than protecting the very hard-won peace and prosperity in Northern Ireland. This is yet another reason to support the noble Lords, Lord Reid, Lord Steel, Lord Kerr and others, in their call for a people's vote on whether this mess or remain should be our future.

7.03 pm

Lord Carlile of Berriew (CB): My Lords, some two and a half years have passed since the 2016 referendum. My concern in this debate is the role of Parliament now, after not just that referendum but the reaching of the draft agreement we have in front of us. I agree with what I regard as the very cogent arguments made by the noble Lord, Lord King of Bridgwater, and my noble friend Lord Hennessy.

I suggest that our task as parliamentarians, particularly in the other place now, must surely be to cut through the recriminations and posturing which have been so clear in the last few years and clear the path to a solution, without running back to the people on the basis that we are not fit to do our duty as parliamentarians.

Parliament was advised strongly, but not enslaved, by the 2016 referendum. The Government have done their duty, in the sense that they have negotiated and presented us with a settlement of a kind, whether we like it or not. I note that the negotiations for that settlement were conducted by two strongly Brexiteer Secretaries of State, neither of whom advocates no deal as being a felicitous result. As many in this debate have said, it would be a disastrous result for the United Kingdom. I suggest that surely it is now time for Parliament to exercise its judgment. It was neither a constitutional nor empirical requirement that we should leave the European Union come what may if the result of the negotiations was contrary to the national interest.

There has always been a clear inference—and, I suggest, a constitutional requirement on us as parliamentarians—that the deal obtained should be considered on its merits by both Houses of Parliament and accepted or rejected accordingly. I fear that the current political drama—many in the Conservative Party will recognise this—has been forced on us by internal disputes within that party. I observe and venture—kindly, I hope—that now may be the time for Conservatives, particularly in the other place, to recognise that they cannot all have their own way or, to coin a phrase, "scweam and scweam". The interests of our country should be placed above their own perceptions.

My conclusion is that there are only two realistic options, given that no deal is so plainly contrary to the national interest. Either we accept, subject to what appear to be available nuance changes, the still-available deal negotiated and agreed in Cabinet by Mr Raab before his somewhat unusual resignation the day after a passionate declaration of Cabinet responsibility; or we reject that deal and abandon the whole Brexit project as having produced a result contrary to the national interest. Those are the alternatives that should be placed before Parliament and on which Parliament, especially the other place, should exercise its responsibility with as little delay as possible.

Baroness Goldie: My Lords, time is now very tight. I ask your Lordships to watch the clock like a hawk and, when it reaches four minutes, please resume your seats.

7.07 pm

Lord Wigley (PC): My Lords, having congratulated the noble Lord, Lord McCrea, I say with all my heart that I wish we were now remaining in the European Union, but we are where we are. Opinion is still divided down the middle. The Welsh and Scottish Governments have significant misgivings about the effect of Brexit on our manufacturing and agricultural economy. There are also concerns about the effect of this draft agreement on devolved powers, such as those arising in Articles 75 to 78 on public procurement and in Article 93 on state aid. It is highly regrettable that the First Ministers of neither Wales nor Scotland were allowed to see the draft withdrawal agreement before it was published. It takes us out of the EU without specifying where we are going. The outline political declaration is a flimsy wish list of ill-defined aspirations.

Early on, Plaid Cymru realised the need to compromise. We contributed positively to the Welsh White Paper published in January 2017, which contained in its subtitle the words,

"a new relationship with Europe".

We indicated that we could accept a withdrawal agreement if the Government, while leaving the EU, negotiated single market and customs union membership. But we cannot possibly support what is now proposed. Northern Ireland is given special status in its relationship to the single market and customs union, so why is that not available to Wales and Scotland—or to the whole of the UK? If this is meant to be a bridge over troubled waters, it is only half a bridge. It takes us to mid-air. We have no idea what follows after 2020. It is a blind Brexit. It pushes uncertainty two years down the road, with potentially devastating costs thereafter for manufacturing and agriculture. Ongoing uncertainty will undermine attempts to secure new investment.

The penny has now dropped with Welsh voters. They realise that this offer bears no semblance to the Brexit promises of 2016. That is why it is legitimate to ask for a people's vote—to ask whether they really

[Lord Wigley]
want to follow this Brexit trail, now that they know its horrendous destination. If they say yes, so be it—they will have voted with their eyes open—but if they say no, that decision should stand. It should be a straight vote between this draft agreement and the status quo of staying in the European Union. No one in their right mind wants a no-deal Brexit. That was not offered in the 2016 referendum and it should not be on the ballot paper now.

An early Commons vote should facilitate such a path. The Government should then apply to put back the Article 50 departure date—as late as the EU can accommodate, given the forthcoming European elections—or withdraw it unilaterally if the CJEU confirms that power. A people's vote Bill should be tabled before Christmas with voting in mid-April. If the present Government are unwilling to allow a people's vote, let them be replaced, without delay, with a cross-party Government specifically to get this done. Having had a people's vote, then—at that point and not before—let us have a general election to elect a Government willing to turn the people's settled wish, as expressed by a people's vote, into a stable, lasting and outward-looking political reality.

7.11 pm

Lord Stern of Brentford (CB): My Lords, the Prime Minister has told us that we have three options: no deal, this deal or no Brexit. I want to speak on the economics of these options. I am a professor of economics at the London School of Economics but of course I do not speak on behalf of that institution.

Let us examine the medium-term effects rather than the very short run, which many have spoken about this evening. These medium-term effects operate through trade and investment. Trade creates opportunities and increases incomes; barriers to trade reduce incomes, and similarly with investment. Thus, economic analysis of the medium term compares the losses from increased barriers with the EU arising from Brexit with any potential gains from possibly reduced barriers elsewhere. In thinking about no deal, the comparisons are clear. In the medium term, it involves major net losses, which, drawing on work by the OECD, the National Institute of Economic and Social Research, the Centre for Economic Performance at the LSE and others, are estimated to be between 5% and 8% of GDP per annum. That means a loss of £100 billion to £150 billion per annum, which is very large compared with the net payments to the EU of around £10 billion per annum.

Although the basic intuition behind these numbers is clear and commonsensical, models make assumptions, so what do the markets say? Sterling has been 10% to 15% below the pre-referendum levels. What does business say? The CBI has described no deal as a wrecking ball. Common sense, the models, the markets and business all point the same way: no deal is a terrible option. Let us take it off the table.

So what about the deal on the table? It is too early for detailed analysis, external to government, of the kind I have described but, unsurprisingly, previous analyses of halfway houses give net losses relative to staying in the EU of roughly half those of a no-deal Brexit. The economic ranking is clear: no deal is by far the worst; this deal is less bad; but both are much worse than no Brexit.

There are two crucial examples that go beyond economics. First, I have witnessed at first hand in climate negotiations, including in Paris in 2015, how effective the UK's leadership can be when working with and within the EU. Secondly, I work in a truly international university, where the best from Europe and the world come to us and we are the best because they do, and our students and young people across the country are in deep anguish about what we are doing to them. Let us take great care. I am deeply worried that we will do major collateral damage in areas that are at the heart of our well-being and our leadership in the world.

In conclusion, we now have a much clearer understanding of the options that we face than we did in June 2016. Surely it is right to lay the options and the evidence before the people of the UK and ask them to make a choice they have not made before: to choose between this deal and no Brexit. No deal cannot be regarded as a serious option.

7.14 pm

Lord Lamont of Lerwick (Con): My Lords, it is extremely difficult, as the noble Lord, Lord Steel, said, not to sympathise with the Prime Minister in this incredibly difficult situation in an incredibly difficult negotiation. She is entitled to a fair hearing and the deal to dispassionate consideration. None the less, it would be fair to say that the reception the deal has received has been less than rapturous, with criticism not just from the Opposition but from within the Conservative Party from leavers on the one hand and remainers on the other. There have been Cabinet resignations as well, and it seems obvious that some in the Cabinet, although staying, are considering their position.

It was in 1997 that William Hague campaigned in the election on the slogan "In Europe but not run by Europe". Jo Johnson, in his resignation statement, said that we now seem to be in the position where we will be out of Europe but run by Europe—and, as the noble Lord, Lord Steel, added, at considerable cost as well. Jo Johnson referred to the inability to have free trade agreements or to make competitive adjustments through regulation. If Brexit is to be like that, it will indeed be pointless.

I appreciate that many of the restrictions or provisions to which people such as Jo Johnson and his brother object are temporary. Personally, I would support the deal if it could be demonstrated that these restrictions were indeed temporary, but we seem to be in danger of drifting into the limbo of a never-ending transitional period. For that reason, one of the biggest concerns is the key point mentioned by my noble friends Lord Howard and Lord King, and the noble Lord, Lord Morrow: the exit mechanism from the two backstops. Indeed, the Irish backstop is extremely significant, with 68 pages in Annexe 5 listing different regulations that will apply in Northern Ireland.

The Government originally asked for, but failed to get, the right to leave the backstop after a period of time. Now, the documents refer to assurances that it

will be temporary. To some people, it seems as though the EU has a veto on when this period will end. If the two sides cannot agree that it is no longer necessary to meet the objectives of the protocol, the arbitration panel will come into place. However, in matters of interpretation of EU law, it has to refer to the European Court of Justice. Martin Howe QC has said that this will mean that the arbitration panel is merely a postbox for the ECJ. I know that the Minister will say that it does not matter, that it will not come into effect if a long-term trade agreement is reached before December 2020— but it will not be. It is highly unlikely that it will, as the former President of the Council of Ministers, Monsieur Van Rompuy, said on the "Today" programme just two days ago.

Does that really matter? I think it matters profoundly. The protocol means that the EU has no incentive to offer a trade agreement better than that in the protocol. The protocol is based on the association agreements between the EU and Ukraine, Georgia and Moldova, but even Moldova has a break clause in its agreement, unlike us. Is this a matter of concern to only a few swivel-eyed Eurosceptics or is it a matter of real concern and a real point of debate? This is what Carl Baudenbacher, a very distinguished judge at the EFTA Court and for a considerable time the president of the EFTA Court, said:

> "It is absolutely unbelievable that a country like the UK, which was the first country to accept independent courts, would subject itself to this".

It seems to me that we need to alter the arbitration procedures for there to be any chance of this deal passing the House of Commons.

7.19 pm

Baroness Quin (Lab): My Lords, my voice is not in great shape at the moment, so I am quite relieved that I have only four minutes in which to speak. I would also like to welcome the noble Lord, Lord McCrea, to the House. I am not surprised that his speech contained some controversy, as I defy anyone to make an uncontroversial speech about Brexit in the current circumstances.

A number of questions are raised in the course of considering the situation that we face. Is the deal that we have in front of us better than no deal? The answer must be yes. Does it deliver exactly the same benefits as we currently have? The answer to that is clearly no, even though we were promised such a deal by the former Brexit Secretary, David Davis. Does the deal meet the six tests of the Labour Opposition? Clearly, it does not. Is it as good a situation as we have now as members of the EU? Clearly, it is not.

Like others, I have sympathy for the Prime Minister in her current predicament. She has worked hard in the negotiations to try to get a deal that honours the outcome of the referendum and at the same time does not let the country down too badly economically, environmentally and on co-operation with justice and home affairs and all the other areas of co-operation within the EU which are of such huge benefit to our country. None the less, she has ended up pleasing almost no one.

We have heard today from representatives of the DUP in Northern Ireland about their concerns. I know that they are very concerned not to endanger in any way the union with the UK. Yet as the noble Lord, Lord Cormack, pointed out, the people of Northern Ireland voted to remain and, in many ways, membership of the EU is a good way forward for Northern Ireland. It does not break bonds between Northern Ireland and the UK, yet at the same time it allows a frictionless relationship, both in trade and other ways, between Northern Ireland and the Republic. Therefore, in many ways, it is the ideal situation.

The Prime Minister is under considerable criticism from within her own ranks, but some of that criticism seems absurd. There are complaints that the EU and the Commission are bullying. In fact—and this answers a point raised by the noble Lord, Lord Pearson, who was somehow hoping that we could appeal over the Commission to the member Governments of the EU —the Commission is carrying out a mandate from the 27 countries. We should not forget that.

We also hear complaints that we will be rule-takers and not rule-makers. We can hardly say that we do not want to belong to this organisation and at the same time complain that we do not have a seat at the table when it comes to making rules.

We are in a difficult situation and, sadly, Parliament and the Government seem disunited. Therefore, finding a situation through Parliament, although that would be a good way forward, looks very unlikely. For that reason, I join with those people who feel that, given that this process was begun by a referendum, the people need the opportunity to decide whether this deal is the way forward or whether they would prefer, after all, to remain as part of the European Union.

7.23 pm

Lord Lee of Trafford (LD): My Lords, its increasingly anti-European stance was the prime reason for me leaving the Conservative Party 20 years ago. Thus, not surprisingly, I was bitterly disappointed by the referendum result. But I accepted it as a democrat and did not go along with those calling for some form of second vote, recognising the potential divisiveness of that. I assumed that an agreement with the EU would be reached and ultimately approved by Parliament, but that now looks very unlikely.

The Brexiteers are rubbishing the agreement, not accepting any responsibility themselves for this ghastly mess, this national embarrassment, this actual and potential disruption to so many lives and jobs, blaming everyone else—the Prime Minister, European negotiators or poor old Olly Robbins, not themselves. We have a wholly unedifying spectacle of Cabinet Ministers resigning, others supporting the Prime Minister inside No. 10 and then bad-mouthing her outside, others plotting over pizzas, and some putting their prime ministerial ambitions well above the national interest.

