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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

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Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
Lab Co-op	Labour and Co-operative Party
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

Wednesday 9 January 2019

3 pm

Prayers—read by the Lord Bishop of Gloucester.

Air Pollution

Question

3.06 pm

Asked by Baroness Jones of Moulsecoomb

To ask Her Majesty's Government whether they will be liable to enforcement action brought by the European Commission in the European Court of Justice regarding breaches of air pollution rules during the proposed transition period; and if so, whether this will continue if the backstop is enacted.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, during the implementation period, Union law will continue to apply and the CJEU will have jurisdiction. Any breaches of air pollution rules by the UK during the implementation period could therefore result in enforcement action by the CJEU. Were the backstop to come into effect, the CJEU's role would be strictly limited to interpreting and enforcing the small number of areas in which EU law would apply. This does not include most air pollution rules.

Baroness Jones of Moulsecoomb (GP): I thank the Minister for his Answer. I am sure he realises that air pollution is a huge problem in Britain today. My big concern is that we will end up with the Government's draft environmental plan option, which is the office for environmental protection, which has absolutely no teeth and cannot prevent air pollution in any way. Why are the Government not replicating the EU regulations, which most people in Britain would like to see happen?

Lord Callanan: I know that the noble Baroness takes a close interest in this important matter. I agree that air pollution is very important. However, the answer to her question is that we are. After we have left the European Union, the same air pollution rules as before will continue to apply in the UK; that was legislated for in the European Union (Withdrawal) Act. The office for environmental protection, which we aim to set up by the end of the implementation period, will be able to enforce those same rules.

Lord Forsyth of Drumlean (Con): My Lords, will my noble friend confirm that one of the reasons we have a problem with air pollution is because of diesel engines, which were promoted as a result of the EU regulations, which were in turn promoted by German manufacturers, such as Volkswagen and others, which then went on to fiddle the rules for emissions standards?

Lord Callanan: As always, my noble friend makes an important point. It is also important to add to the reply that I gave to the noble Baroness, Lady Jones, that it is not only the UK; 13 member states, including all the big member states, are also subject to infraction proceedings by the Commission, primarily as a result of the failure of diesel engine vehicles to produce sufficient environmental reductions.

Baroness Ludford (LD): My Lords, it clearly would have been better had successive UK Governments implemented EU air pollution rules many years ago, as they were obliged to do. In fact, they had to be dragged through the courts to accept their responsibilities. But has the Minister not omitted something? Not only do we have to apply EU law during transition with the normal enforcement powers, but the Northern Ireland protocol obliges the UK not to reduce environmental protection below EU standards. Any disputes raised in the interpretation of EU law must go to the ECJ. Surely, that could include environmental law.

Lord Callanan: As I said, 13 member states are subject to these infraction proceedings. Were the backstop, or some level playing field provisions, to come into effect, they would not be enforceable by the European Court of Justice.

Baroness Hayter of Kentish Town (Lab): My Lords, according to the withdrawal agreement—I think it is in Annex 4, with which the Minister will be familiar—if there are any disagreements over air pollution commitments, they are to be agreed by the joint UK-EU committee. However, if those two sides cannot agree, unlike in other areas, there is no provision for an arbitration panel. Why is that?

Lord Callanan: It depends on whether the noble Baroness is referring to the implementation period or to the backstop. If she is referring to the backstop, I refer her to the answer I have just given to the noble Baroness, Lady Ludford.

Baroness Hayter of Kentish Town: I am sorry, but we are talking about enforcement, and the Minister has not answered the question on enforcement, as opposed to the rules.

Lord Callanan: I answered the noble Baroness, Lady Ludford. Were there to be a dispute over the application of the level playing field provisions, it would not be enforced by the European Court of Justice.

Lord Whitty (Lab): My Lords, the noble Baroness's Question and the Minister's Answer focus on agreement and the idea that a deal will be done and there will be an implementation period. If I understand the parliamentary arithmetic in another place, that is at least doubtful at this point. If indeed we have no deal and leave the European Union on 29 March, there will be no UK-based enforcement procedure for environmental standards because the Government have failed to produce an environment Bill that gives powers to the British

[LORD WHITTY]

Government to do what Europe has hitherto had to do. When will those powers come forward and what is the timetable for that Bill?

Lord Callanan: I think the noble Lord has provided his party with a good reason to vote for the withdrawal agreement, so that we will have an implementation period. However, he is of course correct: if we have no withdrawal agreement, by operation of the law, we will leave the EU on 29 March next year and none of the provisions of the withdrawal Act will come into force.

Noble Lords: This year!

Lord Callanan: This year. I forgot that it is 2019.

Brexit: UK Nationals Question

3.12 pm

Asked by **Baroness Miller of Chilthorne Domer**

To ask Her Majesty's Government what outreach work British embassies have undertaken in the 27 other European Union member states to keep United Kingdom nationals informed of their rights after Brexit.

Baroness Miller of Chilthorne Domer (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare my interests as in the register.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, we are committed to ensuring that timely information is available for all United Kingdom nationals living, working and travelling in the European Union. Our network of European posts held over 200 outreach events between November 2017 and December 2018. We are encouraging UK nationals to visit the "UK nationals in the EU" page and the "living in" guides on GOV.UK and to follow their local embassy's social media channels for the latest updates.

Baroness Miller of Chilthorne Domer: Given that outreach work, the Government must have got loud and clear the message of just how angry and disillusioned UK citizens in the EU member states are. Early on, just after the referendum, the Government could have chosen to offer a reciprocal arrangement for EU citizens here and UK citizens abroad, but they chose not to do that. Now, UK citizens have been left as bargaining chips. Can the Minister explain why the UK Government have done a deal with the EEA and EFTA countries to guarantee citizens' rights but still nothing for Brits in the EU 27? Given that Italy, France, Germany and the Netherlands are offering certainty to UK citizens through guarantees on residency, employment and welfare rights, will the Government finally do the right thing, even at this late stage, and make a reciprocal offer guaranteeing citizens' rights?

Lord Ahmad of Wimbledon: First, as my noble friend Lord Callanan said in answer to a previous question, the important thing is for Parliament to agree the withdrawal agreement. The agreement ensures that the very rights that the noble Baroness talks about will be guaranteed. I assure noble Lords that the United Kingdom has been clear that, in the case of a no-deal scenario, EU citizens legally resident in the UK by exit day will be able to stay—they will be able to continue with the same access to benefits and services. It is also important that, in that scenario, EU states stand up and ensure that those guarantees are made available to UK residents. I agree with the noble Baroness: our commitment has meant that we have reached agreement with the EFTA countries to ensure that those mutual and reciprocal rights can be guaranteed.

Viscount Waverley (CB): My Lords, while declaring that I live in Portugal, I draw attention to the good works of HMA Saintry in Lisbon and commend the French and German Governments on allaying the concerns of the British communities in their countries. Will the Minister encourage all UK ambassadors to call on host Governments and so be able to brief in a more exacting way and allay the concerns of British communities in the 27?

Lord Ahmad of Wimbledon: I thank the noble Lord for his remarks about Portugal and certainly I will relay them to the embassy and to the ambassador. But let me assure the noble Lord and your Lordships' House that not just our ambassadors but our Ministers are working on this. I know that when my noble friend Lord Callanan has been engaging on the European circuit, he has been at various outreach events across Europe on this very basis—to inform British citizens who are living in the EU about their rights and what they will be entitled to.

Equally, we are also working very closely with posts here—ambassadors from the EU in the UK. For example, the Foreign Office, the Home Office and DExEU have organised a series of events in cities around the UK to reach out to those people from the Polish diaspora who are residing in the UK to ensure they understand their rights.

Lord Collins of Highbury (Lab): My Lords, the problem most people have is that many citizens have been put through an unnecessary period of stress. We could have given these assurances much earlier on and alleviated the pressure on people. The Minister says that our citizens living in the EU will retain the rights they have now. This is not true—even under the deal. If their company or business moves within the EU they will not have the same rights as they have now to move within the European Union. They will only apply to the countries in which they currently reside. So it is not true to say that everything is the same—it is not. This Government have put a lot of stress on people totally unnecessarily. If we had given guarantees earlier on, we would be in a much better place to negotiate.

Lord Ahmad of Wimbledon: My Lords, the Government have sought to provide clarity at every stage. I accept the point that the noble Lord makes

that we need to ensure that not just our citizens in the EU, but those people who have made a life in the UK—who work, live and reside here—are given certainty. While things have happened in the past, it is important for the here and now to ensure that we give certainty to EU residents in the UK in what are challenging circumstances. Equally, we should not forget those million UK residents who are living across the EU and ensure that their rights are also understood. Our diplomatic network is doing an extremely good job in that respect.

Lord Ricketts (CB): My Lords, while, I am sure, British embassies around Europe are doing everything they should to pass on information to British citizens, does the Minister accept that the withdrawal of freedom of movement presented by the Government as a great achievement is seen as a disaster by many thousands of younger people who may have had life plans to move and to settle in the EU after the date we leave the European Union, and who are now left in complete uncertainty about the rights they will have?

Lord Ahmad of Wimbledon: My Lords, many people who voted in the EU referendum in 2016 took the view that one of the challenges that the United Kingdom has faced over time has been that of ensuring firm and fair immigration. The issue of free movement across Europe was a challenge. The Government had a mandate from the people after the referendum and the withdrawal agreement will deliver on the result. It was clear from the referendum that the majority of British citizens felt that free movement was an issue of deep concern, and we are acting on that instruction.

Baroness Northover (LD): My Lords, what guarantees is the UK giving to our citizens living in the EU about their pension rights after 2020? That is of course just one area of uncertainty. Many UK citizens living in the EU are campaigning for a people's vote. Is the Minister not personally tempted to agree with them that the only way to end this uncertainty would be not to leave the EU?

Lord Ahmad of Wimbledon: I do not agree with the noble Baroness. I am sure that she has read the withdrawal agreement. After reading it, she will have reached the conclusion that, by passing the withdrawal agreement, all aspects of the pension for those citizens living in the EU, including the uprated UK state pension, will be paid.

Lord Roberts of Llandudno (LD): My Lords, what happens to the status of people who are protected on 29 March by Dublin III when that protection comes to an end on 30 March?

Lord Ahmad of Wimbledon: My Lords, I feel as a Foreign Office Minister that I am going quite wide across all government policy. The noble Lord raises an issue about the Dublin agreement. Bearing in mind the crossover to my colleagues in the Home Office, I will write to him in that respect.

Lord Bilimoria (CB): My Lords, is the Minister aware that there are 130,000 students from the European Union in the UK? If we leave the European Union, students from EU countries will be treated like any other foreign students. Does the Minister think that there will still be 130,000 European Union students here and what will the effect be on our universities?

Lord Ahmad of Wimbledon: I pay tribute to the noble Lord and indeed many Members of your Lordships' House who have an important role in our universities. They are well placed to recognise the important role that our universities play, not just across Europe but globally. Because of the standard and the access that we provide I remain confident that, through the withdrawal agreement and the new negotiation that we will have on our future relationship with the European Union, we will continue to attract both the best and brightest not just from Europe but from across the world.

Folic Acid Question

3.21 pm

Asked by **Lord Rooker**

To ask Her Majesty's Government when they will commence their consultation on the mandatory fortification of flour with folic acid to prevent foetal abnormalities.

Baroness Manzoor (Con): My Lords, the House will understand that this is not a straightforward matter. It requires a robust impact assessment to accompany the consultation to meet our obligations under the public sector equality duty. That work is under way and we will announce soon when in 2019 we expect the consultation to launch. I am sorry that I cannot be more precise today, but we hope to be in a position to announce this shortly.

Lord Rooker (Lab): The Minister knows that the average consultation lasts about 12 weeks. The Government made a very welcome and positive statement on 22 October, but that was 12 weeks ago. Bearing in mind that she cannot answer the Question about the date, the key question that also needs to be answered is: will it be a UK-wide consultation? Two years ago, the Scottish Government decided not to go it alone—and they have a better case than England on the blood-level issue—because of the impracticalities of the integration of the bread and flour industries. Therefore, the consultation has to be UK-wide, and I understand that the devolved Governments have requested that it be such.

Baroness Manzoor: My Lords, I pay tribute to the noble Lord, Lord Rooker, for raising this issue. I am delighted that the consultation will take place, so there has been movement, as he rightly said. I place on record that I had a meeting with the Secretary of State this morning to raise this issue with him personally. Like me, he is passionate to ensure that the consultation happens as soon as possible, but it is important that

[BARONESS MANZOOR]

we undertake the impact assessment. On the question that the noble Lord just put to me, due to the milling process it is of course important that we have a UK-wide consultation.

Lord Winston (Lab): My Lords, the Minister said that this is not a straightforward matter, but actually it is. If noble Lords read the paper by Dr Crider from the United States, they would see that folic acid compounds had been given prophylactically in this way for 40 years. That has shown a reduction in neural tube defects of up to 30%. What is also important is that at least four other papers show that the worst cases are where underprivileged people are not taking these supplements. So far, no side-effects of any seriousness have been noted. Is it not about time that the Government took responsibility for the pain and suffering of these families?

Baroness Manzoor: Of course the Government are taking responsibility, and I have just said that we are having this consultation. When I say it is not a straightforward matter, I mean in relation to the impact assessment. I agree that a number of countries—I think around 40—are putting folic acid on a mandatory basis. However, the noble Lord will appreciate that SACN and COT have issued guidelines that we will need to take into consideration in the consultation, and the Secretary of State has assured me today that we will make a decision as soon as possible.

Baroness Nicholson of Winterbourne (Con): Can the noble Baroness include in the consultation a clear examination of the 11 different additives in standard white flour? Britain has a huge variety of flours and wonderful breads but, on the other hand, we retain those additives. The Netherlands is the next down on the EU list and includes only six additives, while France has only two. Do we honestly need all these additives?

Baroness Manzoor: My noble friend highlights our problem and it is therefore important to have the impact assessment. At the moment, additives are only put into white flour, as things are removed through the milling process. Therefore, with folic acid increasingly put into breakfast cereals and a large quantity of other products, we need to look at the upper tolerance level before decisions can be made on moving forward.

Baroness Jolly (LD): The Bread and Flour Regulations currently apply only to wheat flour, which contains gluten and is therefore unsuitable for people with coeliac disease. In the consultation, will the Government consider extending the regulations to apply to gluten-free breads, to ensure that those people have equivalent access to fortified breads?

Baroness Manzoor: That is an important point and we need to ensure that the consultation captures as wide a group of people as possible. If we move into mandatory fortification of flour, it should be done on a basis consistent in addressing all issues, including that.

Baroness Tonge (Non-Aff): A lot of medical professionals wonder why, after such a long time asking for this to happen, the Government are doing a consultation—whatever that means—only now. It is quite ridiculous and they should be ashamed that it has been delayed for so long. People are suffering because this is not happening. Will the Government please get on with it or tell us the real reason for not doing it before?

Baroness Manzoor: I agree with the noble Baroness that the issue has been on the agenda for some time. I am an optimist. There is a consultation, which will be sharp and rapid. She is raising her eyes but the reality is that we have to take into consideration all the issues. It is about responsibility, and choice too. People can go on the NHS website Change4Life, which talks about healthy lifestyles. There is a positive and proactive campaign to ensure that women of childbearing age take folic acid. Young women—and all those of childbearing age—need to ensure that they have a well-balanced diet that includes things such as broccoli, spinach, pulses and so on. That is their responsibility as well as a matter of government accountability.