If the agreement is not approved, there are three alternatives: crashing out, which everyone agrees would be a disaster; renegotiation, and it is pretty clear that the 27 are unlikely to make any further concessions; or another vote, which is now favoured by a clear majority of our population, by three former Prime Ministers,

[Lord Lee of Trafford]
with Labour moving in that direction as well as my own party, which was the first, of course, to advocate a vote on the final terms.

We have a changing electorate. By March 2019, there will be nearly 2 million new voters. By seven to one, they want the UK to stay in the EU. Some 80% of the under-25s support remain, and it is their future we are talking about, as the noble Lord, Lord Dykes, said earlier. Next time, they would know what they were voting for—not the bogus prospectus of 2016, with its extra £350 million a week for the health service, one of the easiest negotiations ever and 40 new trade deals just waiting to be signed.

After the 2016 referendum, remainers like me were urged to respect and honour that vote. I now say to the Brexiteers: if Parliament fails to ratify the agreement, you now show the same integrity and honour that you urged on remainers like me. In these changed circumstances, support a new vote. As Rachel Sylvester states in the headline to an article in today's *Times*, "Each chaotic day brings a People's Vote closer".

7.26 pm

Lord Bowness (Con): My Lords, the chaos of our proposed exit from the European Union continues to swirl around us as the latest chapter in a sorry tale. From Mr Cameron's appeasement of Brexiteers, who were and still are the minority in the Conservative Party, to the current Prime Minister's disastrous decision to invoke Article 50 without any agreement in the country or even in her own party as to what kind of Brexit we wanted, and the equally disastrous commitment to red lines that obviously would make it impossible to achieve the desired close and frictionless arrangements with our European partners—none of which does the Government, who I have supported, any credit.

At this late stage, there is an acknowledgement that the agreement is a compromise and that the scenario of enjoying all the benefits of membership while being free of the rules and obligations of membership was, and always has been, a fantasy. It is obvious that any arrangement that keeps us close to the European Union cannot be as good as that which we have as members. Before we espouse the doubtful procedure of a referendum, is this not the time for honesty and leadership from the Government and for the people to be told, "We have tried to do your will, but this is the best we can do"? With the knowledge that we now have, do we really want to leave? I put it to my noble friends on the Front Bench that the agreement does not meet the wishes of either leavers or remainers. How can they come to the House and tell us that they are, nevertheless, pressing on with the plan with so many opponents and which is unlikely to pass in the other place? How can they maintain the fiction that we will be better off outside the European Union?

We cannot blame the European Union. The 27 want to preserve the integrity of the Union, its institutions, the single market and the customs union. They knew what they wanted from the start and gave a clear mandate to Monsieur Barnier, while we were unable to agree among ourselves about what we wanted.

Unfortunately, this is not the end of this sorry story. We still do not have the fully agreed version of the political declaration which, unlike the withdrawal agreement, will not be legally binding. What we have is full of generalities and mere aspirations, to which we have become too accustomed over the past two years. Realistically, how long will it be before they put flesh on those bones? How long will it take?

Some who are calling for rejection of the agreement seem to contemplate a catastrophic no deal with equanimity, despite the consequences. If the agreement does not pass in the other place, what is the Government's plan B? I hope that we will not be told, "We cannot disclose our negotiating position". We have spent some two years trying to agree what we wanted, but now we have only a few months to plan against a no deal. Stockpiling medicines, chartering ferries and turning motorways into lorry parks may meet the short-term emergency but are not the answer for the long term. I therefore ask again: what are the Government going to do to ensure that there is no deal?

7.30 pm

Lord Higgins (Con): My Lords, all of those who took part in the debates which set up the 2016 referendum were absolutely clear that what we were legislating for was an advisory referendum, not a mandatory one. But the morning after the result was announced, the Government immediately took the view that we should treat it as if it were a mandatory referendum. That was despite the fact that the campaign itself was riddled with lies, fake information and deception. It is also the case that perhaps the worst lie of all was that leaving the European Union was going to be simple. No one in the Chamber this evening would take that view.

But it has presented the Prime Minister with an immensely difficult task, and we must give credit to the stamina and determination which she has shown in pursuing that objective. However, the last thing we need at this moment, I believe, is a change of Prime Minister. I have been appalled by the way in which various members of my own party have sought to undermine her position at such a difficult time.

We have been very clear that the alternatives are: this deal, no deal or no Brexit. The Prime Minister herself has put it in those terms. I am quite clear myself that, of those three alternatives, as far as the future of this country is concerned, the best thing we can do is have no Brexit. That is what we ought to aim to do, but we are stuck with the result of the referendum and therefore there is now enormous pressure for a second referendum.

On 25 October, and indeed on 19 January, I spoke at great length saying why we should not have another referendum or, indeed, any referendum. Every time we have one, we undermine the whole basis of our representative parliamentary democracy, because the referendum takes away our position as representatives and brings us here as delegates. I therefore do not believe it would be right to hold another referendum. Incidentally, what I am clear about, having spoken to many of those who joined that enormous march in favour of a people's vote, is that 99.9% or probably

even more of them were in favour of a referendum because they want us to remain. The demands for a referendum should be viewed in that light.

The question now is: if we are not to do it by referendum, what should happen? This is the time when Parliament has to look at the three alternatives and should say that, in the interests of our country, we must not go ahead with the proposal to withdraw. Here I agree with the noble Baroness who spoke from the Liberal Benches, and indeed I detect a growing feeling in the House that we ought to stand up and take that position so that we do what is right for the economy and the people of this country. It is a great regret that we did not have a vote on whether we accepted the referendum result. I think that it is high time we did.

7.34 pm

Baroness Watkins of Tavistock (CB): My Lords, I declare my interests as outlined in the register, particularly that I am a nurse. It is clear to me that the Prime Minister and her team have reached an agreement in principle with the EU that may well be the best deal that could be achieved under the circumstances. On Friday 16 November, the *New York Times* summed up the situation as follows:

"Remainers say that it will damage Britain's economy compared with staying in the European Union. Brexiteers say it doesn't fulfill their promise to 'take back control' of immigration, regulation and trade".

Faced with this situation, no one is able to predict whether a majority in the House of Commons will support the proposal. Crashing out or leaving the EU without a deal is now recognised to be at the very least an extremely undesirable option. The people voted to exit the EU formulated on a view of UK independence based not necessarily on lies from Brexiteer politicians but on the notion of "sunny uplands", which now seems to be at least in part a deluded vision of the future. As any elementary student of psychology would inform us, a delusion is a firm, fixed, false belief.

It is widely reported that many people voted to leave because of the expected NHS budget dividend from savings on the UK EU contribution and an expectation that free trade agreements would increase the UK's wealth and create new jobs. As a result of underinvestment and uncertainty, the fact is that many EU citizens no longer feel it is a good time to come and work in the UK. A recent Health Foundation, King's Fund and Nuffield Trust report predicts a staffing shortfall of almost 250,000 in the NHS by 2030. They argue that,

"Critical and lasting shortages in the … workforce mean that the forthcoming NHS long-term plan risks becoming an unachievable 'wish list' of initiatives to improve the health service",

rather than reflecting reality.

In May 2018, the Royal College of Nursing, with a membership of more than 400,000, debated the implications of Brexit, resulting in a vote to campaign for a referendum on the final Brexit deal. The debate made clear the numerous implications of Brexit for the health and social care system. These are risks which, if they are not properly addressed,

"may damage population health, as well as severely impact on our members' ability to provide safe and effective care for their patients in both the short and the long term".

To the EU's credit, in many quarters it has made it clear that it would still welcome the UK remaining within the EU. Recent opinion polls suggest that many people in the UK would welcome the opportunity to stay in the EU. I therefore ask the Minister, if the House of Commons fails to support the EU withdrawal agreement as outlined in the Prime Minister's Statement, to please assure the House that the Government will not lead the country out of the EU with no deal. Instead, will the Government return to the people in a democratic fashion and give them the right through a referendum or peoples' vote to decide whether they wish to accept the current deal as offered or, as I believe they would, decide to remain within the EU?

7.38 pm

The Duke of Wellington (Con): My Lords, I declare my European interests as detailed in the register. This debate is on the Prime Minister's Statement last Thursday, which I was able to witness from the Gallery in the other place. My first and overwhelming reaction was that, in the national interest, we must support the Prime Minister. I have been dismayed over the past five days to see attacks on the draft withdrawal agreement from all parties and persuasions. This is probably the most difficult negotiation which the country has faced since the Second World War. We are leaving the European Union next year and the unenviable task for the Prime Minister over the past two years has been to negotiate terms to enable us to leave without too much damage to the economy.

It is clear to most people who do not allow ideology to overcome common sense that leaving without a deal would be catastrophic. It is also not understood by many commentators and politicians that our negotiating position with the other 27 member states is not as strong as they like to imagine. We are indeed the fifth or sixth economic power in the world but, as a bloc, the EU 27 is a much greater market and has much more economic power than us, as well as more important concerns than the effect of us leaving. So whoever became Prime Minister after the referendum faced a herculean task.

It has been a torturous process and has gone on longer than anyone would have wished, creating damaging uncertainty that has certainly affected the economy. But we have now reached a point where the Prime Minister has negotiated a text with the European Union of more than 500 pages. It would be astonishing if many people did not have objections to or disagreements with one or more aspects of the deal, but, whatever our party, and whether we voted to remain or leave, we must consider the national interest.

The alternatives are to leave without a deal, which would create untold damage, or to hold a second referendum, which I do not support. I hope that a calmer debate can take place over the next few weeks. The proposed deal is a compromise, as it was always going to be, and covers only our withdrawal and the implementation period. It will take many years to negotiate new trade agreements with third countries. We will need a lot of time to negotiate our new relationship with the EU. In fact, I am starting to doubt whether a transition or implementation period of 21 months will be long enough.

[The Duke of Wellington]

But the supreme point is that we will leave the EU next year; we must leave on the best possible terms; and then we must negotiate a close and enduring relationship with the rest of the European Union. Even to contemplate at this moment a change of Government or Prime Minister, or another referendum, cannot possibly be in the national interest. I urge Members of this House and the other place to support our nation's Prime Minister and the interim deal she has so painfully negotiated.

7.42 pm

Lord Davies of Stamford (Lab): My Lords, the Brexit negotiating process has been an unmitigated and historic shambles. I am quite sure that, for decades to come, in business schools and schools of international relations around the world it will be taken as a test case of how not to conduct a negotiation.

I fear that the Government have still not learned even at this stage what the problems are that they ought to face up to. During his speech, I asked the Minister about the new financial services regime, which was held out as a result of the agreement. Of course, I knew that no such agreement had been reached, and he just gave me some PR verbiage taken from the document. We, and business, need to know whether we will be able to do corporate lending from London. Will we be able to manage in London the funds of institutions resident in and regulated on the European continent? Will we be allowed to sell retail financial products without an establishment in the country concerned? These are urgent questions of enormous economic importance. A lot of people are now sitting on contingency plans, wondering whether they should implement them. Only when they know the answer to questions such as those will they be able to take a decision.

This is not just about financial services. It is about the whole services sector, which noble Lords will know makes up 80% of the economy. It is simply waiting for answers. Nothing—nothing—is said on the subject in these jejune and hopeless documents. Let us take broadcasting, for example. We are very good at it—probably the best in the European Union. Will the broadcasting directive effectively continue to operate, under which, if any programme is broadcast anywhere in the EU, it can be automatically broadcast anywhere? Will that happen or not? We need to know the answers to these concrete, precise questions.

The Prime Minister has made a lot of mistakes. One fundamental mistake was to argue and campaign for a project that involved impoverishing the country—although not as much as leaving without an agreement would, as was pointed out by the noble Lord, Lord Stern. Nevertheless, whether we lose £50 billion or £200 billion, we will still lose money. The Government are supposed to focus on improving the economy, employment, living standards and so forth. We are headed in a completely perverse direction. After the referendum, the Prime Minister's mistake was not going for full and permanent membership of the single market and customs union, both of which were entirely negotiable.

At the time, the Prime Minister said that she could not do that because she needed to come up with something that was endorsed by, or had the blessing of, the referendum. She then made a complete nonsense of her argument by coming up in August with this extraordinary Heath Robinson contraption called the Chequers agreement. Of course, that has evolved and been tinkered with since—but by no conceivable stretch of the imagination could it be regarded as something endorsed by or consistent with the referendum. It is something that no one at the time of the referendum could conceivably have thought of. So I am afraid that her credibility, not surprisingly, is almost at the bottom of the thermometer.

I fear that the Prime Minister is now about to make an even worse mistake. There are rumours that she intends to manipulate House of Commons procedure such that the Commons will get a vote, with no amendments or alternatives, on only two possibilities: either her deal or coming out of the Union without any agreement at all. It is what you might call the "dog in a manger" approach, or the "spoiled child" approach: unless she gets what she wants, she will ruin the party for everybody. That is not the sort of thing I would have expected from the Theresa May I knew all those years ago when I sat with her on the Tory Benches in the House of Commons, and indeed in the shadow Cabinet for two or three years. I hope that her better instincts will prevail because, if she went down that road, she would both incur the economic costs of going through with Brexit and cause something even worse: a profound political and constitutional crisis in this country.

7.46 pm

Viscount Waverley (CB): My Lords, I would like to have had more time to explore the point made by the noble Lord, Lord Cormack, that the people of Northern Ireland voted so overwhelmingly to remain—as did the Gibraltarians, interestingly.

The overall benefits of EU membership have never been fully understood. Regrettably, our island mentality has never sat well with the European vision; indeed, that is the case from many in this building. Globally, the timing could also not be less opportune. We face testing times, with many suggesting that our influence is on the wane, but I have no doubt that how we are recognised globally for our heritage—combined with the British virtues of inclusiveness, tolerance, sense of fair play and hard work, and the quality of our goods and services—will guide us through.

The Brexit risk calculus must be carefully assessed by Parliament but a Brexit without some adverse consequences is an illusion. Domestic party politics must and should step aside for pragmatism. The national interest demands it. No deal is tantamount to a cataclysm. Those who advocate walking away at this late stage from a potentially implementable plan jeopardise the process, pitching us towards the cul-de-sac of either crashing out or remaining. This cliff edge could be averted, provided a withdrawal agreement is reached this week.

Thus far, the negotiations have had an eye to the future, with both sides agreeing an implementable, sustainable plan, drawn up in the spirit of partnership

and recognising the inevitable. I fear that prevarication could lead to a whole raft of dissatisfaction on some of the detail from member states and the European Parliament, thus jeopardising the referendum result, with its inevitable disruptive consequences. Once agreement is achieved, we can get on with the urgent task of addressing long-outstanding domestic policies in addition to the full and complete consideration of our long-term collective and individual relationships with the EU and its 27 member states. Those on the political extremes of the debate who advocate walking away are wrong. But, as a degree of comfort to them, it should not be forgotten that it is in the gift of the Government of the day, year on year, to introduce and implement policies that will stand our country in best stead and deliver the will of people.

The point of no return will, in essence, have been reached by the end of this week. Two years have brought us to the point where we should move forward with good grace, leaving the duration of the transition as a matter of common sense and arbitration. The country wants us to get on with it—and demands that we do so—so, with a degree of trepidation, nothing I have heard this evening has convinced me that we have any practical way forward other than accepting this withdrawal agreement as the starting point.

7.50 pm

Lord Forsyth of Drumlean: My Lords, this withdrawal agreement or proposal does not deliver what 17.4 million people voted for. It is a Trojan horse, as the noble Lord, Lord Morrow, said, at the centre of our constitution and threatens our very existence as a self-governing and independent United Kingdom. We are told by the Prime Minister and, indeed, the noble Duke, the Duke of Wellington, that we should support it in the national interest.

Lord Cormack: Yes.

Lord Forsyth of Drumlean: The noble Lord, Lord Cormack, assents. Is it in the national interest to abandon any say in making our laws in vital areas during the transition period and to pay a staggering £39 billion as the price of our emasculation? That is more than £2,200 for every person who voted leave in the referendum. Every penny of it will have to be borrowed and paid back by the young people who have featured in so many of the speeches this evening. Just think how a fraction of this sum could be used for huge benefit in our schools, or to repair the damage caused by the cuts to welfare and universal credit.

Is it in the national interest to enter into a legally binding agreement from which we will have no unilateral right to withdraw, to bind the hands of future Parliaments and to make us reliant on the permission of a foreign power or court to fulfil our manifesto promises? Is it in the national interest to risk fracturing our United Kingdom by making Northern Ireland a rule-taker in further areas, including goods, agricultural products and VAT? The backstop provides for an all-UK customs union and regulatory alignment in Northern Ireland—a gift to the Scottish separatists and, along with the backsliding on fishing rights, a slap in the face for the 13 Scottish Tory MPs elected to preserve our union and save us from a Corbyn coalition Government. It is not just for the Scottish separatists. As we heard, the noble Lord, Lord Wigley, is already on to the opportunities to argue the case for Welsh nationalists on the back of these proposals. It is a total betrayal of the Democratic Unionist Party, which was assured that no unionist—indeed, no Prime Minister—could ever countenance a border in the Irish Sea, so eloquently explained by the noble Lords, Lord Browne of Belmont and Lord McCrea, in an outstanding maiden speech.

This is a hokey-cokey agreement, leaving our country half in and half out of a failing organisation in defiance of a promise given by a Conservative Government—indeed, by all political parties—that they would implement whatever the people decided in the referendum. We spent nearly £10 million of taxpayers' money putting leaflets through every door giving that promise. Now people are prepared to cast it aside. We were told that no deal is better than a bad deal. Now, apparently, the national interest requires us to accept that a bad deal is better than no deal. We were told that nothing is agreed until everything is agreed. Now it seems that everything is agreed for nothing. It seems we have stumbled into an episode of "Yes Minister", where it is being argued that it is necessary for us to leave in order to remain. There is still time for the Prime Minister and the Cabinet to change course and keep faith with those 17.4 million people who were promised that, if they followed us, we would give them their country back.

7.54 pm

Baroness Bull (CB): My Lords, as we heard, the withdrawal agreement is intended to provide for a smooth and orderly transition to the future relationship for people, businesses and organisations across the country, so I will focus my attention outside this House and the other place to consider the impact of the agreement on two business sectors crucial to the UK's future success: higher education and the creative industries. In doing so, I declare my interest in the former as an employee of King's College London.

For all its bulk, the agreement offers these sectors, and, no doubt, others, little more certainty than exists at present. For this, we have to look to the much slimmer declaration on the future relationship. It is encouraging to see in it mention of terms for participation in Union programmes in science, education and culture, but it has little of real substance and none of the detail that would allow these sectors to begin planning ahead—nor, as we know, is it legally binding. It is worryingly light on trade in services and there is no suggestion that the EU and the UK will seek a solution on the country of origin principle which has helped to make the UK a global hub for international media companies. Can the Minister give any clarity on the Government's intentions with regard to this principle, which is of key concern for the sector?

The agreement provides more clarity on citizens' rights, but the future declaration does not go nearly far enough on mobility—just two brief bullet points that have to be seen in the context of the Prime Minister's comments last week that positioned the end to freedom of movement as something to be celebrated.

[Baroness Bull]
In higher education and the creative industries, the freedom to move people, services and ideas within the UK and the EU is fundamental to continued success. The most economically productive parts of our creative industries hire up to 30% of their staff from the EU. The university sector employs just under 50,000 EU nationals. EU-domiciled students—135,000 last year—are crucial not just to the higher education business model but to continuing quality. Their economic impact on the UK each year totals £3.2 billion.

Can the Minister give any indication of when we might get more clarity on future immigration policy for staff and students so that universities can plan for the admissions cycle that begins in autumn next year? When will we have more detail on UK participation in Horizon Europe, Erasmus+ or Creative Europe? Can he give an assurance that any terms agreed would support the movement not just of highly paid established talent, but of those people who would not meet salary thresholds but will be the talent of the future? Without more clarity, the promised benefits of a transition period are denied to businesses in the creative and higher education sectors, and, I have no doubt, in other sectors too. How are they supposed to use this period to plan effectively when there is still no detail on what they are planning for?

The Prime Minister said, as we have heard repeatedly tonight, that there are three choices left to the UK: no deal, this deal or no Brexit at all. No deal would have devastating effects on the creative industries and higher education—sectors that earn the UK billions of pounds each year and make us the envy of the world. No deal would damage these sectors when we will need them more than ever before. So we are faced with this deal, which aims simultaneously to break from the EU, honour the Northern Ireland peace process, protect the integrity of the UK and continue to interpret the 2016 vote, rightly or wrongly, as a popular desire to end free movement. No wonder it is a deal that suits no one. So that brings us to the last option. Two and a half years on from the referendum, with the clock ticking and the stark reality of a post-Brexit Britain hoving into view, the Prime Minister's third option is now, to many people across this country, the most attractive option of them all.

7.58 pm

Lord Hay of Ballyore (DUP): My Lords, I add my congratulations to my noble friend Lord McCrea on a very moving maiden speech to the House. As a party, we have continually said that we want to see a sensible and balanced agreement on leaving the European Union. Leaving the European Union without a deal has never been our preferred option.

We are not a party of no deal. We believe that the proposed Brexit plans will damage the economy and the constitutional integrity of this United Kingdom. Our position on the proposed agreement is aligned with what we have been saying both privately and publicly for some months: we could not support any deal that treats Northern Ireland differently from the rest of the UK. We believed that that was also the position of the Prime Minister. This proposed Brexit plan will establish significant difference between Northern Ireland and the rest of the United Kingdom. It would certainly see Northern Ireland staying aligned with the rules of the EU single market if another solution cannot be found by the end of the transition period in December 2020. That means that goods coming into Northern Ireland would need to be checked to see whether they meet EU standards.

The other issue, which is more serious, is that we would also have to follow EU VAT rules on goods coming into the country. I have to say that the deal fails to protect jobs and the economy in Northern Ireland and it creates a border down the Irish Sea, subjecting us to EU rules without any power to influence or change them. In the other place recently the Prime Minister argued that the customs arrangement, or backstop, as described in the agreement, is only temporary and we will negotiate a future trading arrangement with the EU. The EU has already made it very clear that any free trade agreement will not be an alternative to this legally binding customs union scheme that will be built on in the future. It is hard to believe that any scenario exists whereby the EU would release the UK from an arrangement that gives it such an advantage.

From the very moment she entered No. 10, Theresa May said that the word unionism was important to her. She talked of protecting the precious bond between the UK's four nations. I have to say that I believe this deal does the opposite. I could stand here and list the broken promises, as has already been said, that the Prime Minister gave to us, both privately and publicly. I do not think it is the time or place for that tonight, but it is a sad situation that we are in. I know that the Prime Minister has said that it is this deal or no deal. At one time she was saying that a bad deal is worse than no deal, so it is a tragedy that we find ourselves in tonight. Our battle is not with the Conservative Party but with the Prime Minister and her Cabinet and their broken promises. We will not get into the question of who should lead the Conservative Party, now or in the future: that is a matter for the Conservative Party alone. This is about not any deal, but the right deal.

8.03 pm

Lord Warner (CB): My Lords, I have from time to time this evening sensed that people are starting to feel sorry for the Prime Minister, but let us not get all sentimental: she played a large part in creating the biggest political shambles since Suez. The 2016 referendum result never gave the Government the mandate she claimed: only 38% of the electorate actually voted to leave the EU. She rushed into the withdrawal process without a clear negotiating strategy and with a shedload of misguided red lines. A year after the referendum she thought she could get a better mandate by calling an election, only for the British people to let her down substantially by reducing her parliamentary majority. She has totally changed her tune from saying,

"no deal is better than a bad deal",

to saying that her current, unsatisfactory deal is better than no deal.

Throughout the negotiations the Brexiteers have been allowed to argue that the UK has a very strong hand; that the EU needs us more than we need them; and that the EU would split and do side deals. The

reality has been that the EU stuck together, protected its own rules and stood by Ireland on its border concerns. It is the UK Government who have failed to grasp that you cannot have frictionless trade if you leave a single market and a customs union. So here we are today with a deal that satisfies very few people in the Prime Minister's own party, is opposed by all the other parliamentary parties, threatens the integrity of the United Kingdom and looks unlikely to survive a meaningful vote in the House of Commons.

Although the Prime Minister says she finds it difficult to contemplate, she did last week reluctantly recognise for the first time that there is another option to her unsatisfactory deal or leaving with no deal. That is to stay in the EU, which in practice we will be doing for the length of the transition period, which could now stretch to 2022. Staying in the EU could probably be done only by another referendum that passed judgment on what the Government had achieved.

Until now a second referendum, which is now being called a people's vote, was seen as a pipe dream of crazed remainers—no longer. Even recent Conservative Ministers use the term supportively and pollsters are starting to test the water. In a YouGov poll last Wednesday, after the Prime Minister launched her deal, six out of 10 voters said they wanted a second vote. Moreover, growing numbers of elected politicians now seem unable either to accept a bad deal or to reject it without some political cover from the electorate who have elected them. I think it is time for this House to help them out. We should provide some ideas to the House of Commons on how a second referendum might be carried out and how the EU might be encouraged to extend the Article 50 timetable to enable such a referendum to take place. I am sure that my noble friend Lord Kerr, somewhere in his cupboards, has some ideas. We are always being told our role is to ask the Commons to think again. A second referendum seems to me a good issue on which to exercise this role.

8.07 pm

Baroness Altmann (Con): My Lords, I begin with the words of Albert Einstein:

"Politics is a pendulum whose swings between anarchy and tyranny are fuelled by perpetually rejuvenated illusions".

The word "illusions" in many ways sums up how we have arrived at the current position, and delusions or fantasies still abound in many debates on Brexit. Apparently several members of the Cabinet, several noble Lords today and the leader of Her Majesty's Opposition in the other place seem to believe that they can go back to the negotiating table and achieve a better outcome. This is fantasy.

I have to express my utmost admiration and sympathy for the Prime Minister: I have nothing but respect for her tenacity and resilience. The way she has been treated by some in our party has been shameful. She has done the best she could. She originally stated that we would leave the single market and customs union—the extreme Brexiteers insisted on this. She also said that we must have frictionless trade, leave the ECJ and protect the Northern Ireland border. These objectives are mutually exclusive. Her task was impossible. As her Statement rightly claims, delivering Brexit involves difficult decisions and choices for all of us. There will always be trade-offs. However, she must be honest with the country—her agreement is not a deal.