Lord Balfe (Con): My Lords—

Lord Hunt of Kings Heath (Lab): My Lords—

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, we have had two supplementary questions from the Labour Benches and only one from the Conservative Benches, so would my noble friend like to continue?

Lord Balfe: My Lords, I draw attention to my interests as set out in the register. Every week that goes by there are more medical tragedies which could be avoided, so there has to be a sense of urgency. I hope this consultation is about how to implement the procedure, not about whether or not, as I think that question has been answered. I ask my noble friend the Minister to assure us that the consultation will be about operationalising the addition of folic acid, not about another way of looking at evidence which has already been thoroughly examined.

Baroness Manzoor: I do not know what is going to be in the consultation because I have not had sight of it, but it will take into consideration a wide range of issues to ensure that we are able to move forward in the positive way which I know noble Lords across the House want.

Forced Marriages: Repatriation Charges Question

3.31 pm

Asked by *Baroness Hayman*

To ask Her Majesty's Government whether they will reverse the policy of charging the victims of forced marriages the cost of their return to the United Kingdom.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, today my right honourable friend the Foreign Secretary

has announced that victims of forced marriage who are helped to return to the United Kingdom by the Forced Marriage Unit will no longer be asked to take out a loan for their repatriation costs. Furthermore, no individual assisted by the Forced Marriage Unit who would previously have been offered a loan will have to cover the costs of their repatriation.

Baroness Hayman (CB): My Lords, I am extremely grateful for that Answer. I am very glad that I do not have to berate the Minister—for whom I have the greatest respect—on an issue which, frankly, was a disgrace, and which the *Times* did us all a service by highlighting. I am also glad to understand that the debts that are still around the necks of some of these very vulnerable women who have been repatriated to this country will be wiped out. Will the Minister reassure me that their passports, which were confiscated, will also be returned to them? Will he look very carefully at whether other such practices go on when British citizens abroad need consular help in order to come home after a crime has been committed against them?

Lord Ahmad of Wimbledon: My Lords, I reassure the noble Baroness and your Lordships' House that we are not just waiting in respect of those with outstanding loans but are proactively reaching out to anyone who has been impacted. Those loans will no longer apply, and those who have had passports blocked will have them returned; I can provide those reassurances. On the third point, I think the noble Baroness may well have been listening in to my briefing with officials earlier today because I raised that exact point, particularly with regard to FGM, to ensure that no one who suffers as a victim of this crime abroad has to bear the cost of repatriation.

Baroness Newlove (Con): My Lords, I welcome the commitment the Minister has given today on behalf of the Government. Will the FCO look at getting compensation out of the perpetrators who force the victims to return with no money? As part of this review, will the Government consider that families who have lost a loved one to homicide abroad should not have to refund the Government for the cost of returning the body to the UK? There are victims' families who are crowdfunding, and I do not think it right in the 21st century for the FCO to suggest to them that it is cheaper to cremate the body and collect the ashes.

Lord Ahmad of Wimbledon: My Lords, in any of these cases, our embassies, the FCO and indeed any government department should display empathy towards the victim and their family and ensure that we minimise any distress that has been caused. Perhaps I may suggest that she, in her role as victims' commissioner, and I could meet to discuss her proposal further. I dealt with the issue of forced marriage when I was at the Home Office—I am glad to see the noble Baronesses, Lady Smith and Lady Thornton, in their places—and I remember that when the Government made this a criminal offence, we worked across the House to ensure

that we made the legislation as strong as possible. I recognise the great work that has been done in this House to improve the legislation, but where there is a weakness or more to be done, we need to step up to the mark and do just that.

Baroness Armstrong of Hill Top (Lab): My Lords, I wonder whether the Minister has considered the damage done to our reputation internationally with those countries that are not as caring about human rights and addressing forced marriage as this country is. What are the Government going to do to repair that damage, so that this is not seen as a green light by other countries to continue bad practices?

Lord Ahmad of Wimbledon: My Lords, let us be clear: forced marriage is a crime. We need to ensure that we stand up for the rights of any individual—it is mainly girls, but young boys also have to endure this crime—and provide dignity and a safe return home in instances where they need to do so. The noble Lady asks about reputation. It is important to recognise, as I hope she does, that when this issue arose in the last few days, my colleagues in the Foreign Office, including my right honourable friend the Foreign Secretary, acted decisively and promptly to address a wrong—which we have put right.

Baroness Hussein-Ece (LD): My Lords, I am also very grateful to the Minister for this good outcome today. However, there have been reports of women being sold into slavery, or who cannot come back because of the charges. Have any attempts been made to contact and repatriate those who have been unable to pay and found themselves destitute and trapped in those countries?

Lord Ahmad of Wimbledon: My Lords, the issue of data is an important one. As I said in an answer to an earlier question, the Foreign Office has been proactively reaching out to those for whom we do have a record to ensure that they are aware of the situation and the change that has been effected. The noble Lady raises an important point about modern slavery and human trafficking. As she will know, my right honourable friend the Prime Minister has made this a particular priority on the global stage, and we are working with international partners to ensure that anyone caught up in modern slavery or human trafficking can also be repatriated to the country to which they belong.

Finance (No. 3) Bill

First Reading

3.36 pm

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

Business of the House

Motion on Standing Orders

3.37 pm

Tabled by Baroness Evans of Bowes Park

That Standing Order 30 (No Lord to speak more than once to a Motion) be suspended in respect of the debate on the motion in the name of Lord Callanan relating to section 13(1)(c) of the European

[BARONESS EVANS OF BOWES PARK]

Union (Withdrawal) Act 2018 to enable those members who spoke to the motion in the same terms on Wednesday 5 or Thursday 6 December to do so again.

Lord Taylor of Holbeach (Con): My Lords, I beg to move the Motion standing in the name of my noble friend the Leader of the House. In doing so, I should say that the Motion, if agreed to unamended, would allow those noble Lords who spoke on 5 or 6 December, to do so again if they so wish. Given the way the previous debate was abruptly curtailed, before any of the winding speeches had been heard, and following representation from Members on all sides of the House, who spoke previously, it would seem to me to be the sensible thing to do. I beg to move.

Amendment to the Motion

Tabled by Lord Adonis

Leave out from “that” to end and insert “the debate in the name of Lord Callanan be concluded on Wednesday 9 January and in accordance with the usual rules of debate”.

Lord Adonis (Lab): My Lords, in view of the votes of the House of Commons earlier this afternoon, I will not move this amendment.

Amendment not moved.

Motion agreed.

House of Lords: Sittings

Motion to Resolve

3.38 pm

Moved by Lord Foulkes of Cumnock

That the House should adjourn at close of business on 14 February to return on 25 February, and similarly adjourn at close of business on 4 April to return on 23 April.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I beg to move the Motion in my name on the Order Paper. A number of Members have asked me why I have put down these particular dates. I have put them down because they are the dates for the February Recess and the Easter Recess already announced for the House of Commons. I thought it was strange that the House of Commons, the primary House, in this Parliament is able to announce its recess dates and we are not. It just seems crazy. In both Houses there is a qualification: it is always subject to the progress of legislation. That is understood. It is accepted that things can change, but at least it gives us some degree of potential certainty.

I do not always agree with my noble friend Lord Grocott on everything, but on this I agree with him wholly. When he was Chief Whip, he ensured that both Houses of this Parliament met and went into

recess at the same time, so that it was Parliament that was sitting, not just one House or the other. Unless we take a decision, there is uncertainty not just for Members—a lot of whom have already gone into their whips’ offices asking when the recesses will be—but for the staff. We have to have some concern for the staff of this House and for the uncertainty that it creates for them.

I have been looking back over the last 15 years, and the February and Easter Recess dates are normally announced in October or, at the very latest, November of the previous year to give us some degree of certainty. I know that at the moment there is a particular uncertainty about the legislation—I do not need to go into that; everyone knows it—but of course it works both ways, and it works for both Houses.

The Government Chief Whip could have pre-empted my moving this Motion today by making an announcement in the normal way. As he has not done so, I am minded to let the House decide on its own recesses. That would be self-regulation at its best.

Lord Taylor of Holbeach (Con): My Lords, this is really not how we agree on or give notification of our recess dates. Although I fully understand the concerns of the noble Lord, Lord Foulkes, and others, I cannot support the Motion before the House and ask others not to do so either. As the House has heard, most recently during Question Time on Monday, there will be a significant amount of legislation before the House before the end of March, and I do not think it sensible to confirm recess dates before then.

I have been up front with other members of the usual channels. As I indicated to them at the end of December, all our recess dates are subject to the progress of business. I intend, if possible, to provide for a long weekend during February, but I anticipate that the House will need to sit on days when the Commons is not sitting. The House has an important part to play in scrutinising critical legislation and we all know that we will need to do that during February and March. I hope to be able to confirm our plans for Easter soon, and I hope that that will be a fortnight’s recess, but, again, I cannot guarantee that the dates will match those of the Commons.

I am grateful to everyone for their patience and understanding but, at this critical point for all of us, we need to put the important scrutiny work of the House first, even where it causes personal inconvenience. I do not think that I have to point out to noble Lords how it would appear to members of the public if the House were to vote to give itself a holiday at this juncture.

I give an undertaking to come back to the House at the earliest opportunity to make an announcement in the usual way. On that basis, I ask the noble Lord to withdraw his Motion. If he does not feel able to do so, I ask noble Lords to think very carefully before supporting him in the Lobby today.

Lord McAvoy (Lab): My Lords, at great risk to my reputation as Opposition Chief Whip, I have a certain amount of sympathy with the Government Chief Whip over the situation that he faces, but perhaps I may

qualify that a bit. I think that the statement today could, and should, have been made earlier. I can fully understand the disappointment and frustration about this situation felt by my noble friend Lord Foulkes of Cumnock and others. We think the Government Chief Whip could have outlined that situation earlier.

Nevertheless, these are highly unusual times, and Parliament has a responsibility to sit to ensure that legislation has been given proper scrutiny by your Lordships' House. So I understand the situation in which the Government Chief Whip has been put by the Government's inability to get the necessary agreements in time and by their constant delay in taking critical decisions; this is not about the Chief Whip but the Government's constant delay in taking critical decisions. Given that the expected Easter Recess dates are after 29 March, I hope the Government Chief Whip will come back as soon as possible to outline to the House what he expects us to be doing then and why.

3.45 pm

Lord Stoneham of Droxford (LD): My Lords, I too have some sympathy with the Chief Whip but not with the Government. They have created this problem, and that is why we are being imposed upon with all this late legislation coming forward. I have great sympathy with the noble Lord who has proposed this, but he says it creates uncertainty for us; I am more worried about uncertainty in the country over the next five years. We need to be here, whatever the situation following next week, to do what is required for the necessary legislation so, on these Benches, we cannot support setting down the Recess dates firmly at this stage. We hope the Government will be able to make some provision but, given the uncertainty, we think the country's needs come first.

Viscount Waverley (CB): My Lords, as the Chief Whip has nevertheless announced that he is prepared to give a long weekend in the middle of February, would it be convenient to the House if, at the very least, that long weekend could be identified so that Members can make appropriate arrangements?

Lord Taylor of Holbeach: My Lords, I have been asked a direct question. I am not in a position to identify the weekend. The truth is that the legislative timetable is dependent on the progress of business in the House of Commons as well as the progress of business here. As I said in a communication to the usual channels before Christmas, I intend that there will be a long weekend in February. I understand; I have a life outside this place, believe it or not, so I do understand people's impatience. I admire the House for the tolerance it has shown with its major task, which is to scrutinise legislation as it is brought to us. I ask the noble Lord, Lord Foulkes, to withdraw his Motion on the understanding that I will come back to the House as soon as I am able to give specific dates.

Lord Bassam of Brighton (Lab): My Lords, can the noble Lord the Chief Whip give an assurance on a question I asked the other day? The timetable for considering Brexit Bills before 29 March is getting

shorter by the day. Can we be assured that the legislation that comes forward will not be forced into being emergency legislation? This House needs time to consider the Bills properly.

Lord Taylor of Holbeach: My Lords, that is my intention: that we should create the time to do our business properly.

Lord Foulkes of Cumnock: My Lords, I know that the Government Chief Whip has a life outside this place: I see him from time to time on the plane to Bergerac. But I assure him that I am not moving this because of any personal inconvenience to individual or collective Members of Parliament. All the points he made apply equally to the House of Commons—all of them. They can be recalled, as can we, if urgently needed; indeed my noble friend Lord Adonis suggested late last year that we could be recalled if necessary. I have known my good friend Lord McAvoy since we were very young councillors together: he in Glasgow, me in Edinburgh, and we still got on. I do not want to upset him, but a number of people have said to me that too many decisions in this House are made by the usual channels, without consulting individual Members or considering what they think. I suggest that this is an opportunity for individual Members to make a decision. We have been told we may get a weekend, but we have not even been told which weekend. I would like to give Members the opportunity of a free vote on this, and I hope it will be a free vote.

Motion disagreed.

Brexit: Withdrawal Agreement and Political Declaration

Motion to Take Note

3.51 pm

Moved by Lord Callanan

That this House, for the purposes of section 13(1)(c) of the European Union (Withdrawal) Act 2018, takes note of the negotiated withdrawal agreement laid before the House on Monday 26 November 2018 with the title *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community* and the framework for the future relationship laid before the House on Monday 26 November 2018 with the title *Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom*.

Relevant document: 24th Report from the European Union Committee

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, the noble Lord, Lord Foulkes, is paying attention. Today marks the start of three days of debate examining two documents: the withdrawal agreement and the political declaration, which together form the agreed deal with

[LORD CALLANAN]
the European Union. These were, of course, the subject of two days of debate before Christmas in this House, as well as three days in the other place.

In both Houses we heard many diverse views on the deal, with much positive commentary—and of course some negative commentary—on what has been agreed after two years of difficult negotiations. While the task of closing the next three days of debate falls to my noble and learned friend Lord Keen, I thought it would be appropriate, with the leave of the House, to take time in my opening remarks to address many of the points made by noble Lords before Christmas, since they did not get to benefit from a closing speech at the time.

Noble Lords examined every aspect of the deal, demonstrating the breadth and depth of their experience and expertise. While the vote on the final agreement is rightly one for the elected House, it is clear that contributions from this House will be of great value to those making their choice in the other place. One subject in particular was raised by my noble and learned friend Lord Mackay, the noble Lords, Lord McCrea and Lord Empey, and the noble and learned Lord, Lord Goldsmith, among others, and that was of course the Irish border and the backstop. At the time, I was especially struck by the powerful intervention from the noble Lord, Lord Bew. Given the concern about the backstop across both Houses, it was right that the Government took the opportunity to raise these concerns with our negotiating counterparts in the EU.

Following the December European Council, the EU published conclusions which gave the reassurance that the EU,

“stands ready to embark on preparations immediately after signature of the Withdrawal Agreement to ensure that negotiations can start as soon as possible after the UK’s withdrawal”.