It is true that the agreement allows us to leave the EU in a smooth and orderly way next March. It agrees a time-limited transition period, which literally buys time to agree a future relationship, but that is as far as it goes. It is a legally binding commitment by the EU to enable us to remain in its free-trading orbit, from which we have benefited significantly, for a temporary period, while giving up our political membership, not even retaining the already-elected MEPs. But this is not a deal for our future relationship. It does not provide the certainty that business needs. It is merely a stay of execution. It also fails to protect our service industries—some 80% of the economy. The political declaration is all but worthless: warm words which any future EU or UK Government can tear up. It does not bring back control.

The Prime Minister outlined three options: no deal, this agreement or no Brexit. No deal cannot be an option. It has always been unconscionable but my noble friends on the Front Bench have consistently insisted that we have to keep no deal as an option; otherwise, we would undermine the Government's negotiating position. The negotiations are now at an end so that argument no longer applies. We must exclude no deal. No responsible Parliament could possibly contemplate the chaos it would unleash. That leaves two options: the agreement outlined by the Prime Minister, which she insists delivers on the result of the referendum, or no Brexit. On this, the Prime Minister is right. I earnestly wish I could simply support what she has managed to negotiate but the terms that she has brought back are so significantly different from the campaign promises and post-referendum assurances given to the British people, how can Parliament truly believe it is safe to proceed? If Parliament is not sure that this is what the majority of British people want for our future, democracy demands that it must find out before making an irreversible decision.

I finish with more wise words from Albert Einstein:

"All of us who are concerned for peace and triumph of reason and justice must be keenly aware how small an influence reason and honest good will exert upon events in the political field".

We must ensure that "reason and honest good will" will indeed finally influence the political future of our relationship with the EU.

8.12 pm

Baroness Crawley (Lab): My Lords, this is probably the best deal the Prime Minister could have brought back from Brussels, given where she started from, with those misjudged and totally unnecessary red lines in her Lancaster House speech. She has been hamstrung from the start by the fact that this whole misguided Brexit enterprise has been a massive military endeavour, started by David Cameron to keep his party together. The people of this country have for the most part been mere hapless civilians, trying to find their way through the fog of war.

Watching the PM in the three-hour Commons debate last Thursday, she did seem to be one of the few grown-ups in the Chamber and I could not help but

[Baroness Crawley]
admire her resolve. However, as a former Government Whip, I cannot see how this unloved deal will get a majority in the other place. That is if she survives any 1922 Committee leadership challenge. Did Jacob Rees-Mogg write his letter to Graham Brady with a quill on vellum? Does anyone remember that American show about a dysfunctional family called "The Brady Bunch"? But however dignified, the Prime Minister cannot be absolved of responsibility for the very serious crisis we now face as a country.

As I see it, this is the withdrawal deal that the EU has sweated over with our various negotiators for the last two years and it is not of a mind to conjure up a new one. Mr Barnier's clock has stopped ticking. From next Sunday, Mr Barnier will metaphorically go off and have a nice, well-earned gin and tonic, as he sees it. It is now over to us.

There is little point saying that Parliament will not allow a no deal, because without a plan B we automatically fall into no-deal territory. That is the real Project Fear, where the raw truth of this whole sorry enterprise could face every family in this country in the next few months. There is the prospect of the stockpiling of food and medicines and of just-in-time lorries being refused entry at ports while goods, livestock and jobs perish.

Such prospects are bad enough but, looking through the draft withdrawal agreement over the weekend, especially the free movement part of it, as the noble Baroness, Lady Bull, said, it was striking to see how much our interests as a country will be undermined immediately under no deal. What happens to the rights of UK nationals currently living in the EU? What about our professional qualifications being recognised in Europe? What about police and judicial responsibilities and co-operation across borders? What about the orderly transfer of responsibilities through Euratom on nuclear materials and radioactive waste destinations? What about British people's court cases before EU courts? Does it all stop dead in its tracks?

No agreement on the Irish border is another horror story under no deal. Presumably an EU border comes into immediate force. What happens to the all-Ireland energy market? Do all the lights really go out in Belfast? If we think this draft withdrawal agreement and the future relationship paper are unacceptable, wait till we see a no deal.

Mrs May does not have the numbers in the House of Commons—however, never say never—and although a general election may be triggered, I have my doubts; the last general election in January was in 1910. I have to conclude that it is now over to the British people in a people's vote to take back control.

8.16 pm

Lord Butler of Brockwell (CB): My Lords, I hope that it will not be regarded as a kiss of death if I say a few words in defence of this agreement. I do not retreat from my belief that a better alternative is to stay within the EU and to give the decision to the British people—but, like the noble Baroness, Lady Quin, I regard many of the criticisms of the deal as greatly overstated.

I take as my text the five objections advanced by the European Research Group, which we heard itemised by the noble Lord, Lord Forsyth. The first is that we,

"would hand over £39 billion of taxpayers' money with nothing guaranteed in return".

This ignores the fact that the £39 billion represents the UK's outstanding liabilities when we leave the EU. It has been accepted as money duly owed, whatever terms we leave on, and is a debt of honour.

The second criticism is that we would remain a rule-taker over large swathes of UK law in such areas as social, environmental and employment policy. I agree that it would be better if we remained a member of the EU and had a hand in making these rules. But our acceptance of these rules, with which we largely agree, seems an acceptable price if it leads to negotiating frictionless trade with the EU.

Thirdly, the European Research Group claims that there would be no unilateral right of exit from a backstop to the customs union. We heard this from the noble Lords, Lord Howard, Lord King and Lord Lamont. But we have entered an international agreement designed to protect the absence of physical borders between Northern Ireland and the Republic. I would not expect us to have a unilateral right to abrogate the backstop. The departure agreement provides for an independent arbitration panel in the case of disagreement, and that seems reasonable.

The fourth attack is that the agreement creates internal borders between Northern Ireland and the rest of the United Kingdom. This is the ground for the DUP's opposition to the deal. The special provisions for Northern Ireland in the draft agreement are necessary to maintain frictionless movement of goods across the border, and there are already different regulations between Northern Ireland and the rest of the UK as a consequence of devolution. If the DUP voted against the agreement on these grounds and the result was no deal, I have to say that it would be cutting off its nose to spite its face.

Finally, it is alleged that the European Court of Justice will continue to remain in control of EU laws that are directly effective in the UK. But the ECJ's role will be time-limited, and for it to be the interpreter of EU law as it affects the UK, and for the UK courts to have to take account of its judgments, seems reasonable.

To represent the provisions of the agreement as making the UK a vassal state seems absurd. If what the critics are saying is that the agreement does not give all the advantages of alleged independence promised in the 2016 referendum, I say: join the club. There are many of us on the other side of the argument who knew from the beginning that it neither would nor could.

8.20 pm

Lord Lang of Monkton (Con): My Lords, like other noble Lords I would like to address the three options. I would describe them as: first, to support the present deal, with all its imperfections and uncertainties; secondly, to go for no deal, face economic disruption and do what we can to overcome the unforgivable failure adequately to have prepared for it; and, thirdly, to have the mixed-bag option of rejecting the people's

vote and calling for another one, or for a general election, or for a postponement of the Article 50 trigger—in sum and in essence, to stay in the European Union.

I suppose that it is quite an achievement to have reached any kind of deal in the circumstances here and in Brussels, and I pay tribute to my right honourable friend the Prime Minister for the deal that she has achieved. But one has to ask questions. Does this deal treat the UK as a single entity? Does it give us freedom to set our own tax rates? Does it give us freedom to strike our own trade deals and to leave the customs union when we decide? Notwithstanding what I heard from the noble Lord, Lord Butler—whose speech I shall read tomorrow with great care—my answer to these questions is no.

The vital snag that leads to that answer is of course the Irish backstop. Without the unqualified right to terminate that, we will find the relentless grip of the EU stretching into an uncertain future. We will be like a ship ready to sail that finds its anchor snagged on the rocks beneath. One wonders how the Government thought that they could get away with a concession on the backstop, which they had repeatedly promised never to agree to, and which the DUP had repeatedly said that it could never accept. We conceded so much in order to honour our word to Northern Ireland, and then we failed to do so. Pettifogging over that border should never have been allowed to happen from the very outset. The EU frontier is already perforated by countless special deals. I gather that France even has one to cover French Guiana—a country in another continent across a wide ocean. Given reasonable good will and common sense, a pragmatic solution could easily have been found and still could be.

That is the burden of uncertainty that we take on if we decide to accept this deal, as we may have to. Many people assume that no deal would be calamitous. They could be right; it would certainly create disruption and problems, some of them very severe, in the short term. But in the longer term it could be a different story, unfashionable though it seems to say so in today's debate. We already trade with four-fifths of the world on WTO terms. Our exports there now stand at 60%, with only 40% going to the EU; a decade ago, it was the other way round. The EU's share of world trade has halved in the past 30 years. The single market should be a springboard: instead it is a protectionist fortress. The EU's growth rate is flat, close to recession. While the no-deal route is not an easy one to choose, nor is the present deal, so neither should be ruled out.

There is no denying that we face at present the threat of an economic and political crisis: it is a very bad time to have to take a vital decision of this kind. But the proposals from those who are at heart remainers would make matters worse just when what we and, especially, business need is certainty.

There is another reason why it would be wrong to prevaricate. We gave our word to the electorate in the people's vote of 2016 that we would deliver what they decided upon. Every political party pledged to do that, both before and after the result, without qualification. What the referendum decided was not subject to conditions, and not to honour it now would be the most damning and damaging outcome of all. With or without a deal, we must leave the European Union.

8.24 pm

Lord Desai (Lab): My Lords, I am a realistic pessimist about this. I think life is such that you do not always get the best option, no matter how hard you try. You have to choose between the second and the third best, or even the fourth best. So I am going to make a small forecast, because everything else has been said.

I reckon that, just as the challenge to the Prime Minister in the 1922 Committee has not happened—and I think will not happen—this deal will be approved by the House of Commons; it will not be rejected. I think the fear of no deal, as well as a dislike of no Brexit, are strong enough in the House of Commons for there to be a temporary coalition of enough Conservative Members plus enough Labour Members who will probably follow not their leader's orders but their leader's practice and defy the Whip, and I think there will be a small majority.

I think this deal, bad as it is, is the best that can be got. I think people are not foolish. They may not look very intelligent from a distance, but there have been detailed negotiations by talented civil servants. One also has to pay tribute to the Prime Minister. She has managed all this time by feigning to be a weak, indecisive person, and she has lasted longer than any of her colleagues. She did Chequers and got rid of David Davis and Boris Johnson, and ever since then she has been shedding Cabinet Ministers like nobody's business. It is only when you find out that they have resigned that you realise that they were in the Cabinet in the first place, so it is making them famous by default. I think she has been clever. She has leveraged what men in the other place think are women's weaknesses, and she has lasted eight years in the Cabinet—two as Prime Minister and six as Home Secretary. She has realised that this is the best she could get.

The fact that we may have a transitional period until not 2020 but 2022 is, in the long run of things, a very trivial matter. It will not look very nice now, but it will be forgotten very soon, so I say cheer up. This is what will be. There will be no no deal, there will be no no Brexit, this is the best you can do.

8.27 pm

Lord Balfe (Con): My Lords, I draw attention to my entries in the register and my, I think, fairly well known position as a very strong remainer. The key thing about this deal has been mentioned on many occasions, including by me. It is that you are never better off outside a club than you are inside a club. I happen to think that our civil servants who have been negotiating in Brussels have probably done as good a job as they could do. In the end you might have got a slightly different this and a slightly different that, but it has not been an easy negotiation.

The first thing I would say is that we are facing a second Suez. We have totally misjudged our place in the world. We have totally misjudged our importance to the European Union, and we are going to regret leaving the European Union every year we are out. I have no doubt about that at all. The fact of the matter

[Lord Balfe]
is—and this document proves it—that we have got to live with Europe. You can change politics, but you cannot change geography, and Europe and Britain are inextricably linked. This document confirms us as the rule takers, not the rule makers. We will no longer be at that table, although we will be consulted. As one of my colleagues in Brussels said, "You will be consulted but you are no longer part of qualified majority voting and you will no longer be part of the strategy that shapes the decision".

What do we get back from this? I heard that we get back control of immigration. That is useful, isn't it? But we have always had control over half the immigration into this country, and government cuts to the coastguard service have meant that there is a fair bit of immigration going on at the moment in boats being brought across the channel, so I am not sure about that. And most of the immigration from the EU has helped to make Britain a fairly prosperous place economically. I find it difficult to believe that taking back control of immigration has been a great achievement.

Technically we leave the jurisdiction of the European Court of Justice—but only technically, because if we are going to export into and deal with Europe then we are going to have to obey its rules, and its rules are set down by the Court of Justice of the European Union. So we do not really have that. I am told we can negotiate trade agreements. The EU is busy negotiating a trade agreement with Vietnam, and when I happened to be in Vietnam recently I said to one of its Ministers, "Would you negotiate a trade agreement with Britain?" He said, "Of course we would", but he went on, "Of course it would have to fit in with our obligations to Europe. We could not negotiate something with you that Europe objected to"—for instance, exporting a product such as rice to Britain and us then sending it across the channel under our agreements. So even the trade agreements do not work that much.

I saw our friends the Spaniards coming in at the last minute today, as they always do. Josep Borrell, former President of the European Parliament and Foreign Minister of Spain, has said the agreement has to be amended to take account of Spain and Gibraltar. You will find that the bill will go up. I have never known a Spanish Government who have not been susceptible to financial inducements, and they will certainly be presenting the bill here.

I say this to colleagues: this is probably the best deal we can get, but it is a sad day that we are even seeking it.

8.32 pm

Lord Birt (CB): My Lords, as a country we are split right down the middle. There is an unbridgeable divide between, on the one hand, passionate nationalists craving freedom and independence and, on the other, those who for reasons of culture, security and prosperity want the UK to remain at the heart of Europe. Those divisions have thus far haunted the whole process of negotiating an agreement with the EU, a process that began with the shooting of the most capable messenger around, Sir Ivan Rogers. The European negotiating terrain was always going to be challenging as we came face to face with fervent belief in Brussels in the European ideal and with the understandable self-confidence of the world's most powerful economic bloc outside the United States.

Whatever you think of the withdrawal agreement, its application is temporary. The more critical document, the accompanying political declaration covering future relations for the next period of our history, is skimpy and, oddly, full of sentences without verbs. It falls far short of being a framework. Even if the declaration is only in essence an agreed agenda, though, the sense of it is at least positive. Its import is of a Britain that has only ever been half in the EU moving to a point where it will only be half out. The line in the declaration that there will be no tariffs, fees or quotas for goods offers a ray of hope, even if none of it is agreed and working through that monumental agenda within two years is a very tall order indeed.

Any deal of complexity in any walk of life involving multiple parties requires compromise and will leave everyone involved—including me, in this instance—uncomfortable with many aspects of what has been agreed. Taken in the round, this agreement is preferable to a car-crash Brexit in a few months' time, with the shock to our economy and social harmony that that would trigger. If, however, as seems likely, the House of Commons fails to endorse this deal—if, indeed, it is unable to muster a majority for any option—the only way forward at that point would be to put back to the people the triple choice of leaving on WTO rules, accepting the deal or remaining in the EU. After years of bad-tempered debate and disunity, we should then accept the better informed choice of the British people and make the very best of whichever option they finally decide to take.

8.35 pm

Lord Shinkwin (Con): My Lords, as we have already heard, we are not actually leaving the EU. We are remaining on worse terms. This deal is so far removed from the people's vote of 2016 and the result of that referendum that it is no longer just about Brexit. This is now about trust: a breach of trust.

I cast no aspersions if any noble Lord genuinely believes that this deal honours the referendum majority decision to leave. But in a spirit of mutual respect, I thank those such as Dominic Raab, Esther McVey, Steve Baker and Suella Braverman in the other place, whose integrity, sincerity and courage compelled them to resign. For me, their names comprise a roll of honour, because for them, keeping our promises is a matter of honour. They made the difficult decision with courage, because it takes courage to resign on a matter of principle; it takes courage to acknowledge that postponing the pain merely prolongs the agony; and it takes courage to point out awkward facts that those in power would rather we ignored.

Facts like handing over £39 billion of taxpayers' money in misplaced good faith, on top of additional payments during the transition period—however long that may be—and without guarantees of future favourable trading arrangements from an EU which is determined to do this country down and, understandably, deny us any competitive advantage. Facts like the UK remaining a rule-taker, as we have already heard, over large areas

of EU law. Facts like not being able to leave a so-called backstop customs union without the permission of the EU. And facts like reneging on the promise that Northern Ireland would not be treated differently from the rest of the UK.

Those in my party who accept this deal also need to accept that if it goes through, every Conservative candidate at the next election will face this question: "Which manifesto promise are you going to break first?" It would put them in a completely invidious position. In contrast, leaving on WTO terms, on which the vast majority of the world already trades, as my noble friend Lord Lang mentioned, would enable us to honour the result of the people's vote in 2016 in full.

Some may see Brexit as only a question of technicalities, but trust is not a technicality. Trust determines who occupies No. 10 and which party forms a Government.

8.39 pm

Lord Judd (Lab): My Lords, the noble Lord, Lord Bridges, made the point that the political declaration is absolutely vital and central to our future. He is right; there is no question about that. We need to have a clear view of what the destination is in all our negotiations. What are the challenges facing us as we debate the issues? They are: the inescapability of global interdependence; how we handle economic and resource issues in the world community; security; migration—we talk about immigration, but that is the consequence of the huge migration issues covering the world as a whole—and climate change. In our own, more immediate society, there are the issues of poverty and social justice. As we heard powerfully from the noble Baroness, Lady Bull, culture, the arts and creativity—which make our country worth living in—are intimately related to the free movement of people.

As a nation, under any Government, we never really got the reality of the European project. It started with the coal and steel community, which was real: it was about how they were going to manage that community in their mutual interest. But anybody who thinks that the coal and steel community was an end in itself is self-deluding. It was always a political project; it was really about how you built peace and stability within Europe. There are now wider global issues as well. Whatever our party, whoever our leaders, wherever we are going, the words of the noble Lord, Lord Bridges, should be right in front of us: it is the political declaration. If we are in the community, or closely related to it, we have to have a strategy. If we are out of it, our own society has got to have a political statement of some convincing nature. In the end, the issues that face us are political ones of direction and strategy. Vision is what this country needs; vision and purpose. When I came out of government back in 1979, my family asked me what I had learned in my years in Parliament. I had one answer: within the political system as it was then—God knows how much more it is like that now—tactics were the total enemy of strategy. What is lacking is strategy.

8.43 pm

Lord Anderson of Ipswich (CB): My Lords, Denmark and Ireland joined the Common Market with us in 1973 and some predicted that they would follow us out. However, the latest Eurobarometer poll, taken this spring, showed that 75% of Danes and 91% of Irish thought that their countries had benefited from being members of the EU. Across the continent as a whole, we are seeing the highest levels of satisfaction with the EU in 35 years. Brexit has achieved this at least: by deciding to leave we have fortified the others in their desire to stay in the world's largest and most frictionless trading bloc, its strongest promoter of civilised values and its only regulatory superpower.

We have all been formed by our own experience of Europe. In my case, it was as a junior in the office of Lord Cockfield, the architect of the single market; as an advocate for 30 years in the courts where its principles were worked out; and, after 1989, as a visiting teacher in places where—as Mrs Thatcher had prophesied in her Bruges speech—people were once again starting to enjoy a full share of European culture, freedom and identity. Despite that perhaps unusual enthusiasm for the European project, I believe that we could do worse than this agreement. I see the backstop as an opportunity for Northern Ireland rather than a threat. The procedure for ending it is both fair and inevitable. By providing so carefully for an orderly withdrawal, it demonstrates how disorderly a no-deal Brexit would be. If we need to come out, this agreement enables us to do so in a grown-up way.

However, it also demonstrates the greater folly of our present course. It binds us to EU rules while removing all representation and influence. Our historic leadership role in areas from sanctions and security to financial services and the internal market will abruptly end. As to the future relationship, we might have a long wait for the struts and girders to which my noble friend Lord Kerr referred. The intention apparent from the seven pages is already plain: to pay a heavy price for the primary goal of ending free moment in terms of our exclusion from other economically vital elements of the single market. The next four years at least will be consumed by negotiations that will make these ones look simple, and not only with the EU. Other pressing priorities will be relegated, as they have been since 2016. We cannot hope to end up with the same benefits as we have now. That is not the basis on which Brexit was sold.

If I had a meaningful vote today—for all the great respect that I have for the Prime Minister and for those on the ground who negotiated and drafted this workmanlike agreement—I would use it to seek an extension to the Article 50 deadline so that the public could vote for the first time on whether to accept this predictably inadequate Brexit deal or to cancel the whole unhappy project.

8.46 pm

Lord True (Con): My Lords, blinkered, ignorant, petulant, complacent, hypocritical, destructive—those were some of the adjectives thrown at those who share my position by the noble Baroness, Lady Ludford. You would wonder who was seeking to uphold the verdict of the British people and who to overturn it.

I cannot support this plan. It flows from a lack of confidence and competence in negotiation, as many have said, and a sense that the British people's vote to

[LORD TRUE]
escape the authority of Brussels was a cause for damage limitation and not an opportunity for the future. Yesterday, my right honourable friend Greg Clark said he saw advantage in remaining tied as an EU rule-taker until 2022, six and a half years after the vote to leave—longer than it took to win the Second World War. One does sense that the confidence in our country and the clarity of purpose of some of my right honourable friends is a little less than Churchillian. Once again we hear project panic, catastrophe and chaos let loose. It started with the noble Baroness, Lady Hayter, and has run through this debate.

This Prime Minister—honourably—never joined in Project Fear. How sad it would be if she let her office reach for the manual of Mr Osborne. Like many others, I ask how long this agony must go on, but that does not lead me to arrive at the choice now being designed for the British people in high places. It is the same choice that has been advocated by so many in this debate: a binary choice in the Commons—and if it comes to it, the country—between this sad deal and staying in the European Union. It is a choice between accepting European rules without a voice or with one. That false choice is a snare and a delusion: a choice between spam and würstel, set before a British people who voted for beef and liberty.

There is another way forward: Peel's vision of Britain as a champion of free trade, a policy built on the terms that most of the rest of the world uses, working to a mutually respectful free-trade offer such as that lately agreed between the EU and Canada. Instead, we have a clunking document in which there is much that is shared and valuable, but within it a catalogue of crucial concessions. It offers many billions for a product: the future relationship that is still, fatally, not fully defined. It perpetuates—crucially, potentially indefinitely—a customs union we promised to leave; my noble friend is right about trust. It delays trade deals, ties us to non-regression, a promise not to be competitive with the most uncompetitive part of the globe, and it volunteers Britain into the humiliating position that it may only ever leave if Luxembourg allows it. In addition, with an odour of dishonour, for which I would apologise to my unionist friends if they were in their places, it breaks a promise that there could never be any distinction in the way parts of our kingdom are treated. Like other promises, that has been forgotten in the small print with which Downing Street and the Cabinet Office have smothered the clarity of the vote to leave.

My right honourable friend the Prime Minister is a great public servant, and her belief that she is doing the right thing is beyond question. But I regret to say, like many in this House today, I am dismayed at the point to which this country has been led, and I have little faith that the necessary change of direction will be forthcoming from this quarter. I will not lend my support—in any way—to imposing these articles of dependency on a people who voted to leave.

8.50 pm

Lord Greaves (LD): My Lords, in his opening speech the Minister said that we have agreed the rights of the 3 million EU citizens living in this country and of the 1 million UK citizens living in the EU. At the beginning of this whole process and during the referendum, EU citizens in this country were told pretty unequivocally that their rights would not be reduced, and there are increasing worries that this is happening. I should say that my eldest daughter is married to an EU citizen and lives in this country.

For example, there is the slightly perplexing question of people who have been here for three months and have not exercised their EEA treaty rights, which is possibly being taken to include people with no comprehensive health insurance, who may have problems getting settled status. A clear statement from the Minister that that is not the case would be helpful. In September 2017, the Home Office confirmed that it would not collect fingerprints from EU citizens. Yet the settled status app will read a passport's biometric chip, which includes fingerprint information. Again, will that kind of information be included on the national database of fingerprints? The organisation that calls itself the3million, which campaigns on behalf of EU citizens here, asked the Government 162 questions on settled status much earlier this year, and says that only 19% of them have been answered. Can the Minister tell us whether that is an accurate figure, and can he please say when the rest of the questions will be answered?

I spent much of this debate listening to noble Lords speaking in it via the television in my office and otherwise perusing the internet and looking at social media to see what EU citizens here are saying. There is no doubt that there has been a huge backlash this week after Mrs May made her statement about jumping the queue:

> "It will no longer be the case that EU nationals, regardless of the skills or experience they have to offer, can jump the queue ahead of engineers from Sydney or software developers from Delhi".

Frankly, this has given rise to a wave of dismay and anger on the part of a huge number of people. I refer noble Lords to two interesting bits of the social media environment in particular. One is a Twitter thread based on the #alreadynotfine hashtag, which I urge noble Lords to look at. For example:

> "I've spent 13 yrs in the UK and my wife is English. I am ineligible for permanent residence/citizenship because I spent several years propping up the British university system by doing under-paid teaching work where I was technically classed as self-employed".

There is a whole series of people who are putting forward their own cases, and it is quite clear that they feel that they are in limbo. There is an area of the internet called #InLimbo, which is worth looking at.

In addition, the3million group itself has a Facebook page, from which here is a comment, I think from yesterday:

> "'Jumping the queue' implies that we have engaged in something dishonest or took advantage of a subterfuge. It is offensive".

The person goes on to comment about Mrs May. Then somebody else comments—it is not a comment I would agree with, but it is there—saying, "She is a racist witch". As someone from Pendle, I have to be careful about witches. Somebody else simply says that it is,

> "racist and very hurtful … well and truly unacceptable".

There is huge dismay in this community, among these people. The Government need to be very careful what they say and what they do.

8.55 pm

Lord Inglewood (Non-Afl): My Lords, almost 30 years ago, in 1989, I was first elected as a Conservative Member of the European Parliament and was a spear-carrier in putting together the single market. The problem at that time was that the European economies, including our own, were being held back by what was known as "Eurosclerosis". This is because free trade does not actually mean that you can trade freely, which seems to be a bit of a paradox. Non-tariff barriers ensure this; they are ingeniously constructed and expensive to get through or around.

Free trade is a necessary but insufficient aspect of a frictionless international trading system, which is what our Government are looking for. Free trade is, after all, a late 18th-century and 19th-century phenomenon. Now, in the 21st century, we live in a world of regulated markets because of social attitudes, the size of populations, the nature of business and technologies and probably, to some extent, to avert revolutions.