As has been made clear in private meetings with the Prime Minister, this confirms that the EU, like this Government, does not want to use the backstop. I recognise that, despite all this, significant concerns remain in this House, which is why the Prime Minister set out that we would be seeking further assurances on top of those provided in the December European Council conclusions.

Over the Christmas period, the PM has been in contact with a number of her European counterparts about the further assurances that Parliament need on the backstop. The PM has been in touch with the Taoiseach, and British and Irish government officials have also been in contact over the past week. Securing those additional reassurances that Parliament needs remains our priority, and leaders remain in contact. Leaving the EU with the deal that has been agreed is in the interests of both sides.

We recognise the concerns raised around the backstop and the unique challenges presented by Northern Ireland in our exit from the EU. That is why we have today published a paper setting out a series of commitments to Northern Ireland, in particular in any backstop scenario. These recognise the unique circumstances of Northern Ireland and the unique nature of the impact

of the backstop in Northern Ireland. This seeks to address some of those concerns and reaffirm Northern Ireland’s integral place as part of the United Kingdom.

In that paper, we set out that we will ensure a strong role for the Northern Ireland Assembly ahead of any decision to bring the backstop into effect. We will provide a Stormont lock over any new areas of law being added to the backstop, giving a guarantee in law that no new areas of law can apply to Northern Ireland under the backstop without seeking the consent of the Northern Ireland Assembly. We will guarantee the unfettered access of Northern Ireland businesses to the whole of the United Kingdom market. Again, we will set that out in legislation. We will give an unequivocal commitment that that there will be no divergence in rules between the scope of the backstop between Great Britain and Northern Ireland, were it ever to come into effect.

We will set out a legal guarantee that nothing will change areas of north/south co-operation without the explicit agreement of the Executive, in line with the arrangements under strand 2 of the Belfast Agreement. We will provide a clear role for the Northern Ireland Executive in discussions between the UK and the EU under the withdrawal agreement structures that specifically affect Northern Ireland, and we will ensure a strong role for the Northern Ireland Executive and the other devolved Administrations as we move into the next phase of negotiations.

I am aware of the Motion tabled by the noble Baroness, Lady Smith of Basildon, to which I am sure she will speak in more detail shortly. My noble and learned friend Lord Keen will respond to that in closing the debate.

Over the course of this debate, we will examine two documents that represent months of complex negotiations and deliver on the result of the referendum. As noble Lords, including my noble friend Lord Tugendhat and the noble Baroness, Lady Falkner, noted before Christmas, the deal may not be perfect. It is well known that negotiations require compromise, especially when dealing with 27 other countries. As the Prime Minister has said, we must not risk making the perfect the enemy of the good.

Lord Forsyth of Drumlean (Con): My noble friend has made an interesting statement about Northern Ireland and the paper that has been published. Why was it not possible for the Government to publish it in advance of this debate so that we had a chance to read it and understand what was involved?

Lord Callanan: My noble friend makes a good point, but important negotiations have been going on on these matters and we continue to discuss these matters with our EU partners. We hope to bring further clarifications before the vote.

The withdrawal agreement and political declaration demonstrate our joint commitment to a future partnership that reflects the depth of our shared history and values. It is right, as the most reverend Primate the Archbishop of Canterbury, among others, reminded us in the first debate, that this future partnership should work in the best interests of the country and

for all generations in it. This deal delivers on the result of the referendum by restoring sovereign control over our borders, laws and money. It protects jobs and the vital security co-operation with our European neighbours, and it delivers certainty for businesses and citizens. This is a deal which, if passed in the other place, will ensure that our exit is smooth and orderly, and delivers in the national interest.

This deal delivers in securing the rights of EU citizens living and working in the United Kingdom, who make such a valuable contribution to our society, economy and public services. That contribution was highlighted by noble Lords, including the noble Baronesses, Lady Miller of Chilthorne Domer and Lady Kennedy of The Shaws, and the noble Lord, Lord Cashman. This deal delivers on that commitment and secures the rights of 3.5 million EU citizens living and working in the UK and those nearly 800,000 UK nationals living and working in the EU, so that they can continue living their lives broadly as they do now.

The noble Baroness, Lady O'Neill, rightly raised the important question of Irish citizens' rights in the UK, particularly those who may be without a passport. The Government will ensure that these rights will continue to be protected when we leave the EU, no matter what the terms of our departure.

The noble Earl, Lord Clancarty, and the noble Baroness, Lady Thornton, spoke passionately about immigration and freedom of movement. We shall introduce a skills-based immigration system, built around the talents and skills that a person has to offer, not solely on where they come from.

This deal ensures there will be an end to the billions of pounds we send to Brussels every year, allowing us to invest in our domestic priorities. It means that we will leave the common agricultural policy and the common fisheries policy. We will once again be in control of our immigration policy.

Let me turn now to the political declaration, which sets out the terms of our future relationship. The noble Lords, Lord Mendelsohn and Lord Livermore, and my noble friend Lord Howard of Rising spoke about the impact of leaving the EU on the economy.

Lord Foulkes of Cumnock (Lab Co-op): Why is the Minister reading out a speech drafted to reply to the debate that we are not continuing?

Lord Callanan: It was not drafted just for that; it has also taken account of the latest developments. Many noble Lords contributed in the first debate and we did not get the chance to reply to them. So, while making my points, I will seek to reply to the many questions asked of me of the debate at the time. I thought that would be helpful to the House.

The deal will pave the way for an unprecedented economic relationship with the EU—one that no other major economy has. We will have a new free trade area with no tariffs, fees, quantitative restrictions or rules of origin checks. We will also have an independent trade policy and strike free trade deals with partners outside the EU. I highlight to my noble friend Lady Hooper that this is being taken forward by my right honourable friend in the other place Dr Liam Fox.

Some noble Lords, including the noble Lords, Lord Owen, Lord Mancroft, Lord Lea of Crondall and Lord Monks, suggested a Norway-style EEA option as an alternative to the bespoke deal that is on the table. However, an EEA deal would leave us unable to end free movement without the EU being able to take retaliatory action. It would also not cover a range of important issues such as customs, external security or Euratom. Others have put forward a Canada-plus option as an alternative. However, we believe that we need a solution that allows for frictionless trade and at the same time avoids a hard border between Northern Ireland and Ireland. A Canada-style deal would not provide for this and would therefore be unacceptable.

Some noble Lords, including my noble friends Lord Shinkwin and Lord Hailsham, spoke about economic forecasts and assumptions of late. Let me highlight to noble Lords what has happened in our economy since the referendum. Total UK exports rose by 10.9% in 2017 compared with 2016. We have increased our exports from the equivalent of 28% of GDP to 30% of GDP. Of course we must not be complacent, but this does not represent the doom and gloom declared by many speakers. I agree with the passionate speech made in December by my noble friend Lady Meyer, who said:

“We should believe in ourselves”.—[*Official Report*, 5/12/18; col. 1077.]

My noble friend Lord Wasserman and the noble Lord, Lord Ricketts, were correct in their contributions. The security of our nation is paramount. That is why we have negotiated the terms of the most comprehensive security relationship in the EU's history. The noble Lord, Lord Krebs, and my noble friend Lord Risby also raised the important issue of the UK's participation in Galileo. The EU's current stance is to bar the UK from full involvement in developing Galileo. The Prime Minister has made it clear that we cannot allow our Armed Forces to depend on a system that we cannot be sure of. As such, the Government will take forward plans, working closely with key international partners, for a new system that will fulfil our security requirements and provide appropriate resilience. We can of course discuss the matter of our past contributions to the Galileo project in future talks with the EU, as specified in the December joint report.

Many noble Lords, including the noble Lords, Lord Krebs and Lord Whitty, my noble friend Lord Heseltine, the noble Baronesses, Lady Bakewell, Lady Randerson and Lady Thornton, and the noble Earl, Lord Clancarty, spoke passionately about the UK's scientific and education programmes. Noble Lords rightly asked about future collaboration with the EU on science and technology, and of course on higher education programmes. The withdrawal agreement offers certainty to universities and other UK recipients of EU research funding programmes, including Horizon 2020, by providing for continued UK participation until the current programmes end in 2020; and for the lifetime of individual projects, replacing the need for the Government's existing funding guarantee.

We have been clear that we want to explore association with EU research and innovation programmes, Horizon Europe and Euratom research and training, and will of course be prepared to make an appropriate financial

[LORD CALLANAN] contribution if we do participate. That is why the political declaration sets out that the future relationship will include terms for the UK's participation in EU programmes in areas of shared interest, including science and innovation, and culture and education.

Many noble Lords, predominantly on the Liberal Democrat Benches, spoke at length about their favourite subject: a second referendum. I repeat yet again that in June 2016, 17.4 million people voted to leave. The British people confirmed that decision the following year by voting for parties committed to delivering Brexit. This deal delivers for the British people.

The Liberal Democrats, I know, have history on this. Indeed, it was the Liberal Democrats under Nick Clegg who first called for a “real referendum on Europe”. I looked again at a copy of that leaflet and I have to say that nowhere did it call for “two real referenda on Europe”. What we need now is certainty and clarity and not the chaos and confusion of a second referendum and all the division that it would bring.

Noble Lords: Oh!

Lord Callanan: My Lords, we have come a long way to respect and deliver on the result of the referendum. This House has scrutinised and contributed to a number of Bills which will guarantee that the UK continues to have a functioning statute book after exit day.

Lord Reid of Cardowan (Lab): Why should the British people have any confidence in the Government's capacity to produce what the Minister said they wanted—clarity and stability—when the most glaring recent example of the Government's capabilities was to hire a firm to supply ferries which had no ferries? If the Secretary of State for Transport really wanted an organisation that had no ships, he could have asked the Royal Navy.

Lord Callanan: My Lords, I thank the noble Lord for his amusing contribution. I am sure that many noble Lords would disagree with his assessment of the capabilities of our excellent Navy. We make no apologies whatever for preparing for a no-deal situation. The exit date was legislated for in the notification of withdrawal Act and in the EU withdrawal Act last year. We will be leaving the EU on 29 March next year.

Noble Lords: This year.

Lord Callanan: That is the second time I have done that today, my Lords. I apologise; I meant 29 March this year. I got so used to saying it last year that I have repeated it a number of times. Maybe I did not get a long enough Christmas break to get over it properly.

Lord Adonis (Lab): I tried to shorten it for you.

Lord Callanan: I am grateful to the noble Lord.

There will be further legislation to implement this deal—the withdrawal agreement Bill—and then a future relationship deal to be scrutinised, shaped and signed. Throughout this, we will continue to work closely with both Houses and their Select Committees.

As my right honourable friend the Secretary of State confirmed in the other place earlier today, we will accept the amendment made by the honourable Member for East Devon to give Parliament a vote on whether to seek to extend the implementation period or to allow the possibility of the backstop coming into effect.

During the three upcoming days of debate, noble Lords will examine a withdrawal agreement that will ensure our smooth and orderly departure on 29 March and, tied to this agreement, a political declaration on an ambitious future partnership that is in our national interest.

Lord Purvis of Tweed (LD): Before the Minister concludes his reflections on contributions from the previous debate, perhaps he can assist those who will take part in this one, given the parliamentary rules. A Written Statement made in the other place today by Mr Lidington says that there will be,

“a strong role for Stormont before the backstop could be triggered”.

It is two years to the day since Martin McGuinness resigned, triggering the cessation of the Northern Ireland Assembly. For those who will contribute to this debate, can the Minister be very specific about what the role is intended to be for an institution that does not exist but which would effectively have a veto over a key part of what he has just outlined to the House?

Lord Callanan: The Stormont Assembly does exist; it is just not sitting at the moment. [*Laughter.*] Noble Lords laugh, but this is an important matter. The Secretary of State for Northern Ireland is working day and night to try to get the Assembly restored, because that is the proper place for it. We hope that it will be, but, obviously, if it does not sit then it cannot have a role. I set out in the paper released earlier today the guarantees that we are giving to the Stormont Assembly.

This is a deal which honours the integrity of our United Kingdom. It delivers on the referendum result, and it delivers Brexit for the people of the United Kingdom. I look forward to listening to the debate and, in closing, I commend the withdrawal agreement and the political declaration to the House.

4.10 pm

Baroness Smith of Basildon (Lab): Well, My Lords, here we go again. I often have a sense of déjà vu when it comes to Brexit, but even more so today, as we resume the debate that started before Christmas.

I have to say to the Minister, never before have I heard a winding-up speech open a debate, and there was no clue or evidence that anything had changed since the vote was called. When he makes a reference to “29 March next year,” we know he is reading last year's speech.

There is only one reason why we were unable to complete the debate last year. The Prime Minister, recognising that she was going to lose by a large margin, stopped Parliament expressing any opinion on the deal she was presenting as the very best she could get, and therefore the only option on the table.

Of course it is the best deal that Mrs May is presenting to Parliament—it is the only option she is presenting to Parliament. By the same measure, it is also the worst deal she is presenting to Parliament. Not even her most loyal supporters offer any confidence that this is a good deal, let alone better than what we have now.

There is no glowing praise, no great admiration for brilliant negotiating skills; just a recognition of her dogged determination to get something—anything—that she thinks she can present as a win. Even with time rapidly running out, the Government pulled the vote before Christmas, delaying certainty for individuals, communities and businesses across the UK. They wanted answers, but all they got was a political tactic designed to get the Prime Minister through to the end of last year and the first few weeks of this one.

On Monday, with Mrs May not willing to go to the Dispatch Box in the other place, Labour forced the Government to update Parliament on any progress they had made with the EU, and whether that justified the delay. I listened carefully but, as I said then, I did not hear anything new, and despite this document—belatedly and, I have to say, disrespectfully published today—I have seen nothing new to persuade me that her decision to pull that first vote was anything other than an attempt to buy time.

I have two key questions. Other than seeing off a further leadership challenge by Conservative MPs, what has really changed since the vote was pulled? Do the Government understand the scepticism of many, including business groups—that the delay was just a political ploy to take this decision right to the wire, trying to force through an inadequate deal, knowing that Parliament will simply not support a no-deal outcome?

Media reports suggest that the Prime Minister has told the Cabinet that she expects the deal to be rejected in next week's Commons vote, but the Government appear conflicted regarding what the consequences will be if the agreement is turned down by MPs. The real Project Fear is Mrs May's threats of the consequences of rejecting this deal—threats that differ, depending on the audience she is speaking to. Brexit supporters are told that it could lead to the UK's remaining in the EU; yet those who voted remain are being told to support the deal, or we will just crash out. Both cannot be true. That threat alone is hurting businesses, manufacturing, academia, the City—and it is hurting now.

I tabled a Motion—referred to by the Minister—ahead of the debate in December, and we debated that at some length before the House was adjourned. I am grateful to colleagues across your Lordships' House for further discussions in recent weeks. Noble Lords will be aware that an updated Motion has been tabled in my name.

Our aim remains the same: to frame this debate around three key issues. The first is to recognise that it is for the House of Commons to determine the matter and find a way through the current impasse. During our lengthy debates on the withdrawal Bill, we were clear that this House should not have a veto on Brexit, and we provided MPs with that meaningful vote. But

this House has an important constitutional role: we consider the detail and offer an opinion to the elected House. My Motion allows your Lordships' House to do just that. The second, and crucial, issue is to ensure that the threat of a no-deal exit—a danger that looms ever larger as a result of the Prime Minister's actions in the December debate—is emphatically rejected.