It was 30 years ago that the Conservatives under the leadership of Margaret Thatcher, helped by Leon Brittan and Arthur Cockfield, drove forward the single market. They recognised that sovereignty can be exercised in differing and more or less sophisticated ways. Being clever about this led to the creation of transnational rules and enforcement procedures, which involved our participation. This has enriched our country, generating revenues for private and public sectors and paying, I suspect, for our net contributions to the European Union budget.

The road to Brexit is through a gate called the withdrawal agreement, and Brexit entails our leaving the single market. We have been told that trade with other countries will make up the difference. All I can say is that it did not do so in the 1980s. Other EU countries trade very successfully from the EU into the wider world. For example, I understand that both France and Germany are more effective at doing business with China than we are. I suspect that third countries are keen to flood this country with cheap goods but will be much less inclined or able to buy things from us.

It is therefore my view that we should pause and take stock. I do not see how a non-binding, somewhat tarnished referendum more than two years ago can mandate a sovereign Parliament to run pell-mell into something that its advocates sold on a flawed prospectus. It seems far from clear what the people of this country want now. Where do they want this country to go? The case for Brexit is invariably that it is what the people want, not that it is in the nation's best interests.

As currently presented, it seems to me that Brexit looks like a curious cross between the revocation of the Edict of Nantes and a political form of the South Sea bubble. As such, it is something that we as parliamentarians, who must act in our fiduciary capacity for the country—past, present and future—should do our utmost to avert.

8.58 pm

Lord Dobbs (Con): My Lords, it is always a pleasure to follow the noble Lord, Lord Inglewood, even though I cannot always follow the thrust of his arguments.

How I wish this deal might have settled things, even with a heavy dose of compromise. Would that not have been nice? But where it should clarify, it confuses, and where it should deliver, it delays. Far from shining an illuminating light on the subject, it simply lights a bonfire of the Government's frequent explicit promises about the role of the ECJ, about leaving the customs union and about treating all of the United Kingdom as one.

Historians of the near future will ask why the EU, with all its genuine ideals, went so badly wrong. They will identify one cause above all else: its driving ideology, that of political union. It is not an evil ideology, but it is unremitting and so inflexible that those who threaten it, as we do, are punished as a deliberate act of policy—like Greece has been punished. The birthplace of democracy had the temerity to vote for change and instead has been ruined. If you think that is rubbish, please visit the poor, benighted citizens of Greece and see how they are suffering.

Why should elections or referendums make any difference to a European Union whose deafness of ear, blindness to opportunity and wilful rejection of demands to fill the democratic deficit have turned it in on itself? Its response to every question and every rebuff is always more of the same: more Europe—an insistence that there is no other way but theirs.

The establishment loves this deal, of course, because it changes almost nothing. Elites do not want change; they want protection and the status quo. So the CBI, big business, even big charities—those who think only within the big bubble—applaud.

But just imagine if Brexit were put on hold, as I think this deal tries to do—or even reversed, as some want. That would not finish the argument. Political union, the fundamental ideology of the EU, will not change, so the fundamental arguments against it will not change either. The demand for separation from the EU would return with even greater force and, I fear, perhaps in sharper, uglier form. It would be a gift for the bigots and xenophobes who would treat our neighbours in Europe as the enemy, not the allies and friends they are.

There are those who embrace the EU and all its ideals, including many in this House. But sometimes we destroy the things we love the most. Look around Europe and tell me that that is not happening there.

I want a bigger, more open Britain, which takes the many talents and cultures we have and forges them into an exciting new player on the stage, not looking back but looking forward to the challenges and opportunities of a new world that has already left the European Union behind. It is not about having our cake and eating it but finding a better future for our children and grandchildren, one they can create for themselves.

Today we are engaged in a great experiment to test the proposition that it is possible, democratically and peacefully, to leave the European Union and become a sovereign, independent nation once again. If we fail that test, I fear that the price we will be forced to pay—the damage to our sense of self, our standing in the world and, perhaps most of all, our respect for our parliamentary institutions—will be beyond measure.

9.04 pm

Lord Liddle: My Lords, I feel a genuine sympathy for the Prime Minister in her plight and I rather admire her dogged determination, but this deal will not wash. Jo Johnson described it as being offered a choice between vassalage and chaos. I am not against vassalage if it means that sticking to EU rules brings big economic advantages. We could have said that we wanted to remain in the single market and customs union. I believe that that is the position we should have taken after the referendum and it is the position the Labour Party should then have supported, but we did not. Now, we are facing a situation where Michael Gove talks about "Norway for now". If I were Norway, I would say, "Never put up with that kind of playing around with our future".

However, accepting the EU rulebook is not worth it for the deal that we have on offer. The declaration says that the temporary customs territory is the model for the future. It is what the EU describes as a swimming pool, with a shallow end and a deep end. Economically, Northern Ireland does very well out of this, and it is a shame that the DUP, which of course does not speak for the majority of the people in Northern Ireland, does not recognise that fact. However, my worry is about the shallow end of this offer, which is Great Britain. It is not a full customs union; it is a bare-bones deal that will result not in frictionless trade but in industries with complex supply chains withdrawing from Britain in the future. It is a real economic threat to our future.

In the negotiations, the Prime Minister might think that she can revert to the Chequers idea of a common rulebook but, because of the arguments in the Conservative Party, in Brussels there is very little trust in Britain's willingness to stick to a common rulebook. Brussels recognises that the only viable national strategy for Brexit is for Britain to become a regulatory competition state. In order to avoid that, it will try to attach details such as level-playing guarantees, enforcement mechanisms, supervision by the Commission and the jurisdiction of the European court. Frankly, the Prime Minister will never be able to get that through her party.

Therefore, this will end up being a bad deal without frictionless trade. If the last two years have shown anything, it is that we would be much better off if we stayed in the EU. To be fair to Mrs May, she does not pretend that this deal will make us better off than being in the EU. If I may just say a word to my own Front Bench, I do not understand why Labour does not speak out now and say that this deal is much worse than our current EU membership.

The fact is that in the last two years Brexit has been shown to be a disaster. It is leading to the biggest political crisis we have faced since the Second World War. I believe that it can be stopped now, but we on this side of the House have to rise to the level of events. Let us hope that in December, we will.

It is time to end all the verbal conundrums about how we can get a better deal. The only choice now is to give the people the opportunity to vote on this deal in a referendum and to see whether they decide to remain, which I sincerely hope they will.

9.08 pm

Lord Hannay of Chiswick (CB): My Lords, the three principal documents that we are looking at today are very different in nature. A sketchy seven-page document on the all-important new relationship between the UK and the EU is so skimpy as to be almost laughable, and there I agree very much with the noble Lord, Lord Bridges. It is more a flyer than a serious blueprint for the future. The document called the *Explainer for the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union,* which I take to be the Government's sales pitch for the deal they have concluded, is odd too. Paragraph 58 states flatly that all four of the conditions that the Prime Minister laid down in October for the Irish backstop have been met. But at the time she laid down those conditions, the Government were trying to get a fixed duration and a unilateral right to leave the backstop. Neither of those is in the agreement.

Then there are the provisions on dispute settlement in paragraphs 148 and 149. The dispute panel, which is frequently referred to as arbitration, is not an arbiter because paragraph 149 states quite categorically that when a dispute involves the question of the interpretation of EU law, the panel will not decide the matter but request that the European Court of Justice give a ruling. You cannot be much clearer than that, and that is not being free of the European Court of Justice.

The fact is that all these examples demonstrate that beneath the surface there are fatal flaws in the Government's approach to these negotiations. Divided counsels at home; intemperate drawing of red lines that have subsequently had to be smudged and smudged again; the use of doublespeak all the time. What of the implementation period? Oh dear. In fact, it is a standstill. Everyone knows that a standstill is being proposed.

It is said that we will get back control of our laws, money and borders, but during the transition period—and possibly for quite a lot longer—we get none of that. As a document on the future relationship, it is as yet little more than warm words and worthless waffle. It will not be easy to change this week, and I rather doubt whether very much substantive change can be made. The trade arrangements in the document, for example, are all things to all men. They could come out in a multitude of different ways. That is no doubt necessary since there are a multitude of different views in the Cabinet as to how they should come out. It is not so much a plan as a sales catalogue.

Then there is the triumphant claim that we can negotiate and ratify trade agreements with third countries during the transition period. Which third countries are going to negotiate with us when they do not know what our relationship is with the European Union and how long they will be held up waiting to find out? The best that can be said for this deal is that it is less bad than no deal, and I hope that both Houses will rule out that option.

The key test, surely, is to compare what we have on the table now with what we have around us as a member of the European Union. On that test, despite all the valiant efforts of our negotiators and of the

Prime Minister, it fails on every respect. As the Irishman told the traveller who was asking the way, "I wouldn't start from here".

9.13 pm

Lord Hunt of Wirral (Con): My Lords, I draw attention to my interests as set out in the register. I personally regret Brexit, but we cannot ignore the message of June 2016 that our membership of the European Union has been rejected by the electorate and a new relationship with Europe must now be crafted.

I spend a great deal of time with the business community, above all with leaders of our financial services industry, which leads Europe and the world. The clear message from that vitally important industry is the pressing need for there to be no hiatus or vacuum, pause or cliff edge on 29 March next year. Business generally, and the insurance sector in particular, craves certainty, in order that it might plan effectively for the future, and continue to invest in the UK.

I join noble Lords who have said that the best that can be achieved by Parliament is for the House of Commons, and for us taking note, to agree to the terms of the withdrawal agreement, enabling us all to move rapidly on to discussing the vitally important terms of our future political and commercial relationship. That relationship must recognise the UK's unique strength and experience in insurance which delivers not only much-needed revenue for the UK, but also enables many businesses across the EU 27 to obtain insurance cover that is just not available in their local markets. There has been talk of "equivalence" or "enhanced equivalence" in financial services and how vital it is for these important matters to be taken out of the political arena with a clearly defined procedure. However, for insurance companies, equivalence is extremely limited in scope, while for insurance brokers the concept does not exist at all.

In her Lancaster House speech, the Prime Minister called for:

> "A bold and ambitious Free Trade Agreement with the European Union. This agreement should allow for the freest possible trade in goods and services".

As part of the new economic and regulatory partnership the Government are proposing, the UK and the EU would improve their domestic market access frameworks, including extending them to cover activities that generate the greatest benefits in economies of scale and scope. I would urge the Government to continue to seek as a minimum something akin to the provisions in MiFID II, or to go even further to achieve the broadest possible access.

In conclusion, I will just say this. Our reaction to this proposed agreement with the European Union will define us as a nation and as a generation. The Prime Minister's determination to rebuild a middle ground in this divisive argument is beyond commendable; I believe it to be heroic. Indeed, it is the very outrage of the fundamentalists on both sides that persuades me fully to support, without hesitation or equivocation, the Prime Minister and her noble attempts to build one nation in place of strife. I hope that we can now unite in supporting the Prime Minister as she seeks to build upon the foundations of Brexit a close, sustainable and mutually beneficial new working arrangement between our nation and the EU 27.

9.17 pm

Lord Green of Deddington (CB): My Lords, the advantage of being tail-end Charlie is that most of the key points have already been made, which also means that one can attempt to weigh them up. I am with those who are seriously disappointed about the outcome of these negotiations. I believe that the Government have been naive and that the Commission has been deeply cynical. We now risk being not just out of Europe but run by Europe; indeed, we risk being trapped in Europe, as my noble friend Lord Kerr of Kinlochard so vividly explained. Yet, as the noble Lord, Lord Lamont, mentioned, even Moldova has a break clause.

We do not yet have a final deal, and the noble Lord, Lord Bridges, explained the importance of the outline political declaration which is still being negotiated. But at present, as the noble Lord, Lord Forsyth, described, this deal does not deliver on the referendum. It leaves us half in, half out, and possibly trapped. So if this is effectively the final deal and if it fails to get through Parliament—the House of Commons—I find myself persuaded, rather to my surprise, that we should look again at a second referendum. I do not mean a people's vote, but a second referendum. Indeed, that has been the sense of the House because a remarkable number of noble Lords have been moving towards that conclusion.

It is not that I believe entirely the cries of woe about no deal. There is perhaps an element of Project Fear mark 2 in that, but there are clearly risks and this deal, frankly, is nothing like what people were offered during the Brexit campaign. I simply do not see how that course could be pursued without a renewed mandate from a referendum. The answer may well be the same but we need it as soon as possible.

I conclude with a matter which is of considerable importance but has hardly been mentioned; indeed, it was barely mentioned in either the withdrawal agreement or the draft political declaration. Of course, I am referring to immigration. I am very suspicious; I foresee the risk of the skills-based system that the Prime Minister mentioned being widened under pressure from the European Union when we get down to a negotiation on trade, where our hand is very weak. That pressure could well be reinforced by the many employer groups whose members have been making substantial profits from low-cost labour from Europe and, dare I say it, substantial savings on the training of British workers. I will not go any further into that issue but I will just say this: if Ministers are not careful, the outcome of this enormous process could well be very little reduction in net EU migration. If that is the result, the Government will pay a very high price with public opinion—and rightly so, in my view.

9.20 pm

Lord Bilimoria (CB): My Lords, the Prime Minister has said these things for two and a half years: Brexit means Brexit; no deal is better than a bad deal; we will

leave the EU on 29 March 2019; there are red lines in leaving the customs union and single market; we will take back control of our borders and laws; we will have no more to do with the ECJ; the result was 52:48; the previous EU referendum was won with 67% of the vote, and was convincing and decisive.