As I said last time, while there are some who fondly imagine that the only consequence of no deal is for the UK to step back in time and pick up where we left off more than 45 years ago, the reality is very different. The world outside the EU has not been static, just waiting for us. Much has changed in that time and we cannot reset the clock. This was recognised by MPs in last night's vote on the Finance Bill—and, indeed, in their vote this afternoon—in dealing with the urgency of the situation we are now in. It is not often that I quote a Conservative MP, but Oliver Letwin spoke for many when he asserted that,

“we will not allow a no-deal exit to occur at the end of March”.—*[Official Report, Commons, 8/1/19; col. 264.]*

Regrettably, and despite the clear advice of your Lordships' House, rather than ruling out no deal, the Government have stepped up their planning for such an outcome in recent weeks.

The Minister said that he makes no apology for stepping up such preparations for no deal. I think he should make some apologies, because billions of pounds, from the Government and from businesses, have been devoted to these preparations, despite the Chancellor being fully aware of the dire long-term economic consequences that no deal would bring. This week, at the disused Manston Airport, the Government held a much-heralded exercise for a no-deal Brexit in relation to cross-channel transport. It was absolutely farcical. They managed a role play with only 89 lorries, and that included a Thanet Council refuse vehicle. It was certainly far fewer than the intended 150, and a very long way from the thousands of vehicles that currently cross the channel every day. It is little wonder that the managing director of one company, Harrier Express, described it as, a “dress rehearsal for our own execution”.

As my noble friend Lord Tunnicliffe noted yesterday, plans to deal with port and shipping capacity are even more inexplicable:

“The Transport Secretary has awarded a £14 million contract to a company with no money, no ships, no track record, no employees, no ports, one telephone line and no working website”.—*[Official Report, 8/1/19; col. 2127.]*

Chris Grayling really is the gift that keeps on gaffing. Given the incompetence of the Government, it feels at times as if we are living in some tragic comedy. It is so bad it is almost unreal, as though we are living in a Carry On film: “Carry On Brexit”—or perhaps more appropriately, “Carry On Screaming”.

All the while, major legislation remains stalled. In the case of the withdrawal agreement Bill, a piece of the puzzle that absolutely must be in place by exit day, weeks of time for parliamentary consideration has been lost. As we discussed in response to an Oral Question on Monday, piles of statutory instruments are parked on desks across Whitehall, rather than having been tabled for consideration. The Minister boasted earlier this week that there will be only 600 SIs

[BARONESS SMITH OF BASILDON]

to address. Some of those are believed to be hundreds of pages long. If recent events demonstrate anything, it is that there are absolutely no circumstances in which a no-deal scenario has any benefit for the UK. That is the central point of my Motion, which I will put to the House on Monday.

Thirdly, my Motion expresses an opinion on the agreement before us. As I said earlier, it is not the role of this House to accept or reject the deal—that is for elected MPs—but we can and should express an opinion on the merits, or otherwise, of the deal. We are assisted in this by the excellent report of our EU Committee, for which we should be grateful, and we should express our opinion not by comparing this agreement with no deal, as the Prime Minister is quite desperate for us to do, but by carrying out a forensic assessment of the documents before us and expressing an opinion as to whether we consider them good enough, or not. This political declaration provides no certainty. It outlines a menu of options that may or may not be available in future trade negotiations. So the agreement we are asked to consider represents a blind Brexit with no certainty or clarity for the future.

The Prime Minister asserts that she has the best deal on offer, but that is simply not the case. She may have the best deal that her red lines allowed—even that is debatable—but that is because she chose the wrong red lines before triggering Article 50. The public were literally promised the world: “a truly global Britain” that would have frictionless trade with Europe and boost ties elsewhere. Instead, we seem to have alienated almost everyone.

With just over 11 weeks left, we lack the legal basis required to establish new trade relationships, immigration requirements and food safety standards. Over the next few days, your Lordships’ House will continue to scrutinise these agreements and pass our opinion on them. On Monday, before the House of Commons takes its own binding decision, I will once again ask colleagues to support a Motion standing in my name that has three straightforward and simple points: that we recognise that it is ultimately for the House of Commons to decide; that, crucially and vitally, this House believes no deal can never be an option; and that, even if the UK exits the EU on these terms, it represents a backward step for our prosperity, security and influence.

4.21 pm

Lord Newby (LD): My Lords, it is somewhat odd to be debating an identical government Motion with a month’s gap, during which time, in the Brexit negotiations themselves and despite the announcements the Government have made today, there have been no significant developments whatsoever—a reality reflected in the Commons simply continuing its adjourned debate on the topic rather than having a new Motion or amendments.

There was therefore a temptation to simply repeat the speech I made on 5 December. I was attracted to this option by the true example of a vicar friend of my wife’s who, having preached a sermon on a Sunday morning, found that his colleague who was due to

preach at evensong was taken ill during the day. Stepping into the breach and having no time to prepare a second sermon, he simply repeated the one he had given in the morning. He was therefore rather disturbed to see in the congregation one of the churchwardens, who normally only attended in the morning but who had had visitors for lunch who wanted to see the church. At the end of the service, the vicar greeted the churchwarden with some trepidation. The churchwarden approached the vicar beaming. “Another corker, vicar”, he said. It was clear that he had not listened to at least one, and possibly both, of the sermons. But I suspect that your Lordships’ House is somewhat more attentive than the average churchwarden, so I shall repeat neither the speech nor the exact arguments I made a month ago.

The challenge in fashioning another speech, however, is that, as far as the withdrawal agreement and political declaration are concerned, nothing of substance has changed. I am unaware of a single MP who threatened to rebel last time but has pledged to support the Government this time around.

Although nothing has changed in the agreement itself or the views of MPs, this does not mean that nothing has changed beyond Parliament. The first thing that has changed is that the Government have stepped up spending for a no-deal Brexit. Given that the Commons will never vote for a no-deal outcome, as evidenced by yesterday’s vote, the spending of billions of pounds against an outcome that is simply not going to happen was always going to be a colossal waste of public money. But the way in which the Government have chosen to do this has turned mere profligacy into farce.

It was bad enough having a Health Secretary boasting—and I use the word advisedly—that he had spent tens of millions of pounds on refrigeration units. But when the Department for Transport prepares to give £14 million to a shipping start-up that seems to have difficulty differentiating between a roll-on roll-off ferry and a takeaway pizza, things have reached a new low. Having 89 lorries at Manston practise at being a traffic jam is merely the icing on the cake of a litany of episodes which make “Dad’s Army” look like a model of discipline and efficiency. No wonder the rest of the world looks at us today as it does with a mixture of pity and amazement.

Secondly, in the real world, businesses and individuals are making their plans and putting them into effect. Financial services companies have now moved some £800 billion-worth of staff operations and customer funds to continental Europe. The number of staff who have already moved is 2,000 and rising rapidly. Polling of business leaders now shows some three-quarters of them pessimistic about the year ahead, with Brexit by far their biggest headache. This, of course, means lower investment and will eventually lead to fewer jobs. The fact that manufacturing in some sectors is holding up because companies are building up their stocks against the possibility of a no-deal Brexit is at best a temporary relief.

In the public sector, and in the NHS in particular, there is growing evidence that EU workers are leaving or not choosing to come to the UK because of the

potential consequences of Brexit. The organiser of a Facebook group of 15,000 Italian nurses working in the UK, for example, estimates that some 10% have already left, with another 10% planning to do so. Given that over one-fifth of London's nurses are EU citizens, this leeching away of EU staff is already causing problems which the delay in getting to a Brexit decision is only making worse.

Thirdly, because of these real-world developments, people are increasingly saying that they do not trust their politicians to take the final decision on Brexit and that they do not wish to leave the EU. Over recent months, the polls have told a consistent story that a majority of the population now want a referendum and, in such a referendum, a majority would vote to remain. In the latest poll by YouGov, for example, taken over the Christmas break, some 54% said that in a further referendum they would vote to remain and 46% said that they would vote to leave. With every passing day, the demographics are bringing on to the electoral register a group of young people of whom 85% wish to have a future as European citizens. Even groups which have been traditionally hostile to a referendum are changing their minds—the latest being the influential business body London First, which on Monday said that, in the absence of a Commons majority for a Brexit deal, the issue should be put back to the people.

On the basis that the Government's Brexit deal would make the country poorer, less secure and less influential—arguments that I made last time and I hope I have not repeated today—and in the light of these recent developments, I strongly urge Members of your Lordships' House to support the Motion in the name of the noble Baroness, Lady Smith.

While it is clearly for the Commons to decide on the next steps, we should be clear what the options are. The Government's deal is an option, but it is set to be defeated. No other negotiable deal is available, despite the probability that the Prime Minister will respond to a defeat next week with yet another futile trip to Brussels in search of unicorns.

Crashing out is a theoretical option, albeit one of a kamikaze nature, which the Commons has already, in effect, rejected. As the ECJ ruling on 10 December proved, this is not an inevitability if the Government's deal is rejected. We have the sovereign right as a country to unilaterally revoke our Article 50 notification. Talk of crashing out by accident is nonsense. It could only happen if the Government chose to do so and the Commons agreed.

A general election is an option, but this would itself solve nothing and serve only to split Labour and the Conservatives further.

Going back to the people with a chance to remain in the EU is an option. As the House knows, the view on these Benches is that this is the best—

Lord Lea of Crondall (Lab): Is it an oversight or deliberate that the noble Lord has left out the perfectly feasible alternative option of remaining in the EEA by changing from pillar 1 to pillar 2?

Lord Newby: My Lords, I do not believe that that is a feasible option.

As I was saying, going back to the people with the chance to remain in the EU is an option, and, as the House knows, the view on these Benches is that this is the best option. Every single development over the past month, and since our last debate, has only reinforced us in that view.

4.30 pm

Lord Hope of Craighead (CB): My Lords, it seems to me, too, that nothing much has changed since we began our debate on this subject on 5 December. I said then that I felt trapped in a maze from which there was no way out. It seemed then that, despite the EU's obvious shortcomings, we would almost certainly lose more than we would gain by leaving it. However, I was, and I still am, willing to respect the result of the referendum and to regard it as something from which there can be no turning back. Nevertheless, I still feel trapped, because there is no way out that is as attractive as remaining in the EU, and because, of the various possible ways out of the maze that give effect to the result, some are distinctly less attractive than others.

I said that nothing much has changed. There was of course last night's vote in the House of Commons, and another vote this afternoon, but on their own these votes have not moved anything forward. One thing still seems to be just as certain as it was on 5 December: as the law stands, we will be leaving the EU on 29 March. That is the effect of paragraph 3 of Article 50. The treaties will cease to apply to us on that date—that is, two years after the notification—if we have not entered into a withdrawal agreement. Frankly, rather than crashing out of the EU, as it is sometimes put, we will be pushed out—ejected, one might say—by this article of the Lisbon treaty. We are still faced with the same problems.

As matters stand, there seems to be no majority in the other place for the agreement on the table. Personally, I regret that, because of the uncertainty that this situation gives rise to. As I said last time, I sympathise with those members of the public, many in the business community, who are fed up with the process and want to move on and have certainty. It is not just the business community. Many other people, up and down the country, have, quite frankly, given up on all the detail. Some just want a deal to happen so we can move on. They recognise that there may be a price to be paid because the deal has not a few things wrong with it, but they are willing to pay that price and to move on. There are others who wish that the whole issue would go away and who would like to have another vote on it.

Like last time, I am left with three possible ways out of the maze, other than accepting the deal that is now on the table. The first is no deal. I still think that, if leaving the EU with this deal will make us all somewhat poorer, to leave with no deal at all would be far worse. I agree with the noble Baroness, Lady Smith of Basildon, that this is simply not an option. Business leaders and the Governor of the Bank of England tell us that it is the worst of all worlds. Furthermore, leaving on WTO terms, which this seems to amount to, would leave so much in this agreement unresolved. To take just one example, the consequences for our security and for judicial co-operation in criminal and family law matters

[LORD HOPE OF CRAIGHEAD]
would be very serious. No solution for this problem has yet been devised that can be relied upon, after many months of trying and calling for it in this House and other places. The time to do anything about it is fast running out. For me, this is simply not an option.

One other point we should recognise is that the European Union (Withdrawal) Act, the legislation we are currently seeking to implement in various ways through SIs and so on, was drafted on the assumption that there would be an agreement. It does not begin to address the situation that would arise if there is no deal. Is it conceivable that we could have legislation that does that in place, in time, for all that would have to be done before 29 March? I very much doubt it.

Should we ask the Prime Minister to go back and renegotiate, in the expectation that some significant changes can be achieved? Again, it seems to me to be too much. It would prolong uncertainty with little prospect of success, and it is far from clear how much can be done about the wording of the political declaration at this stage. Article 50 contemplates agreement on what it describes as a framework for our future relationship. The political declaration is far short of what can be described as such, but it is something that looks to the future, and it may well be the best we can get for now. Whatever we do, and whatever may be got out of further discussions with the EU negotiators, is for the future.

Back to the people? Of course, if a second referendum were to reverse the vote, it would open the door to a decision by Parliament not to leave after all—to no Brexit. But we would be deluding ourselves if we thought that this would settle the matter for ever. The last campaign was unpleasant enough. “Project Fear” and all the other slogans would raise their ugly heads again. So would those who are likely to promote trouble so as to get their own way, from whichever side. If the result were to be to remain, there would be much resentment among people who voted the other way. They would feel that they had been cheated. They would not remain silent—and who can blame them? It seems to me that there are real dangers here, however attractive this solution might seem.

It seems to me, after all, that the best way out of the maze, defective though it may be, is to accept the agreement and the political declaration for what they are. Part of me regrets that, because there are aspects of it which I do not like. Let us have a sense of perspective, however. We must be careful not to confuse the shortcomings of those documents with the inevitable consequences of no longer being a member state of the EU, about which we can do nothing. Furthermore, the agreement that we are being asked to look at is a deal about the withdrawal and the implementation period only. There is much more work to be done. We should look to the future and move on to the next stage. We should concentrate our efforts now on establishing a sound basis for our future relationship with the EU through that negotiation process which lies ahead, so that we can create what can truly be described as a framework for our future relationship with the EU. That is what really matters in the long run.

The decision to leave was always going to leave us with less than we wanted. We were always going to have to compromise. What is before us is an imperfect deal, for all the reasons the noble Baroness, Lady Smith of Basildon, explained to us. But that is all we have. So I am where I was in December. I am prepared to swallow all my misgivings, and to accept the agreement and the political declaration as the best answer to the calamity of no deal.

4.37 pm

The Archbishop of Canterbury: My Lords, one of the aspects of being a Bishop in your Lordships’ House is the inherent link to local communities through our dioceses. My own diocese being Canterbury, which covers the eastern end of Kent, I shall start by speaking for a moment about the small picture, about local issues in Kent, as an example that applies in many other places, that would be exacerbated and strained by the impact of a no-deal Brexit which serve as a reminder to us all of the seriousness of the challenges we face should we, perhaps by default rather than design, leave the EU without an agreement.

We have all seen in the media—it has been referred to by the noble Baroness, Lady Smith, and the noble Lord, Lord Newby—the artificially created traffic blip, rather than traffic jam, which was staged on Monday albeit with only 89 vehicles. In the case of this experiment, the reality we face is much worse. The channel ports handle over 10,000 lorries a day, so that 89 represented less than 1% of the flow.

Aside from delivery issues, if there are border delays as a result of no deal, which will of course impact on the rest of the country, in practical terms these lorries will take up an enormous amount of space. Anecdotally, one day’s lorry supply would stretch from Dover to Leicester. Furthermore, if 10,000 lorries are stuck in east Kent daily, 10,000 drivers will need to use the local facilities to eat, drink and go to the bathroom. That will have a major impact on local towns and villages, as was seen during Operation Stack three or four years ago.

Support services will be physically unable to access those in need. That was also our recent experience. If roads are logjammed people will be unable to get to work, small businesses, tourist sites and haulage companies will suffer very severely and go out of business, with an increase in unemployment. The burden on local communities and their infrastructure—

Lord Forsyth of Drumlean: Did the most reverend Primate by chance hear the chief executive of Calais ports on the radio this morning? He said that there was no question of there being any delays at Calais because preparations had been made. Therefore, is it responsible to continue to spread these scare stories?

The Archbishop of Canterbury: My Lords, I did not have the privilege of hearing the chief executive of Calais, but I did have the privilege of talking to the chief executive of Kent County Council, of Canterbury City Council and others involved in small businesses in Kent over the past week—and very significant numbers of them. I take my evidence from our own people in this country and it is evidence.

Noble Lords might remember the effects of Operation Stack in 2015 after strikes in Calais disrupted thousands of lorries bound for cross-channel ferries. It cost the local economy £1.5 million a day. It cost the country £250 million a day. Operation Brock, which will supersede Operation Stack, can only cost more. Back in 2015, arterial roads were blocked which had a significant impact on local communities.

“No man is an island”,

as John Donne tells us, and significant disruption in one industry will invariably have a knock-on effect across the community and eventually across the country. This is not Project Fear or projected fear. It is an account of what happened in 2015.

Having spoken to local officials, I have heard time and again that Kent does not currently have the structural capacity to cope with a no-deal Brexit or time to prepare. The last time that customs checks were made for UK/EU trade, in 1993, before the EU single market, there were between 2 million and 2.5 million customs clearance documentation entries. Since 1993, Dover has seen significant increases in freight, and Eurotunnel is also now in operation. Consequently, post Brexit, there could be an estimated 25 million customs clearance documentation entries. Before 1993, 300 customs officers were located in Kent, 125 at Dover. There are now only 24 in east Kent, covering both the port of Dover and Eurotunnel. In 1993, there were 185 customs clearance agents to do the paperwork. Today, there are only 17 and only five of them operate a 24-hours-a-day service.

The transition in the event of no deal may possibly be without difficulty. We are assured by those who support it that it will be, and many of the projections of two years ago have not come to pass. But experience in 2016 and 2015 indicate a very material risk. To take that risk without assured and adequate mitigation is not a moral decision.

That brings me to my second point about moral responsibility. The decision is rightly with Parliament and specifically with the other place, but with parliamentary sovereignty comes responsibility for the welfare of those represented and legislated for. We face not just practical choices but moral decisions alongside our highest responsibility to protect our poorest and most vulnerable. The burden, therefore, must be on those who believe that no deal is a reasonable option to prove that it would not have a significant negative impact on people such as those in the diocese that I serve who already face hardship.

My third point is on the adversarial nature of the process. I spoke a little about this in December with regard to reconciliation. The most serious and visible aspect is the personalised nature of the threats outside the House against Members of the other place especially, whether personally, online or by other means. These threats have rightly united all sides in stating that this is an attack on democracy itself. Our Christian heritage and the heritage of other faiths and non-faith traditions call for us to treat others as we would wish to be treated—the golden rule. Christ himself went on to call for love for enemies. That does not mean the absence of passionate difference but calls for respect for human dignity. That requires active leadership—

politically and in security against such threats—and it must require now, not after 29 March, examples of reconciliation by public figures who have differed most profoundly during this painful process over the past two or three years. That is leadership.

My final point is on the nature of the decision now. It may not feel like it and we may not wish it but we are still near the beginning of the Brexit journey, not at the end of the process. The decisions made over the next week will not be finalised for all eternity but are a foundation for further discussion and negotiation down the line. There has to be an agreement in which all accept the need to deliver the “will of the people” that was expressed in the referendum, while also recognising that when it was expressed in such a close result, there is a duty to build in compromise—an inevitability, albeit unwelcome to some. If not, there will be by default a no-deal Brexit. That outcome would be not only a political and practical failure but a moral one equally as serious as ignoring the result of the referendum entirely.

A second referendum is not my preference but if Parliament fails in the task entrusted to it, then regrettably it may be required. This is about more than Brexit, and Parliament must not show itself unfit for the job. Parliamentarians must be able to look back at this time and say honestly to the people of this country that we put them, their choices, their welfare and their communities above the politics and ideology that can seem so all-consuming here in Westminster. As we embrace the challenge, which is hope-filled and exciting, of reimagining our country and its structures over the next few years and months, I hope politicians will take it upon themselves to make these crucial decisions, not only with the grand vision but with the small picture—the effect on local people, communities and businesses—in mind.

4.48 pm

Lord Howell of Guildford (Con): My Lords, I am honoured to speak after the most reverend Primate, whose voice is much valued in the land in these troubled times. I am also grateful to the Whips for reinstating me in this debate after some of us were cut off a bit abruptly before Christmas. I assure your Lordships that I shall not repeat what I would have said then and that I have something a little new to say. It is always prudent to show gratitude to the Whips, especially when I am going to say some things that will not, I fear, be popular with them or my party.

To continue reviewing our current situation in partisan terms is completely useless. Everyone knows that my party, the Conservatives, are badly split, not down the middle but with a significant and entrenched dissenting minority. Everyone knows that the Labour Party is also badly split, although this is much easier to cover up in opposition. They do it rather well, if I may say so. But we all know, and endless polls confirm, that at least a third of the Labour Party in the other place do not much like Mr Corbyn's policies, while the excellent Opposition Front Bench here in this House is clearly cool towards him and leading figures such as the noble Lord, Lord Mandelson, have vowed to work to undermine him every day of their lives. Even our own Lib Dems,

[LORD HOWELL OF GUILDFORD]

so strongly and assiduously represented here in their massive ranks, have another referendum as their official line, but they know, or at least the wiser ones must know, that a plebiscite is a dangerous and divisive instrument and is not true democracy, which always has to be filtered and mediated. Mass opinion is not only a mosaic of differing views but changes from week to week. The only solid, civilised and true democracy is the parliamentary sort that we are trying to operate here at Westminster. We all know that in our heart of hearts.

The incontrovertible reality now, which is as plain as a pikestaff, is that the Parliament we have, as presently constituted—that is, the House of Commons—cannot agree on anything positive. It can unite against no deal—we are all for that—but without an agreed alternative it will happen anyway, however much it is voted against and however many people are whipped through the Lobbies. Everyone keeps asserting their own position and none will prevail. There is talk of Parliament taking control, but Parliament is not a Government, and if the present House of Commons cannot decide on or support any way forward, it must be replaced by one that can.

How could that be done? My advice to the Prime Minister, which I am sure she will not take, would be to make the upcoming vote on the withdrawal agreement, or perhaps the next one if the first is lost, not only a three-line Whip but a vote of confidence in the Government. Of course, the best thing would be for her to win or to narrow greatly the majority against her—that I continue to hope for—but if she still loses on a clear confidence issue, as seems highly likely, she should immediately call a general election, as the five-year rule would fully permit her to do. It is true that she has undertaken not to lead the Conservative Party into the next election in 2022, but for a 2019 election she would still have to be in place. Based on Lords Library figures, under the 2011 Act, the timing from a no-confidence defeat to the polling day requires about seven weeks, giving us a new Parliament well before Article 50 day, March 29, and we can probably get a short technical extension to that anyway. Of course it would be a gamble, and it may be a gamble very few want, but it would also have the smack of firm national leadership.

The consensus of commentators and so-called polling experts and, I suspect, of many noble Lords, is that this just hands victory to the Corbyn cabal and destroys the one available deal and agreement that is on the table, but I wonder. The proclaimed consensus of opinion is often spectacularly wrong, and I hear experienced Labour voices warn that that could certainly be so. Why should yet another divided party, led by someone with policies most Labour supporters regard with dismay and no credible alternative Brexit path—because none exists—win the nation's trust? The European Union has made crystal clear that the deal agreed is locked and final. It may be that it can be tweaked here and there, on duration, legality and so on, but the promise that there is a deal around the corner, based on Labour's so-called six tests, that is much better than the one agreed is pure fantasy and delusion or worse.

My guess is that in a new Parliament the PM's losses on the rebel Brexiteer front would be small and outweighed by support elsewhere for her deal. The nation wants an orderly Brexit deal and does not want deadlock. That is the real consensus and the mood of the nation, which must somehow be fed back into a Parliament that reflects it. Far from an indecisive and paralysed outcome, an election could provide a new Parliament with a firm majority for the deal now on the table. New cross-party alliances could form—in fact they are already developing, as we can read. We would at last begin to emerge from the labyrinth which has no other exits, except a no-deal disaster, although plenty of wrangling and negotiation, which some people have called a Europe of constant bargaining, lies ahead.

I believe there is an overwhelming national view to be harvested in support of the PM's transition plan and gradual further disentanglement from the old, outdated EU model. I repeat that we are and must remain a parliamentary democracy, otherwise we are nothing. The answer is, and must be found, in our ancient Parliament elected by the people. That is where we should keep it, whatever the cost. That is where the nation is entitled to look for it, if not in this present stalemated and deadlocked Parliament, then in a new one.

4.54 pm

Lord Hain (Lab): My Lords, what a fascinating speech to follow.

Speaking in support of my noble friend's Motion, I refer to the paper by the European Research Group and Global Britain, entitled *Fact—NOT Friction*, which insists that all the warnings about a no-deal Brexit are mere myths. It claims that the European Union has promised us tariff-free trade, so we can have our cake and eat it, citing in support the President of the European Council, Donald Tusk. Although he did in indeed propose, on 7 March 2018, that the parties should,

“aim for a trade agreement covering all sectors and with zero tariffs on goods”,

any reading of his speech shows that that was a clear reference to the long-term aspiration of a UK-EU free trading agreement under WTO rules, which will, of course, take years to negotiate. It would follow a deal taking effect after March 29, not no deal. Tusk also made clear that such an agreement,

“will not make trade between the UK and the EU frictionless or smoother. It will make it more complicated and costly than today, for all of us. This is the essence of Brexit”.

Whatever the fantasies of the ERG-type Brexiteers, therefore, once we leave the EU without a deal, WTO non-discrimination rules mean that the EU will be obliged to treat the UK as it treats other non-EU WTO members—not, as has been implied, like the remaining 27 EU countries—unless and until a free trade agreement is in place.

As a European Union member, the UK gains from around 70 additional free trade agreements with non-EU countries such as Japan and Canada which, in a no-deal Brexit, would also be lost. The Department for International Trade has made no real progress in

persuading each of these countries to agree a rollover of the UK's current deals as part of the EU. To encourage potential foreign inward investment, a prior UK-EU agreement will need to be in place, so that third countries will know what, if any, EU market access they can achieve from the UK as a platform into the European Union. The Comprehensive Economic and Trade Agreement between the EU and Canada, despite being the European Union's deepest free trade agreement yet, covering most goods, has little to offer on services, which make up 80% of the UK economy and 45% of our exports. This agreement took over seven years to negotiate and is still not fully in force.

The EU, with which we have a trade surplus in services, would have no obvious incentive to grant significant openings on services to the UK in a free trade agreement, not least because, under WTO rules, the EU would then be obliged to make similar offers to other countries with which it already has bilateral free trade agreements. For example, CETA explicitly states that Canada will benefit from any new services concessions by the EU to other third countries. This is therefore a major disincentive for the EU to make such deals. Even under a deal along the lines of CETA, to minimise the friction of trading with the EU single market, the UK would need to maintain European regulations in all the relevant sectors, as, for example, do EEA members Norway and Iceland. We would need to replace over 30 EU regulatory bodies and arrange legally workable memorandums of understanding between them and their EU counterparts. This is a process which, again, would take years and be very expensive.

In the event of no deal, the European Commission's own package of 14 contingency measures, which are allowed by the WTO, specifically warns of delays to the transport of goods—hence the most reverend Primate the Archbishop of Canterbury's warnings—because of the need for checks on all UK livestock exports and the application of customs duties and taxes on goods moving between the UK and EU.

These minimalist EU measures were taken, as the Commission explained, to maintain the integrity of the single market and customs union—relating to, for example, financial services, aviation and haulage. These and other sectors such as pharmaceuticals, food and drink, data flows and the car industry, to name but a few, would still face significant disruption and legal uncertainty. All this would have severe implications for competitiveness, for our GDP, and for trade and foreign investment in the UK, especially for advanced manufacturing operating just-in-time systems.

These Brexiteers claim that the UK already trades with non-EU members on WTO terms alone. On the contrary, because of its membership of the EU, the United Kingdom benefits from numerous side agreements with countries such as the US and China that go well beyond WTO provisions. In fact, no EU member trades on WTO terms only; all have at least one bilateral or regional trade agreement with other countries, especially their nearest neighbours.

If we leave the EU with no deal on 29 March, therefore, only WTO terms will apply, including a hard Irish border with its political danger and economic

damage. The UK will also lose the leverage of the EU bloc—the richest and biggest in the world—and will be weaker, not stronger, in future trade negotiations. A diminished UK will face the unenviable choice of Donald Trump's "America First" United States or the repressive and expansionist dictatorship of China.

The consequences for citizens, consumers and businesses will be nothing short of catastrophic. In some leave-voting areas, lives will be blighted for generations. The no-deal Brexiteers should come clean and stop peddling myths that all will be fine. It will not. As the noble Lord, Lord Patten of Barnes, told the BBC on Monday, their agenda is "snake oil". No deal must be blocked at all costs and I believe that a people's vote should be supported to save the country from the ERG-aligned Brexiteers, who have no viable plan of their own, yet still insist on charging on recklessly.

5.01 pm

Lord Fox (LD): My Lords, it is a great pleasure to follow the noble Lord, Lord Hain, and I look forward to working with him when we move into Committee on the Trade Bill.

When the Minister was looking in our direction, he spoke about the need for clarity. I understand that his right honourable friend the Secretary of State for Defra is organising a new unit in his department with the express remit of "seeing through the fog" of Brexit. I also understand that the department is finding difficulty in recruiting people to take on this task. Meanwhile, the Government are stress-testing their own ability to create fog. We have already heard the lighter side of Project Grayling today but actually it is not funny; it is quite sad and rather pathetic that a government department led by a Minister is going out and trying to prove how serious the Government are about a no-deal exit, and doing it completely incompetently. I do not know who does due diligence in the Department for Transport but the big question is: who did due diligence on Chris Grayling?

Elsewhere, Iain Duncan Smith has been vocal about the benefits of a no-deal exit. He does not, "believe that a single job will be lost",

in a hard Brexit. It is not for me to challenge his belief system—I will leave that to the Lords spiritual—but I am able to refute what is clearly a false claim. Take, for example, a small engineering firm on an industrial estate just outside Hereford employing 30 people. It is very successful. Unlike some firms, the owner has looked long and hard at his situation and has talked in detail with his largely continental European customer base. He has prepared for no deal and the imposition of borders, tariffs and non-tariff barriers. In that situation, his plan is clear: he will make 10 of his staff redundant.