Now we are told that we must implement the will and instructions of the British people. Time and again, we have been told that 17.4 million people voted to leave. What about the rest of the 50 million people in Britain, including the 16.1 million people who voted to remain? What about Scotland, London, Northern Ireland and young people, all of whom voted to remain? Two and a half years after the referendum, the country is being held to ransom by a narrow decision made by just over 25% of our population.

Throughout the negotiations, we talked about equivalence and asked whether we would get something as good as what we have now as part of the European Union. This deal is not about protecting jobs, security and the integrity of the UK, as the Prime Minister said. Northern Ireland, the Achilles heel of Brexit, remains a circle that cannot be squared without jeopardising the Good Friday agreement and the almost-century-old common travel area. What a mess we are in. This is now a hokey-cokey Brexit; it is a case of in and out and shake it all about, as said by the noble Lord, Lord Reid.

The EU is not perfect but it is not the bogeyman. It has not bullied us; Michel Barnier has followed the instructions of 27 other countries. The EU has said, "You, the UK, want to leave and have boxed yourself in with red lines. You opted into Europe 45 years ago but you have had your cake and eaten it because you have had all the opt-outs too. We are talking about the biggest and best free trade agreement in the world, yet you are not in the eurozone, you are not part of the Schengen agreement and you are not for further unification. Now you want to opt out but have all the opt-ins".

We are losing our sovereignty. Day by day, we are losing our standing in the world. No one in the world, including the EU, wants us to leave. London has already lost to New York its number one spot as a leading financial centre. In future, we will not be at the top table. As said by the noble Baroness, Lady Smith, we will pay but have no say. Two-thirds of MPs and 75% of this House wanted to remain in the EU at the time of the referendum. What has happened to our precious representative democracy, spoken about by the noble Lord, Lord Higgins? Do we have the guts to do the right thing for our country?

No deal is not an option. That is pretty unanimous. So the choice is between this deal and a transition period until 2020 or possibly 2022—the can has been kicked down the road—with a backstop that we may be held to inordinately. Two-thirds of our global trade is already with and through the EU. We have a six-and-a-half-page political declaration being finalised in six and a half days. What a fudge this is; it is a blind Brexit. Spain is already talking about having a veto over Gibraltar. The French are already talking about their fishing rights. The British public have been sold a pup. This is not in the best interests of our economy, businesses or citizens.

What about the 800,000 children born every year in this country? Since 2016, that makes almost 2 million more 16 and 17 year-olds who would be allowed to vote today. If the transition period goes on until 2022, almost 5 million young people will not have a say when their future is at risk. We have to break the spell. It would be democratic, after two and a half years—a normal democratic cycle—to go back to the people and say, "If you have changed your minds or do not like what you see, you can vote differently". The polls already show that 100 leave constituencies now want to remain. Last week, straight after the Prime Minister's Statement, 54% would have voted to remain, as opposed to 48% in 2016, and 55% wanted a second referendum.

If we really want to respect the will of the people this should not be Hobson's choice of a deal or no deal, and a bad deal at that. The British people can get their future back by choosing the Prime Minister's newly declared option: no Brexit. We need a people's vote. That would stop this train crash, save our union, respect the will of our people and do the right thing for the British people.

9.25 pm

Lord Wallace of Saltaire (LD): My Lords, we have heard a lot that still suggests, as we come into the endgame with four months left, that there are still a number of illusions about where we are. I hear people saying that the European Union, the world's largest regulated open market, is a protectionist fortress, but what is China? What is the United States now? I hear people saying that we are better off with global organisations such as the WTO rather than the European Union. I remind the noble Lord, Lord Shinkwin, that the WTO is close to breakdown since President Trump refuses to appoint new members to the arbitration panel. I remember many people saying that we did not need Europol and European security co-operation because we had Interpol. Looking at what is happening at Interpol, that might not be a good idea.

We are now in the endgame. I will talk briefly about the future relationship paper, foreign policy and what we mean by the national interest. I remember asking the noble Lord, Lord Callanan, some weeks ago whether we would have a five-page paper on the future relationship or a substantial document. He assured me that it would be a substantial document. I thank him for the seven-page paper that we have got so far and the promise that we will, by the end of November—in five working days, more or less—have the 200-page substantial, detailed, precise document that we are now promised. Without a precise document we are drifting into a blind Brexit. We need to pause before we jump into a chasm without knowing where the bottom might be.

The foreign-policy dimension of this is particularly important. The Conservative Party used to be the party of strong foreign policy and defence. The state of play document the Government distributed says that we are pursuing,

"a broad and deep partnership on foreign policy, security and defence".

The seven-page outline of the political declaration is far more hesitant. The Commission's explainer fact sheet talks about the "possibility" that Britain might be invited to join informal conversations and to contribute to missions. That is a pretty shrunken foreign policy. Any foreign policy for Britain requires, as it always has, that we have close relations and we manage our relations with France, Germany, Italy, Spain, the Netherlands, Poland, Serbia and Greece. Without a European policy we do not have a foreign policy. Instead, for the past two years we have had Foreign Secretaries who talk about either Germany, together with Hitler and Nazis, or the Soviet Union as being like the EU.

The Prime Minister has insisted that she is defending the national interest. It is a good concept but we need to discuss what it is. Some, like the noble Lord, Lord Forsyth, suggest that defence of our absolute imperial sovereignty must prevail over everything else. I much prefer the statement of the last really good Conservative Foreign Secretary, Geoffrey Howe, when he talked about shared sovereignty. He understood that unilateral sovereignty is not the badge of sovereignty. You have to negotiate with your neighbours if you want to maintain good relations.

Jacob Rees-Mogg has warned the Prime Minister that she is risking an 1846 moment, when Robert Peel split his party on the abolition of the Corn Laws. For the first time I agree with Jacob Rees-Mogg about something. It is a good analogy. Robert Peel decided that the national interest was more important than the unity of his party. When faced with the potato blight and the development of famine in Ireland and the Scottish Highlands, he challenged the ideological commitment to agricultural protection that thinly covered the vested interests of landowners at the back of the Conservative Party. It might now be in the national interest for the Conservative Party to split again, with their offshore and financial interests on the ideological right and their English nationalists going in one direction and the pragmatic, one-nation Conservatives going another. I offer that to the Prime Minister and others as a definition of what the national interest might now require.

9.30 pm

Lord Goldsmith (Lab): My Lords, tonight is not, of course, a night for any decision, but we have heard in this debate some interesting observations on where we now stand and some very important contributions—including that of the noble Lord, Lord Steel of Aikwood—reminding us of one of the political reasons behind the European Union, in the shadow of the reminiscences that we have had of the First World War. I must very briefly welcome the noble Lord, Lord McCrea. We have heard the robust straight talking already; we look forward to hearing the singing on another occasion. Given the time available, I will not say more about other contributions other than in the course of the few remarks I want to make.

What we have heard is, first, voice after voice saying that a no-deal solution is not one we can accept or that should be accepted. We have heard formidable descriptions of what this would be: a car-crash Brexit; devastatingly damaging; catastrophic—all these remarks have been made during this debate. The noble Baroness, Lady Altmann, may have explained well why it is in fact no longer an option, but in this House at least it seems there is a strong view that a no-deal exit is not acceptable. So what do we have? Do we have a deal? That has been the subject of much discussion tonight.

Plainly, some issues are dealt with in the 585 pages, some of them important ones. But what really matters for the future are the seven pages—it is quite generous to call it seven; it is six and one-third actually—of the political declaration. That is where we find all the areas that will really govern our future relationship with Europe and the rest of the world. What does it consist of? It consists, as some noble Lords have said, of sentences without verbs. The reason why is that it is a list. On the whole it is an index, a list of things that are desirable—many extremely desirable—but they are not yet spelled out and of course they are not yet a binding commitment. So I want to ask the Minister, the noble and learned Lord, Lord Keen of Elie, a couple of questions about that.

When we look at the political declaration, noble Lords can see all the important things it needs to deal with. Energetic though she and her advisers may be, there is no way that the Prime Minister is going to solve all those issues by the end of the weekend. Some important changes may be made and we look forward to seeing what those are—they may cover some of the areas referred to by noble Lords—but there is a huge amount to deal with, including services and investment. To take one small example, the headline promises:

"Appropriate arrangements on professional qualifications".

That is very important to many people. Appropriate they must be, but what are they going to be? That covers, as some noble Lords have said, many possibilities. On financial services, I read of:

"Commitments to preserving financial stability, market integrity, investor protection and fair competition".

Those are really important, but how you achieve them—the detail—is what will ultimately matter, and we do not know that at this stage. The critical thing, therefore, is what the deal is going to be.

When the Minister winds up, I want him to consider the extent of the commitment to two things described during this debate as possible mitigators of the lack, as yet, of a concluded, complete and full binding agreement. One is the fact that Article 184 of the withdrawal agreement provides for good faith negotiations to reach a conclusion. However, does he agree that the obligation that,

"The Union and the United Kingdom shall use their best endeavours, in good faith"—

I will qualify that in a moment—

"to negotiate expeditiously the agreements",

does not amount to anything other than a best-efforts obligation? It is not an obligation to reach an agreement or to guarantee that result. That is well understood in United Kingdom law and European Union law. That is an extraordinarily important difference.

The noble Lord, Lord Kerr—who ought to know—said that what Article 50 required was not a list of things which should be agreed but things which were there as the framework. That has not happened. That

is critical. The sequence of this has been completely wrong. The other thing that has not been contradicted in this debate is what my noble friend Lady Hayter said in opening: that this has been, regrettably, a complete mess and that is why we are in the position we are in today. The sequencing that has taken place on the negotiation is one element of it.

The point about the good-faith negotiation is important but it cannot actually result in an agreement if it is not within the wishes of the EU to achieve it. Of course, as noble Lords have said, the extent to which it will have the incentive to do that is reduced in the circumstances in which we are now.

The second potential qualifier is the arbitration provisions. I really would welcome the Minister's views on this. It might at least save there being a Motion in the other place to get all the legal advice. The arbitration provisions appear to me to be provisions to determine the true meaning or the true effect of those things which have been agreed—and not to fill in gaps where the parties have not been able to agree them. If the Minister can help us with that, it will make a big difference, because it means that if we do not reach agreement on certain things, the arbitration provisions will not provide it. I would welcome his help on those two points.

Where does that all lead us? The thing that struck me most in the resignation article by Jo Johnson was his statement:

"Suspension of disbelief is a necessary ingredient in all storytelling".

He was saying that about the narrative that the Government had been putting forward. Having got to this stage in this critical and sensitive area, with these things still not having been finally agreed, will the Government please commit to no more storytelling and no more narratives and to giving an honest statement of what the possibilities are and what the result of those possibilities will be, so that whoever has to make the ultimate decision—whether it is Parliament or the people—can do so in the knowledge of all the true facts?

9.38 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, this has been an extensive and interesting debate. I remind noble Lords that it is a debate on the Statement made by the Prime Minister relating to European Union exit, although it has ranged much more widely than that, as we have noticed. In the time available, I will endeavour to address the points raised by noble Lords, but I hope they will forgive me if I do not manage to address each and every point raised by the, I think, 56 speakers we have had so far.

It is clear that we have made a decisive step forward. We have agreed in principle the terms of the United Kingdom's exit from the European Union, as set out in the withdrawal agreement—or, in the words of the noble Baroness, Lady Hayter, a smooth and orderly exit. We have also agreed the broad terms of our future relationship, as set out in the outline political declaration. It is just that. It is no more than a political declaration at this stage, but that process is not complete and the Prime Minister will be meeting Mr Juncker in the next few days to take that further forward.

Lord Wallace of Saltaire: My Lords—

Lord Keen of Elie: No, I am not taking interventions because of the time available. I am sorry.

All this puts us close to a Brexit deal—a deal that takes back control of our borders, our laws and our money, while at the same time seeking to protect jobs, security and, indeed, the integrity of the United Kingdom. It is a deal that brings the country together—a deal that realises the benefits of Brexit and then lets us focus on other issues.

Let me touch upon several points that have been raised during the debate. There was the question of citizens' rights. What we intend to do there is to protect the rights of the more than 3 million EU citizens living in the United Kingdom and about 1 million UK nationals living in the EU. In respect of that we intend to bring forward an immigration Bill, which will be the subject of consideration.

The question of students was raised by the noble Baroness, Lady Smith of Newnham. We have clearly taken a position with regard to EU students in this country, and it is our belief that in due course, in the course of negotiation, we will achieve a reciprocal undertaking from the EU 27 but that has not yet been achieved.

There is the implementation period, which provides a bridge to the future relationship and will allow businesses to continue trading as now until the end of 2020. There is also the financial settlement—a fair financial settlement for UK taxpayers, which is estimated at between £35 billion and £39 billion. Let me be clear in response to my noble friends Lord Forsyth and Lord True: that is not a price. As was pointed out by the noble Lord, Lord Butler, it is an estimate of a determination of our outstanding obligations on a net basis. There are sums that will fall due during the implementation period; there are sums that we have committed to meet in respect of obligations of the EU; indeed, there will be sums coming back from the EU over time, including from the European Investment Bank and the European Central Bank.

Lord Forsyth of Drumlean: Will my noble and learned friend—

Lord Keen of Elie: No, I am not going to take interventions.

Lord Forsyth of Drumlean: You have 25 minutes. The point I made in my speech about the price was that we would be in a transition period or implementation period, although there seems little to implement, and in that period we would have no say in our affairs yet were still expected to pay the £10 billion per year. If we did not have that period, then we would not pay the £20 billion.