That is one business on one trading estate, the like of which surround almost every town and city in the UK. They will not all have to do this, but a significant proportion are thinking about making those decisions. Put them together and the toll on jobs is significant. Across the country, high-quality local jobs will vanish. Many of them are craft jobs in SMEs, which are

[LORD FOX]
highly valued. They will disappear. That is not a belief; it is what I have been told by the people who run those companies.

At the other end of the scale—the big scale—are the tier 1 manufacturers. We have heard what they say: a no-deal exit would be “catastrophic” to their just-in-time supply chains; that is their word, not mine. But of course, it is not just manufacturing: the 80% of our economy that is services-based will also be put at risk and here the numbers are huge. For example, the Bank of England estimates that there are some £69 trillion-worth of cleared derivatives which should not be disrupted. In this case, the EU Commission has put in place a temporary fix but the long-term implications of what needs to be done have to be considered, and that is just one financial instrument.

To be clear, any customs process, any imposed regulations and any non-tariff barriers will seriously hamper both our manufacturing and our service industries: the whole economy. That is why those of us sitting on the Liberal Democrat Benches need no encouragement in our analysis that leaving the EU, either with no deal or with the deal on the table, will damage the United Kingdom.

Turning to Mrs May’s deal, there is no doubt in our minds that this will leave us poorer than remaining in the European Union. Despite what the Minister says, nothing has changed since before Christmas. There cannot be frictionless trade if we are not part of the European Union and that creates a land border in Ireland. The backstop, conflated with the Irish border paradox, will permanently tether the United Kingdom into what I have called an economic terrarium: it will be an economic microclimate where the EU 27 permanently make the weather on our behalf. We will not have a say on what happens regarding the rules and regulations if we are bound by the backstop. For these reasons, I will support the Motion tabled by the noble Baroness, Lady Smith. We all recognise the limited role of this House, but to support the Smith Motion is to tell the other place and the world at large that we have very serious concerns about this deal and the prospects of no deal.

When proposing the backstop, the Attorney-General described it as a “calculated risk”. We saw later that his calculation was either flawed or a rhetorical trick but the whole prospect of leaving the EU is a risk, a huge risk. I have heard the process described as “self-harm”, yet who will really be harmed by the decisions made in this building? As the most reverend Primate said just now, it is a moral issue. In the main, we are not the ones whose futures are at risk; the vulnerable and least well off are those most at risk. To put that in detail, the British Retail Consortium has just published figures that show, in each constituency, the effect on the shopping basket. It is clear that the poorest people will have their bills and pay packets per week affected the most: food will go up by 5% or even more, according to the BRC. A deal, including the deal on the table, would also add to their shopping basket; already poor people will be made poorer by the actions of politicians in this place and the other place.

We need to take this very seriously. That is why it is perfectly consistent to say to the people of the UK, “You voted to leave the EU. The detailed work now indicates these risks to you and your family. Before we take the final, irrevocable step, we ask you to confirm whether you want to take and participate in those risks”. Quite simply, now that the risks are out in the open, the British public should have the final say on whether they want this deal or to stay in the European Union.

5.09 pm

Lord Kerr of Kinlochard (CB): My Lords, following the noble Lord, Lord Fox, I too have decided I will not repeat what I said five weeks ago. I learned from the noble Lord, Lord Newby, and the most reverend Primate. Speaking then about the deal on offer, I said how shocked I was by the humiliating nature of the treaty, and by how vacuous the declaration was and how toxic the combination was, in particular since, to me, it in no way predetermines or indicates what the nature of the future relationship will be. It seems the only certainty it guarantees is that there will be continuing uncertainty and rancour for a very considerable period, once we are trapped in the backstop.

What I said produced some unusual support; this was unaccustomed support for me from the Robespierres of the government Back Benches—the rebellious revolutionaries. I fear I must disappoint them today, because I want instead to talk about two things which have happened since our debate started. In particular, I want to draw the House’s attention to the Commission’s announcement on 19 December about what happens if the British crash out on 29 March. The Commission has told the member states that if the treaty is not approved and ratified by the United Kingdom, it must apply the Union customs code in full to all goods coming from the United Kingdom from 30 March. It did so in spite of the suggestion made from the government Benches by a former leader of the governing party—a very distinguished noble Lord—that the answer to the problem of disruption was a 12-month moratorium, during which we would,

“not place any tariffs, tariff barriers or obstacles against the importation of goods and services into the United Kingdom from the European Union”,—[*Official Report*, 5/12/18; col. 1034.] in the hope that the EU would reciprocate. He emphasised that we should do it anyway, even if it did not reciprocate.

Why has the EU not responded to this extremely kind and generous proposal? Because the EU is a member of the World Trade Organization and is legally obliged to play by WTO rules, including the fundamental rule known as “most-favoured-nation”. If the EU allowed tariff-free access for our goods when we are a third country, as we will be from 30 March if the Government get their way, it would have to do the same for similar goods from any other third country. That is what WTO rules mean. If we were to do as the noble Lord suggested, we would either have to abolish all our import tariffs and quotas for any category of goods which we also import from the EU—a step which would hardly thrill British industry or agriculture—or, from the start, we would be in breach of the very WTO rules which the Robespierres tell us would suit us so well. I give way to the noble Lord.

Lord Lamont of Lerwick (Con): Would the noble Lord comment on Article 24 of the GATT agreement?

Lord Kerr of Kinlochard: Indeed, if there was a free-trade arrangement, then of course none of what I have said applies. However, I thought the essence of “no deal” was that there would be no deal. Those who advocate no deal and living by WTO rules should be honest about what these rules mean. The noble Lord, Lord Hain, was absolutely right in his description: no deal would be a disaster, and a managed no deal is a mirage.

The second development I want to mention is the Court of Justice’s finding on 10 December, which confirmed that we have an absolute right unilaterally to take back Mrs May’s letter and that this would bring the withdrawal process to an immediate end. The only stipulations are that the two-year period, or any extension of it, must not have expired; that our decision must involve a democratic process, not just an executive act—in other words, Parliament must have voted for revocation; and that the decision must be unequivocal and unconditional, which I assume means we could not withdraw the letter and resubmit it the following day. We could not just do so as a stratagem to reset the clock, undercutting both the two-year limit and the specific provision in Article 50 for securing extensions.

I was not surprised by the court’s ruling, although I admit that I was a little relieved. Had the court reached a different view my credibility might have dropped a little bit, since I have spoken on the subject once or twice before. But my relief must have been trivial compared with that of the Dantons and Marats of the Government Back Bench, who have argued regularly in the House—and a couple of them in the columns of the *London Times*—that revocation would entail a negotiation. They have warned us down the years that we would lose the Thatcher rebate, or be forced into Schengen or the euro. They must have been hugely reassured that the court confirmed that there would be no negotiation. The terms of our membership would not change and could not be changed to our disadvantage.

This establishes that the country has a third option. We do not have to settle for the Hobson’s choice of the May deal or no deal. There is the option of keeping the deal that we have, secured and improved by successive Governments. Public opinion polls, as the noble Lord, Lord Newby, said, consistently show that that is the will of the people. The margin for months has been 8%. Interestingly, it rises to 16% if you ask people to compare the May deal and staying in, and to 26% if you ask people to compare no deal and staying in. Now that people have the facts and know that we cannot have our cake and eat it—that unicorns do not exist—they can make an informed choice. It is pretty clear what that is.

Of course, putting the question to the country would require an extension of the Article 50 period, but I have yet to meet anyone in Brussels who thinks that an extension for that purpose would be refused. Brexit, though worst for us, is bad for everybody. I would expect objections if we were seeking an extension purely to permit further posturing and prevarication, or further efforts to get the 27 to agree a legally binding

text contradicting the legally binding treaty. But an extension to permit consulting the country would be easily obtained. Though, like the noble and learned Lord, Lord Hope, I do not relish the prospect of a second referendum, it seems it is now clearly the least worst option on the table.

I support the Motion in the name of the noble Baroness the Leader of the Opposition. I hope that the Opposition will soon be able to return the favour and support a people’s vote as a responsible way to resolve the deadlock in the other place.

5.17 pm

Lord Cormack (Con): My Lords, I regret that I cannot agree with the concluding words of the noble Lord, Lord Kerr of Kinlochard, for whom I have, as we all have, great respect and to whom we should always listen with great respect. This has been a remarkable debate so far. There has been one extraordinary suggestion made by my noble friend Lord Howell. I am afraid that my reaction is similar to that of Brenda from Bristol: “Not another one”.

The most important single point that has been made was in the very notable speech of the most reverend Primate, when he reminded us that we are not at the end of the Brexit process. We are not even at the beginning of the end of it; we are at the beginning of the beginning. We have to get on with it. I speak as one who was deeply distressed by the result of the referendum, who believes we are giving up far more than we will be able to retain but who has to acknowledge that a referendum—I do not like referendums—has produced a narrow but decisive result. We have to work on that basis.

I could not take part in the debate in December. I was in hospital, but I was able to follow it at a distance. I talked to doctors and nurses who came to see me fairly regularly, all of whom were extremely exercised by this issue. Those nurses came from Italy, Portugal and Latvia, as well as from the United Kingdom, but they were all united in one thing—they were very concerned about what was going to happen. When you are away from a place, as I was—it was deeply frustrating to be away from your Lordships’ House—you tend to see things from a different perspective: in the words of the great Scottish poet, as others see them.

One thing that perplexed people was all this emphasis on Northern Ireland. I have a great love of Northern Ireland. I had the honour to chair the Select Committee on Northern Ireland Affairs in the other place for the whole of my last Parliament. But we have to remember that in Northern Ireland a significant majority of people voted to remain. Our colleagues from the Democratic Unionist Party should remember that, and take note of what people in Northern Ireland have been saying about the agreement that has been negotiated. Many of them, as we have seen on the television and heard on the radio, say that—as I would say—this is certainly not a perfect deal, but they would much rather end uncertainty and agree it, than do what the DUP want to do. A degree of humility on the part of the DUP would be no bad idea. We all have to recognise that compromise is essential. To those of my noble friends in this House and honourable friends

[LORD CORMACK]

in another who are Brexiteers: it was a narrow victory—a victory certainly, but one that means those who won should look very carefully at the fears and misgivings of those who lost.

The noble and learned Lord, Lord Hope of Craighead, said in his excellent speech that he felt trapped. I know the feeling—it is rather how I feel. I have come to similar conclusions as the noble and learned Lord, Lord Hope. I recognise that leavers cannot dictate terms from the club or institution that they are leaving. But I also recognise that it is completely morally wrong—the most reverend Primate touched on this—to take risks for other people. Take risks for yourself, but not for others. One of the most interesting speeches during the recent Christmas Recess was made last week at the Oxford Farming Conference by the Secretary of State, Michael Gove. He said that no deal would mean great uncertainty, and he even used the word “chaos”, for farmers. I wish he had thought of that two or three years ago. Nevertheless, far better a sinner who repenteth. If he can say that, we have great knowledge that that would be the worst of all outcomes.

We then come to the second referendum. The noble Lord, Lord Kerr, spoke in favour of it, and the most reverend Primate did not totally dismiss it. But just look across the road from your Lordships’ House. See the passions that have been aroused over the last two years, and particularly in recent months. See what would happen with another divisive referendum. Reflect on the tactics displayed in that brilliant Channel 4 film on Monday night. If you do all those things and think you are confident that there would be a sweeping victory for what I would consider to be the best outcome, I would say “Think again”.

We have a deal before us. It is not ideal, but much can be developed from it. The noble and learned Lord, Lord Hope, referred to that. I plead with my honourable friends in another place particularly: let us take what we have and build upon it, and not prolong the chaos and division that have done so much to disfigure our country since 23 June 2016.

5.25 pm

Lord Grocott (Lab): My Lords, at the heart of our negotiations with the European Union about Brexit has been a fundamental difficulty which, uncomfortable though it is, it is important to recognise. It is that the people voted in the referendum to leave but that we have in both Houses of Parliament, the institutions central to the process of leaving, a majority who want to remain—a considerable majority in the Commons and a very large majority in this House. This conflict has meant that, while this House quite rightly voted without dissent to hold a referendum and to invoke Article 50, which was universally understood to make inevitable the UK’s departure from the EU in March this year, there remain many Members who want to thwart or block that process.

First—it is a long time ago now—we were told that the referendum was purely advisory: that neither Parliament nor government was obliged to observe it. I cannot help noticing that those remainers who today want a second referendum make no mention of that

one being purely advisory. Then we were told that the real choice was not between remaining and leaving but between a hard Brexit and a soft Brexit. That was clearly a false proposition, because we now have before us the Government’s proposed agreement, which is not just a soft Brexit but the softest of soft Brexits, yet still some remainers will be voting against it. They will say that the terms are not right. I think that the truth, which no one can deny, is that for many of them no terms will ever be right.

During the referendum campaign, I spoke to lots of people who were planning to vote leave. I can report to the House that not a single one said that they were minded to vote leave but only if we got an acceptable withdrawal agreement. Outside the Westminster bubble, there is no ambiguity whatever about the word “leave”. To coin a phrase, leave means leave. If you leave any organisation, whether it is the EU, a trade union, a political party or the darts club, you no longer have to abide by the rules and pay the subscription, and you most certainly do not need a withdrawal agreement.

Unbelievably, as we saw yesterday, some MPs are now saying, “Let’s postpone or even cancel the date of our departure”. We live in a time when public mistrust of politicians is at a level that few of us can remember. A majority voted in good faith to leave the European Union. We are now in the third year since that decision was made. Are we really saying to people that three years is not long enough and that, when they voted in June 2016, it meant that, yes, we would leave the European Union at some time but possibly not in their lifetimes?

The case against Brexit has been argued in this House ad nauseam. Although it gives me no pleasure to do so, I should add that the mere mention in our unelected Chamber these days of the 17.4 million of our fellow citizens who voted for it is often greeted with an audible groan. We have heard every possible doomsday scenario. We have been told that we will have to stockpile food, our doctors’ surgeries and hospitals will run out of medicines, and there will be great problems about taking holidays in France, Spain or Italy. We have even been told that planes taking off from airports in Britain may not be able to land in mainland Europe. It is only a matter of time before we hear about an impending swarm of locusts.

Unbelievably to me, I even heard of one remainer in this House, whom I will not embarrass by naming, comparing the situation that we are facing today with that faced by Britain in 1940. I am very wary indeed of wartime comparisons, but I will say this: if some of the people peddling these frightening scenarios had been in charge of the Normandy landings, the ships would never have left the south coast.

Now we are being told that we need to delay our departure date from the EU to have a second referendum. All I can say is that the mere fact that people are asking for a second referendum three years after the first reveals the fundamental absurdity of that proposal. If you think a second referendum should take place, what on earth is the objection to a third referendum, then a fourth, then a fifth—maybe one every three years? Please do not say that the circumstances have changed. Circumstances are always changing, and, my

word, they most certainly changed during the 40-odd years that we were members of the European Union, an institution that, after 40 years, bore no resemblance to the institution that the public had voted for in the referendum in 1975.

The remainers, of course, claim that it is not a second referendum they are after but is a people's vote. I ask you. Rarely has any public campaigning organisation carried a banner with such a cynical Orwellian title because, of course, the so-called people's vote campaign has one simple objective: to overturn the vote of the people.

Turning, finally, to the significance of today's debate, quite rightly, the law requires this House simply to take note of the Government's negotiations. It would be absurd and indefensible if our unelected House, on an issue of this importance, could veto not just any decision by the House of Commons but also the 2016 referendum result.

Surely the responsibility of both Houses is the same. It is to implement the referendum result, in which, as I need to remind the House, the turnout was 10 % higher than in all recent general elections, and tens of thousands of people voted who had never voted before. At a time when the gap between Parliament and the people is getting wider, they showed their faith in our democracy.

It is surely our clear duty to ensure that we do not confirm the powerful feeling of so many people that politicians do not listen by further frustrating our departure from the EU. It is not an overstatement to say that the integrity of our democracy—of the implicit contract between Parliament and the people—means that we do not just say that we respect their opinion, expressed in 2016, but that we will act on it, ensuring that we leave the European Union on 29 March.

5.32 pm

Baroness Butler-Sloss (CB): My Lords, I am sad to have to disagree with the noble Lord, Lord Grocott, with whom I very often agree. I had intended not to speak, but we are now less than three months from the deadline, so I feel that I have to add something. I am so shocked and alarmed by the feeling of drift and national crisis shared by many people outside Parliament and the failure to make decisions which are more important than any made since the Second World War. I do not resile from mentioning the Second World War, despite what the noble Lord, Lord Grocott, says.

I feel like the noble and learned Lord, Lord Hope, somewhat trapped in the situation in which we are today. I am of course well aware that the decisions have to be made in the other place. There is no question of a veto, but this House has a responsibility to advise, and that is what we are doing today.

Sitting as a Cross-Bencher, I watch the toing and froing of the political parties, the major disagreements and divisions within the two major parties and the resulting acrimony. I am not the only person to watch it. Many of the public feel badly let down by the level of hostility and infighting by our elected representatives, and deserve better from Parliament.

It seems impossible to me—and, I think, to others—that, if the withdrawal agreement is voted down in the other place, we can scramble together an alternative sufficient agreement with any of the immediate consequential legislation in under the three months remaining. We should support those Members of the other place, leavers and remainers, who have—in my opinion, properly—called for the Prime Minister to rule out a no-deal exit on 29 March. This House too should do everything we can to prevent that.

To avoid this impending crisis and the sense of rising panic that preparations for no deal are engendering, the Government should either ask the EU for an extension of Article 50 for at least a year or unilaterally revoke Article 50. The European court has ruled that we can do this, as my noble friend Lord Kerr said today. These proposals might possibly need to be put to the people in another referendum. I am not particularly supportive of referenda but I cannot understand how a single referendum is a total block on any further discussion of our relationship with the European Union, or how a further referendum can possibly be seen as undemocratic. I believe it was the noble Lord, Lord Reid, who asked just before Christmas why we could not have a further referendum, when we have regular elections. The last referendum cannot be set in stone: in my view such an approach is itself undemocratic. If the people vote for an agreement that entails us leaving the European Union, we can reissue Article 50 and leave on those terms.

I recognise that my suggestion will provoke an outcry among the most fervent Brexiteers, but my impression is that many in the other place—and possibly a few in this House—have not yet faced reality. The problems before us have got beyond party politics. The time has now come for MPs in all parties to look across party lines and put the best interests of our country before political manoeuvres. After an extension or revocation of Article 50 a cross-party solution must be found that does not impact adversely on the poor and would meet with approval within and outside Parliament. However difficult and protracted that process might be, the British public have every right to expect Parliament in this crisis to act responsibly and guide us through the best route possible to protect our national and international interests.

5.37 pm

Lord Steel of Aikwood (LD): My Lords, exactly three weeks ago today as I was leaving the House to go home for the Christmas Recess I passed three people sleeping in our entrance to the Underground station. It was reported next day that one of these had died in the night—on our own doorstep! That typified for me the paralysis of the Government over these last two years, as they have had to concentrate on dealing with the complicated lunacy of Brexit. Homelessness, the delays in the NHS, the chaos on our railways, the shortage of teachers in our schools, even the lack of legislation to deal with drones, and so many other issues, have had to be neglected while every department of government struggles with the consequences and divisions of Brexit.

[LORD STEEL OF AIKWOOD]

In one of our debates at the end of last year, the noble and learned Lord, Lord Mackay of Clashfern, told us that it was for Parliament to assert itself and get things sorted out. It could, for example, revoke Article 50. He is of course correct, but that is one option over which the Commons should hesitate, because it would mean Parliament contradicting the referendum result. That is why, although like the late Paddy Ashdown I was initially doubtful, I have come around to the view that a people's vote is necessary to take that decision. I do not for one moment believe the scaremongers about civil unrest, provided that we hand it back to the people to decide whether, in the light of all the realities, they really wish to leave the European Union.

As my noble friend Lord Newby and the noble Lord, Lord Kerr, have pointed out, all the opinion polls suggest not only that the public want that but that they feel they were misled by the meretricious campaign in 2016. As the novelist Robert Harris rather graphically put it, we should,

“hand the screaming, defecating, vomiting baby back to its parents – the electorate”,

because a second referendum is the least bad way of clearing up the current mess.

If there is another referendum, it should be conducted properly by politicians across party on both sides as in 1975, when I was actively involved. It should be accompanied by stricter financial controls. One of the distressing features of our democracy in recent years is the extent to which it is aping America in coming under the improper influence of billionaires.

The Government should also announce the appointment of a Cabinet Minister for Europe to oversee reforms of bureaucracy and to seek more accountability. Is it not ludicrous that over the last two years we have had several Cabinet Ministers for Exiting the EU but never one for staying in and getting on with the job?

In the light of the last referendum result, the Government should also pledge themselves to remedying the real grievances in parts of the country that have felt neglected over many years. Above all we need to realise that, in a world where China, Russia and the USA are all exercising their muscles, now is not the time to be leaving an economic alliance that guarantees our future.

5.40 pm

Lord Brown of Eaton-under-Heywood (CB): My Lords, I spoke in the December debate and have no intention of wearying your Lordships by repeating what I said then. Indeed, I can only suppose that what I said then remains imprinted indelibly on your Lordships' recollection. The reason I am speaking again is the vital change in the terms of the opposition Motion put down in the name of the noble Baroness, Lady Smith of Basildon. In the earlier debate, I strongly supported an amendment put down by my noble friend Lord Butler to the then Motion from the noble Baroness. The noble Lord, Lord Butler, made plain that, like a good many of us, he supports the Prime Minister's deal as the best, or least bad, option or

outcome now available, its deficiencies being necessarily implicit in the result of the 2016 referendum—a result which many of us regretted, continue to regret and have long recognised could have no happy ending.

Those of us supporting the deal agreed entirely with the first two limbs of the original Motion from the noble Baroness, Lady Smith: that it is for the House of Commons rather than this House eventually to decide this matter, and that a no-deal outcome—to call it a “managed no deal” is really nothing short of oxymoronic—would be bad news and must be rejected. The problem was that the last limb, the regret part of the Motion, was in such extreme terms and so fiercely condemnatory of the deal now on offer that we could not have voted for that Motion consistently with our wish to encourage the House of Commons to accept the deal on offer. Although her Motion still regrets the damage that Brexit under the proposed terms will cause, it now does so in far from the same extreme terms, and I have concluded—as I understand it, this is exactly what my noble friend Lord Butler has likewise concluded—that we can in good conscience sign up to it consistently with our support for the deal.

The simple fact is that I continue to regret the decision to leave and continue to believe that it will damage us as a nation, but I nevertheless strongly believe that this deal is now the best available outcome and that the various suggested alternatives are worse and put too much at risk. For anyone interested in why I think that and why I have moved away from the earlier support I gave to the proposal for a second referendum, I refer to my speech on 6 December—or, better still, to the speeches by the noble Lord, Lord Tugendhat, and my noble friend Lord Butler on 5 December, reported in *Hansard* at cols. 999 and 1085 respectively.

I shall now vote for the Motion in the name of the noble Baroness, Lady Smith, but on the explicit basis that I support the deal now on offer. Now is the moment for decision for your Lordships no less than for the Members of the House of Commons. It is now simply too late to try to keep other options open; too late to indulge in criticisms easily made of the Government's process of negotiations over the last couple of years—criticisms of the Government for not having got the 27 to offer us a better deal. This deal, I respectfully suggest to your Lordships, should, however reluctantly, be accepted and the Commons urged to accept it too.

5.45 pm

Lord Dobbs (Con): My Lords, I was hugely disappointed when we aborted this debate a month ago to allow time for clarification, and I am relieved that things are now so much clearer.

There is still a fundamental problem with the withdrawal agreement—it is not really an agreement at all. It is a laundry list, work in progress, things to be discussed. Of course, we are told that it will be sorted over the next couple of years through “best endeavours” with the other side. But it is worth asking: “Who will the other side be?” We concentrate on ourselves; it is necessary to look across the channel.

In May, there will be EU elections, when a significant number of the current fleet will disappear beneath the waves. There will be no President Juncker. My heart breaks, but he will be gone in a few months, and his Commission with him. It is enough to bring a tear to a Brexiteer's eye. So who will be left? Who will we be able to rely on for those best endeavours to bring about a deal? The fact is that we have no idea with whom we will be dealing or what we can expect. This non-agreement does not allow us to take back control. It is a leap in the dark.

The EU itself is in a dark place; it has its own distractions. Brexit is not its only challenge. There is the cruel chaos of Greece; the crisis hovering over Italy; the smoking streets of Paris; the fading of Mrs Merkel, and all the rest. It is not a happy place. It has its own mess to sort. Why should it bother with Britain? Promises about best endeavours on all sides simply are not enough.

If not this agreement, then what? As Sherlock Holmes once said, once you have eliminated the impossible, whatever remains must be the truth. What remains, dear Watson, is no deal. It is preposterous, of course—everybody says so. But so much of Project Fear is pure fantasy—scenarios which no one wants drawn in black and white. Have we forgotten how to dream in colour; how to create an understanding and a painting on many layers? No deal is made to sound like a cross between the Berlin airlift, the three-day week and a miners' strike all mashed together. I have to remind your Lordships, we survived all those. There is a lot of backbone in Britain.

I commend to your Lordships the elegant analysis just produced by my noble friend Lord Lilley. It covers the downsides and upsides of no deal. He had hoped to be here today to present his case in person, but sadly found it impossible. What makes it all the more important is that those who are still able to open their eyes should at least read it. It is detailed, authoritative and absolutely required reading.

We must, of course, be ready for no deal but personally I want a deal—not this one, but one that does not rip my country in two. The EU itself does not want a no-deal scenario, and that is an important point. I have a suspicion that the very prospect of no deal might prove the catalyst for that elusive new deal that everybody talks about. Perhaps it will be something like the Canada-plus-plus-plus deal that Mr Tusk has suggested, but it will be somewhere between what we have now and no deal.

Ah, but what about the Irish border? A couple of days ago, the Taoiseach, Leo Varadkar, said something rather interesting. He said that in the event of a no-deal Brexit, they—meaning us—would,

“still be aligned on customs and regulations. So the problem would only arise if they decided in some way to change their customs and regulations”.

And of course we would decide to do that, at some point, but it would be in consultation and not confrontation, doing our best to minimise any difficulties for our friends. I know that that means more negotiations, but this time we would be negotiating from a position of strength, not stuck in some ball-breaking backstop. No one—not the Irish, not us—is ever going to build a

hard border; it is just not going to happen. There will be no cliff edge; more a hill to climb. It is not a risk-free scenario, but surely we have not completely lost the art of stretching our imaginations along with our ambitions. What a prize it would be to be back on working terms with our friends and neighbours, having delivered on the instruction we were given by the people to take back control.

This country is engaged in an historic struggle to test the proposition that it is possible, peacefully and democratically, to withdraw from the European Union. There is no remainder solution to that challenge. If we fail, what trust remains in our political institutions could be destroyed, the weeds of extremism will flourish and the consequences for our democracy will be potentially catastrophic.

5.52 pm

Baroness Quin (Lab): My Lords, the noble Lord, Lord Dobbs, referred to Project Fear, a theme that has been repeated many times during our debates. I begin by saying that Project Fear is not limited to one side in the debate on this subject. I was due to speak in the debate on 10 December and was one of the casualties unable to do so because of the postponement of business at that time. On that very day, in an article in the *Times*, David Davis talked about us being,

“trapped indefinitely as a virtual prisoner of the EU, obeying its laws unless it gives permission for us to leave”.

He talked of the EU imposing its will on Gibraltar, imposing unrestricted immigration and having a “whip hand” in the negotiations. That seems to me very much like Project Fear. I urge people on both sides of the debate not to talk about Project Fear and not to rubbish the real concerns expressed by industry, our universities and some of our most important scientists by simply waving them away as Project Fear. That is a disservice to the voters and to democracy.

Our colleagues in the House of Commons have a difficult time ahead. Many of them are challenged by the positions taken by their party leaders and their party Whips, and, importantly, by how their constituencies voted in the referendum two years ago. How much do they simply reflect their constituents' voting patterns and how much do they try to persuade them of their own views, which may be contrary in whatever direction?

I welcome the vote that took place in the House of Commons yesterday. It is an important step in standing up against a no-deal outcome. Already, however, those MPs who had the courage to vote in the way that they did—particularly the Conservative rebels—have been pilloried in the press. One headline today claimed: “They really do want to steal your Brexit”. In fact, the vote was not against Brexit as such but against a no-deal Brexit, and that ought to be made absolutely clear. As our public representatives, Members of Parliament have the responsibility to say and do what they think is in the best interests of our country. That has to be very much in the forefront of their minds as they approach the votes in the coming days.

I hope that, in the course of those votes, our colleagues in the other place will come out very strongly against no deal. I also hope that they might be willing to consider a delay to the exit date, given the current

[BARONESS QUIN]

chaos, which makes the imminence of 29 March very alarming indeed. As others have said, I hope they will consider asking the people to give their view on the outcome of negotiations and whether they want to accept the deal that has been put forward or would prefer to remain in the European Union. It is with a heavy heart I say that. Like many others, I do not like referendums, but I accept the logic that, if the process began with a referendum, it makes sense for it to conclude with a referendum and for people to vote on the situation they are now confronted with.

Interestingly, earlier, the Minister had a go at Nick Clegg for saying that he wanted only one referendum and did not want another one afterwards. My understanding is that John Redwood, David Davis and even Jacob Rees-Mogg have, on occasions in the past, called for two votes. They have not repeated that since the referendum result in 2016, but they are certainly on record before that date calling for two referendums.

I agree strongly with the concluding remarks of the noble and learned Baroness, Lady Butler-Sloss. It is absurd to say that democracy stopped in 2016 at the time of the referendum. Democracy does not have a best-before or use-by date; it is an ongoing process. If circumstances change and if the will of the people changes, that must be expressed, in either a general election or a referendum.