Lord Keen of Elie: Let us be clear: if during this implementation period—this transition or time-limited period—we are to have the continuing benefits of membership of the single market and the customs union, and of the other institutions during that two-year period, then there is a price to be paid. In addition, EU obligations have been incurred—for example, those in respect of Turkey. Having undertaken those obligations we will, as a matter of international law, meet them. I reiterate: it is not a price but a matter of discharging our obligations.

With regard to Northern Ireland, as part of our solution to ensure that no hard border between Northern Ireland and Ireland emerges, in the unlikely event that more time is needed to finalise the future relationship, there are two options: the implementation period could be extended for a limited time, or we could bring in the backstop. The backstop as now agreed replaces the EU's proposal for a Northern Ireland-only customs "backstop to the backstop" with a UK-wide solution, respecting the constitutional and economic integrity of the United Kingdom.

The withdrawal agreement legally commits both sides to use best endeavours to ensure that the backstop is never used. If either side fails to do so, this could be referred to an independent arbitration panel. I stress that it is an independent arbitration panel; it will comprise five members, two selected by the United Kingdom, two selected by the EU and a fifth, wholly independent arbitrator, selected by those parties, to resolve any dispute in that regard.

I would also observe, and I will come back to this in the light of a question from the noble and learned Lord, Lord Goldsmith, that as he observed, the use of the term "best endeavours" gives rise to an obligation. It may be regarded as a good faith obligation, but it is an enforceable obligation. It may be breached, and it may be determined by an arbitration panel. That mechanism is, as I believe the noble Lord, Lord Anderson of Ipswich, observed, a fair means of seeking to resolve disputes with regard to the backstop.

I turn to some of the observations that have been made during the course of the debate and the questions raised. The noble Baroness, Lady Hayter of Kentish Town, said that no one believes that the agreement will get a majority in the Commons. With great respect, the noble Lord, Lord Desai, either as a realistic optimist or a realistic pessimist, observed that he anticipated that it will pass. Of course, much of that lies in the hands of the Labour Party in the House of Commons. If the Labour Party wishes to avoid a no-deal Brexit, it has the means to do that by being prepared to see this final agreement on withdrawal pass through the Commons, so the answer lies in the hands of Labour as much as it does in the hands of any other party in the House of Commons.

As regards the suggestion of further negotiation that the noble Baroness referred to, that, as my noble friend Lady Altmann observed, is fantasy. It is not going to occur and indeed, I believe my noble friend Lord Cormack made the same observation.

With regard to the future relationship, it cannot at this stage be taken beyond a political commitment. The EU 27 are not, prior to our leaving the institution of the European Union on 29 March 2019, in a position to conclude an agreement with regard to the future relationship, so what we have is a statement of political intent, a political statement or undertaking. The noble Baroness said that this is a political statement without guarantees. Of course, that is a truism because political statements do not come with guarantees. That is why they are called political statements. That is where we are at present as we take that matter forward.

I think it is fair to say that the noble Baroness, Lady Ludford, did not have a good word to say about anyone on this side of the House, but it seemed to me that she fundamentally confused the objective of the withdrawal agreement with the issue of our future relationship. At present, we are concerned with the withdrawal agreement, not with the final determination of the future relationship.

The noble Lord, Lord Dykes, began by saying very candidly that we should not leave and then he suggested that we should have what a number of noble Lords referred to as a people's vote, which is another term for a second referendum. He said that the remain option should be an option in that second referendum. I remind the noble Lord that the remain option was an option in the last referendum.

The noble Lord, Lord Morrow, addressed issues with regard to Northern Ireland. Clearly there are sensitive issues here. He suggested that we should leave the EU in the same way that we joined. There has been a span of 45 years since we joined the EU, and a great deal has happened in both the politics and the economics of the island of Ireland in that 45-year period. I do not accept the suggestion that Northern Ireland is somehow going to be subservient. It will be subject to those elements required to maintain the open border in Ireland. I do not believe that anyone would wish to see that open border threatened. In my submission, it does not indicate, as he suggested, that Dublin or Brussels holds a veto on the backstop. The backstop is one of two alternatives, and the backstop itself is subject to the dispute resolution process in the withdrawal agreement, subject to the obligation of best endeavours. I again emphasise the use of term obligation in respect of best endeavours. My noble friend Lord King of Bridgwater pointed out, and I entirely concur, that a second referendum is not a realistic prospect. It simply does not engage with our democratic process.

A noble Lord: What does that mean?

Lord Keen of Elie: I must say I am a Burkean as far as representative democracy is concerned. That is how our constitution operates. There are exceptions so far as referenda are concerned.

Baroness Hayter of Kentish Town: Your party had the first one.

Lord Keen of Elie: It is suggested that my party had the first one. I believe Harold Wilson had a referendum over the EU rather before my party, but I may be mistaken about that. I am obliged to the noble Baroness.

It is said by the noble Lord, Lord Reid of Cardowan, that we have arrived at an impasse. We have not. We have arrived at an agreement, and it is one that will go before the House of Commons in the near future.

The noble Lord, Lord Steel of Aikwood, talked about crashing out without a deal, and we have had references to car crashes and catastrophes. Such arguments are not improved by overstatement. That, with respect, is what has been happening, perhaps at both ends of the spectrum, with regard to the debate on this matter and it takes away from the factual issue. It plays into what the noble and learned Lord, Lord Goldsmith, referred to as the "storytelling" that can sometimes fog proper decision-making in this context.

The noble Lord, Lord Steel, also referred to "a defective deal, at great expense". Again I remind him that the sum of £35 billion to £38 billion is not a great expense; it is a negotiated means of meeting our outstanding obligations under international law, and that is what we intend to do.

The noble Lord, Lord Browne of Belmont, also raised the question of Northern Ireland. Again I emphasise that the issue of the backstop, even if it comes into play, will be subject to the obligations of "best endeavours" and to the independent arbitration process provided for in the withdrawal agreement. I also note that there is no limitation at all upon the movement of goods from Northern Ireland to the remainder of Great Britain. That movement remains wholly unimpeded by these terms.

My noble friend Lord Bridges of Headley referred to the political declaration. Of course, as he later observed, it is not yet complete, which is why we must wait to see the outcome of further discussions regarding the political declaration in order to see where we are going to be. It is certainly not the time to anticipate what that outcome might be.

Lord Bridges of Headley: My Lords, I understand that it is premature, but could my noble friend therefore refute the proposition put forward by the EU's deputy negotiator that the political declaration means that the customs union will be the basis of the relationship?

Lord Keen of Elie: The withdrawal agreement has expressed the terms for the implementation period and the present political declaration has indicated where negotiations will begin, but where they will end is a wholly different matter. It is a case of saying that it is a work in progress and we will have to await the outcome of that further negotiation.

Lord Wallace of Saltaire: My Lords, the document that we had from the Government to say where we are now said the negotiations on the political statement would be finished by the end of November, which is the end of next week. Can he confirm whether that is expected to be the case and when it may come to Parliament for us to debate, or is he saying that it will be much longer delayed?

Lord Keen of Elie: My understanding, as I said before, is that the Prime Minister is going to be meeting with Mr Juncker in the very foreseeable future and that the discussions are going to be taken forward. As to when the final political statement will be concluded, I cannot give a specific date but the intention is, as previously stated, that it should be available by the end of November. I cannot say when it will come before Parliament; at this stage I cannot give a definitive date from the Dispatch Box, but I am quite willing to write to the noble Lord if I have any further information on that point.

The noble Lord, Lord Kerr of Kinlochard, mentioned Article 50 and has previously observed that he had a hand in its drafting. As a general rule of law, one does not submit subjective evidence over the construction of a contractual provision, and there are very good and compelling reasons for that. However, I note what he has to say about the idea of the EU 27 being prepared to stop the clock. With great respect, it appears to me that the indication is: "Let us get on with it. Let us go forward. We have an agreement for withdrawal. Let us implement that. Let us then address how you are going to leave"—because we are going to leave the European Union on 29 March 2019.

The noble Lord, Lord McCrea of Magherafelt and Cookstown, made his maiden speech today. I thank him for that and compliment him on his contribution to the debate. It was suggested that he should not have used a maiden speech to be controversial, but I would not take issue on that. It is a matter of deep concern to the noble Lord and his fellow Peers from Northern Ireland that we should address the matter of the border and the integrity of the union in this context, and I fully understand his concerns, but I cannot accept that Northern Ireland is either a hostage or a sacrifice in the circumstances. Far from it: our concerns lie in maintaining the union. In so far as he suggested that a hard border was a fictitious idea and could be managed, I do not disagree with him. That is one reason why we anticipate that the backstop will not be required. But, as it is, the people of the United Kingdom of Great Britain and Northern Ireland have spoken as a United Kingdom, and their decision is that we should leave the European Union.

The noble Lord, Lord Carlile of Berriew, pointed out that the role of Parliament must be remembered. Like him, perhaps, I am a Burkean on the issue of representative democracy. He said, and I agree, that there should be no running back to the people. It is for Parliament to consider the present withdrawal agreement. It is for Parliament to accept or reject that withdrawal agreement. It is for Parliament to address the consequences of its actions, and it answers to the people in a representative democracy. I agree with much of what he said about the process that we should be going through in this context.

Lord Carlile of Berriew: I am very grateful to the noble and learned Lord for giving way, but on that point, dredging up his experience of representative democracy, does he agree that when a Government put forward a proposition in the House of Commons and it is defeated, the normal course is to revert to the status quo ante?

Lord Keen of Elie: That might be the normal course, but it is not the invariable course. We have to look forward to how the Government will proceed in the context of the present process, where they present their agreement to the House of Commons, where it will be subject to consideration. I shall not anticipate that outcome, although, like the noble Lord, Lord

Desai, I take the view that there is every prospect that the House of Commons, having examined this agreement —I am amazed at how many people commented on it before they could conceivably have read its 580 pages—will find that it takes us forward towards the goal that we were set as a result of the referendum.

Lord Hannay of Chiswick: As the noble and learned Lord seems to be drawing to the end of his remarks and has not yet answered my question, I wondered whether he would have a shot at it now. I asked how he would construe the provision that the arbitration panel may not rule on a matter which involves the interpretation of EU law, but must pass it to the European Court of Justice.

The whole of the withdrawal treaty will become European Union law on the day it is ratified. It is no good the noble and learned Lord shaking his head. In its view, it will become European Union law. There will be binding obligations under European Union law. Irrespective of that, how does he construe that provision?

Lord Keen of Elie: I am obliged to the noble Lord for reminding me of his question. Under the provisions of the withdrawal agreement, if there is a question as to the interpretation of a point of EU law, the interpretation must be given by the arbitration panel to the Court of Justice of the European Union, which will determine that point. The application of that interpretation of European law will be a matter for the arbitration panel, not the court. That is why we have an independent arbitration panel and it is why I took issue with the way in which the noble Lord sought to characterise the matter. At the end of the day, the issues that the arbitration panel will be addressing will, no doubt, involve mixed questions of fact and law. The panel will be masters of the fact, apply the law and make a determination on that mixed basis.

I am told that I have three minutes left. That being so—I know that noble Lords would want me to have another 30 minutes—I will quickly go through some of the issues which were touched upon but which I have not yet addressed. Many noble Lords talked about a people's referendum. I hope that I have made the point that that simply does not accord with our democratic principles, nor does it reflect the will of the people when they voted in the referendum. I was quite taken by the observation of the noble Lord, Lord Warner. He said that only 38% of the electorate voted to leave. That is 17.4 million people and, under our democratic traditions, is what we call a majority.

Lord Warner: Does the Minister accept that the proportion of the electorate that voted to leave, 38%, is less than the requirement for 40% of an electorate to call a strike in many public services?

Lord Keen of Elie: My Lords, we are not talking about a strike in public services. Whether the figure is 38% or not, it represents a majority and that is where we are.

The noble Baroness, Lady Bull, raised a series of questions about citizens' rights. I quite understand her concern, particularly in the context of educational institutions. We are bringing forward an immigration Bill. Once that has been brought forward and laid, we will be in a position to address comment and criticism with regard to its terms.

Lord Goldsmith: When will it be brought forward?

Lord Keen of Elie: I understand that it will be in the new year.

Noble Lords: Oh!

Lord Keen of Elie: Every year is a new year.

The noble Lord, Lord Judd, made the prescient point that the political declaration is vital and that until we have that declaration we will not have a clear picture of where we are going to be with our future relationship. This is a staged process. We have the withdrawal agreement in draft; we are capable of taking that forward. We are capable of having a Brexit that works for both the EU 27 and ourselves. We will have an implementation period and we will then have the opportunity to lay out the precise terms of our future relationship with the EU 27.

The noble Lord, Lord Anderson of Ipswich, talked about an extension of the Article 50 process. It is not the policy of this Government that the Article 50 process should be interrupted. Notice has been given; the date of exit is determined; we will follow that through to a conclusion. The noble Lord, Lord Inglewood, raised a number of issues relating to Written Questions. I do not have the answer, but I will arrange for a letter to be written and will put a copy in the Library. I do not know what the present status of various Questions to that department is.

Finally, the noble Lord, Lord Dobbs, referred to a deliberate act of punishment on the part of the EU. I cannot accept that. The EU 27 are negotiating in the best interests of the EU 27. We are negotiating in the interests of the entire United Kingdom. It is going to be a demanding negotiation but, at the end of the day, we will have an ongoing, civilised and mutually beneficial relationship with the EU 27 after we have left.

I am obliged to noble Lords for their attention.

Motion agreed.

House adjourned at 10.04 pm.

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