Finally, I hope very much that this House will approve the Motion tabled in the name of my noble friend Lady Smith. It would enable us as a House to express a clear view on this situation, which we are of course entitled to as the debate moves forward to the other place and to the important votes that will take place there.

5.58 pm

Lord Hennessy of Nympsfield (CB): My Lords, in a celebrated article in the *Times* to mark the unveiling of a statue of the great Benjamin Disraeli in Parliament Square on the second anniversary of his death, the leader writer penned a sentence that has resonated ever since:

“In the inarticulate mass of the British populace which they—the Conservatives—“held at arm’s length”, Disraeli, “discerned the Conservative working man as the sculptor perceives the angel imprisoned in a block of marble”.

Is that not a wonderful sentence? The angel-in-marble image flashed across my mind when, in a burst of admitted optimism, I first picked up the political declaration. Euro-documents are, of their very nature, free of the poetry of that *Times* article, let alone of Disraeli himself, and they can never be a thing of statue-like beauty and symmetry. But here in these 26 pages of aspirations just might, I thought, be found sufficient pieces of marble that we could somehow sculpt into a set of arrangements which capture the real possibility of a sustained, even dynamic, future partnership with the EU 27.

The future relationship document admits that it reflects what it calls a “high ambition” with regard to its “scope and depth”, which “might evolve over time”. Indeed, virtually all its 147 paragraphs assume a harmony

model, not just in the converting of the declaratory framework into a legally binding treaty but in a developing partnership thereafter. And “harmony” is not quite the word one associates with the often tense and never serene relationship between the UK and an integrating Europe. Nonetheless, the ambition is there in black and white, as are suggested mechanisms for both the regular review of the proposed arrangements and the seeking of new ways and additional areas in which future co-operation might take place.

Certainly there are, in my judgment, more reasons to be cheerful than I had expected in the deal Mrs May brought back from Brussels on Sunday 25 November, especially as the UK’s negotiating position was weakened from the outset by our inevitably being the mendicant at the table. Though a remainer—but not a second referendum man—I have always held the view that there is much force in the sovereignty arguments expressed by my leaver friends. And there is a very substantial pulse of returning sovereignty in that political declaration.

To my regret, the Prime Minister’s deal has been greeted by a cacophony of negatives across the parties. Mrs May has managed to unite a battalion of critics. I do not share their disdain for what she has brought home. I have no idea how the great showdown in the House of Commons will play out next week. The Rubik’s Cube of possibilities shows yet again how difficult it is to reconcile plebiscitary democracy with representative democracy, as the noble Lord, Lord Howell of Guildford, put so eloquently. The primary colours of a binary referendum do not—cannot—sit easily with the shades and subtleties of our standard model of parliamentary democracy.

Another general election would not be a satisfactory means, in my judgment, of settling the European question in its stark current form—of their very nature, general elections cannot be single-issue events.

Never before have we been faced with a contingency comparable to a hard Brexit with all the short-term dislocation that would bring, as well as GDP forgone in the medium term. For all the respect I have for my leaver friends—and I genuinely do—I cannot fathom the insouciance, verging on Pollyanna-ism, about it that some of them exhibit. In my darker moments I sometimes think it would take the four horsemen of the apocalypse to ask for landing rights at Heathrow before they showed the slightest trace of anxiety about what lies ahead. Heaven forbid that we should face such an outcome, for if it happened it would seriously damage—perhaps for a long time—our people’s faith in the ability of the state to fulfil its duty of care to those it exists to protect and serve.

Even so, if Mrs May’s proposal—or something very like it—makes its way through the House of Commons, it would take years of our diplomatic and political skills at their finest to implement it fully and satisfactorily. But it could work and in doing so draw at last the sting from the question of Britain and Europe to the surprise and relief of not just ourselves but of Europe too, as we cease to be a destabiliser nation—that is exactly what we are at the moment—and revert to being a bringer of stability and maturity to the councils of the world.

What a great prize it would be if at last we could find a settlement of the Britain in Europe question, which, in the words of the great Rita Hayworth, has bewitched, bothered and bewildered us as a country and a people for nearly 69 years since in May 1950 the French sprung the European Coal and Steel Community plan on us out of the blue.

There are multiple reasons for our being bewitched, bothered and bewildered—for this particular condition. Especially potent among them is that the European question has always touched directly upon our individual notions of patriotism. The paramount need now at this time of high national anxiety is, while respecting each other's patriotisms, to find a way through, while satisfying nobody, that somehow carries us to a workable settlement with the EU 27. In my view the Prime Minister's deal does this and I hope she wins the vote in the Commons.

What a gift it would be to our country—above all to our children and grandchildren—if we could lift the curse that has seared us for so long, freeing up everyone's minds and energies for application to the other great economic and social questions we face that are crying out for attention. What an angel in marble that would be if somehow we could fashion a viable and durable settlement out of the molten mass of uncertainty and possibility that the people we serve and the country we love are facing.

Despite many other instincts that are pushing the other way, I insist on living in hope.

6.04 pm

Lord Forsyth of Drumlean: My Lords, I have huge admiration for the noble Lord, Lord Hennessy, but I am afraid I do not agree with much that he had to say, surprisingly enough. It has been a very interesting debate, in which he talked about angels and the horsemen of the apocalypse and the most reverend Primate the Archbishop of Canterbury talked about the arrangement for lorries crossing the border from Calais, in contradiction to the man who actually runs the Port of Calais.

I want to draw your Lordships' attention to a cliff edge—not the insubstantial and imaginary creation of Project Fear, but a real one. The north face of the Eiger is a 6,000-foot sheer wall of rock and ice. In 1936, a young German, Andreas Hinterstoisser, attempted a first ascent. He was a brilliant rock climber and cleverly traversed an impossibly smooth section of ice-covered rock high up on the mountain by swinging on a rope in a pendulum motion to a lower point on the other side. Today it is known as the Hinterstoisser Traverse in his honour. Unfortunately, gravity meant that it was not possible to reverse the manoeuvre and when he and his companions were forced to retreat by a storm, they were trapped and tragically perished.

The decision by the House of Commons, by 544 votes to 53, to hold a referendum on our membership of the European Union, and the subsequent vote to trigger Article 50, by 494 votes to 122 and to set a date in law to leave on 29 March is the constitutional equivalent of the Hinterstoisser Traverse. There is no turning back without putting our democracy in serious peril, as pointed out in a brilliant speech by the noble Lord, Lord Grocott, and by my noble friend Lord Dobbs.

The Government would do well to follow the advice given by the former leader of our party, my noble friend Lord Howard of Lympne, in our debate before Christmas. He has asked me to say how much he regrets not being able to be here today. We should try to amend the deal, perhaps by accepting the offer made by Mr Barnier to have a free trade Canada-plus-style agreement and repeated on numerous occasions. While getting on with that, we need to start discussions now with the EU in parallel, to make our transition to trading on WTO terms as smooth as possible for both the EU and ourselves.

The Prime Minister's deal, I regret to say, is completely unacceptable. It is not just because of the backstop. The House of Commons has no right to surrender our right to govern ourselves. Unionist parties should never risk the integrity of the United Kingdom. Nor is it responsible, when we have so many other priorities, as the noble Lord, Lord Steel, pointed out, to borrow £39 billion to pay the EU for a political declaration that is long on aspiration, short on commitments and leaves us without a fig leaf to cover our nakedness in future negotiations which require unanimity. The international treaty we are asked to sign hands over the cash and leaves us at the mercy of every member state. It is hewn from rock, while our interests and demands are written in water.

I have longed for the day when we could be free of the job-destroying, enterprise-crushing European Union since I first attended European Council of Ministers meetings and saw how they operated. It is genuinely puzzling to me how people can believe that our future lies with this deal, which would leave us out of the EU but being run by the EU—an organisation disintegrating before our eyes. At the end of last year we saw Paris in flames at le weekend, Italy in revolt and extremists prospering throughout Europe, fanned by a political integration project which only the elite desire.

The noble Lord, Lord Newby, who is not in his place, and some other Peers in the previous debate cited the importance of our young people and their future in defence of their determination to reverse Brexit. Thank goodness our youngsters have been spared the criminal rates of youth unemployment that Spain, Greece, Italy, France and others have endured as a result of economic and monetary union. Three cheers for Gordon Brown, who resisted the CBI and the same establishment gang who are a Greek chorus for this deal—many of whom are now here in your Lordships' House—and who told us that we would lose the City to Frankfurt and face economic ruin if we did not join the euro. Think where we would be if we had taken their advice.

I say to the Liberals who plead for another referendum: what would the question be? If the choice is between the PM's deal and remaining in the EU, it is a choice between remain and remain plus emasculation. If a third option of no deal is added, it is a rigged vote. This deal is a trap that leaves us worse off than now and utterly betrays the 17.4 million people who voted for Brexit.

The noble and learned Lord, Lord Hope, told us, as many have, that we need to compromise, but compromise means settling for less than you want for something better, not something worse. The deal is like the little

[LORD FORSYTH OF DRUMLEAN]

boxes that we used to see around this place to catch the mice. They go in and cannot get out and wait patiently for someone to dispatch them. But the Prime Minister's mousetrap could run for longer than Agatha Christie's, prolonging the uncertainty that business and the public want ended.

So, as Ministers say on the "Today" programme, with differing degrees of success these days, let me be absolutely clear: I do not like this deal. It certainly is not 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. Nor 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. It is a gift to the Scottish separatists and, along with the sell-out on fishing rights, a slap in the face for the 13 Scottish Tory MPs elected to preserve our union.

The backstop is a back stab for the Democratic Unionist Party, which was assured that no unionist—indeed, no Prime Minister—could ever countenance a border in the Irish Sea. It betrays the trust of the British people, breaking the promise given by a Conservative Government—indeed, by all political parties—that they would implement whatever the people decided in the referendum. Now we have even members of the Cabinet openly campaigning against it and promoting a Norway solution, which they themselves rubbished during the referendum campaign. Their message is, "It was necessary for us to leave in order to remain".

Sir Ranulph Fiennes, in an astonishing feat and against all the odds, scaled the north face of the Eiger in 2007. He was not a trained climber, he suffers from vertigo and his left hand is missing its fingertips, which he sawed off himself after suffering frostbite. I asked him how on earth he managed this highly technical climb on the most vertical face in the Alps. He said that he was determined to get to the top, wanted to raise funds for Marie Curie and did not want to let down the great team supporting him. "What about the vertigo?" I said? "Oh", he said, "I just tried not to look down". I do not know what Ran's views on Brexit are, but this is the kind of courage, commitment and leadership that our country deserves and needs now.

6.13 pm

Lord Browne of Ladyton (Lab): My Lords, I speak in support of the Motion of my noble friend Lady Smith of Basildon, and I am delighted to follow the noble Lord, Lord Forsyth of Drumlean, for a number of reasons. He has given me an opportunity to use a sentence that I never thought I would in my political career, which is that I agree with him. The Prime Minister's deal is unacceptable. I am not tempted to engage with the elements of his excellent speech simply because I want to change the subject.

When she opened this debate on 10 December, the noble Baroness, Lady Evans, the Leader of the House, sought to persuade us that the withdrawal agreement

and the political declaration represent the national interest and that they should be considered and, "voted on as a package in the other place".

She described the political declaration as outlining, "the scope and terms for our country's future relationship with the EU".—[*Official Report*, 5/12/18; col. 979.]

Others have spoken before me, such as the noble Lords, Lord Dobbs and Lord Forsyth, and it seems to me that there is much more scope in this political declaration than there are terms. That relationship, she said, included security and defence, law enforcement and criminal justice, and referred to a security partnership which the Government assert will keep our citizens safe and will require negotiation of the broadest and most comprehensive security relationship in the EU's history.

The UK's internal security is a matter of the greatest importance and consequently I shall confine my remarks to the internal security challenges that the Prime Minister's deal has generated for us, although, largely, these challenges are ignored by the Government Front Bench in this place and in the other place. On occasions their treatment of this issue has been more egregious than that.

On 17 December, when Theresa May returned from the European Council she said in a Statement to the other place,

"our Brexit deal includes the deepest security partnership that has ever been agreed with the EU".—[*Official Report*, Commons, 17/12/18; col.527.]

At best, that language was odd; at worst, it was misleading. To clearly state that we have an agreement when no such agreement exists is misleading.

Thankfully, others were more straightforward. During the Recess, this issue dominated the news agenda for two days, on 27 and 28 December. The Metropolitan Police Commissioner, Cressida Dick, said in an interview on the "Today" programme that the consequences of not having a security deal—a no-deal Brexit—will, "be more costly, undoubtedly ... and potentially, yes, put the public at risk".

In the same interview she said that our security would be lessened even if the Prime Minister's deal is approved. That latter point received less publicity, but essentially is the issue that I want to expand on in this speech.

Apart from the Leader's passing reference in her opening remarks to the necessity of the further work required to turn the political declaration into a legally binding treaty and the aspirational vocabulary of the declaration itself, no government spokesperson has ever given us any further information about how they plan to achieve their ambitious objective of,

"the deepest security partnership that has ever been agreed with the EU".

Importantly, they have not admitted what they know to be the case—that the full benefit of membership of the EU in security terms cannot be replicated under the proposed deal at its very best. That was the very point that Cressida Dick made in her "Today" interview.

On 17 February 2018, at the Munich security conference, Theresa May pleaded for an urgent deal with the EU on post-Brexit security co-operation, warning:

"This cannot be a time",

to,
 “jeopardise the security of our citizens”.
 Rightly, she said that the,
 “threats we face do not recognise the borders of individual
 nations or discriminate between them”,
 that a “deep and special partnership” in security was
 needed and that,
 “we cannot delay discussions on this”.

In particular, she warned that if there is no special deal
 on security by the time Britain leaves, extraditions
 under the European arrest warrant will cease, and if
 the UK does not continue to be part of Europol,
 information sharing will be hampered, undermining
 the fight against terrorism, organised crime and
 cyberattacks, and putting all of our citizens at greater
 risk.

On 19 June in Vienna, in a speech at the EU Agency
 for Fundamental Rights, Michel Barnier clearly set
 out the EU 27 position on security co-operation. The
 European arrest warrant, Europol, The Schengen
 Information System, the European Investigation Order,
 and the ability to enforce judicial decisions across
 Europe in real time have obvious benefits for all
 Europeans, he said. Co-operation of this nature is
 both unique and unprecedented throughout the world
 but, as he set out in his speech, the trust that underpins
 this legal infrastructure requires common rules and
 safeguards, shared decision-making, joint supervision
 and implementation and a common court of justice.

What Monsieur Barnier described was an “ecosystem”.
 He was blunt in saying if you leave this ecosystem, you
 lose the benefits of this co-operation. While explaining
 that the EU wants an ambitious new relationship with
 the UK, he admitted that realism demands that we are
 honest about what is possible when the UK is outside
 of the EU’s area of justice, freedom and security and
 outside of both the EU and Schengen. My intention
 in this speech is to give the Minister the opportunity to
 be honest about what is possible in these circumstances.

I remind the House that in her Statement on the
 December European Council, the Prime Minister could
 not be said to have been fully honest with us when said
 that we already had the necessary security partnership
 with the EU. Intelligence officers, police chiefs, security
 officials and even the Security Minister are constantly
 stressing how crucial quick and efficient data exchange
 is to counter-terrorism, policing and law enforcement
 co-operation, and to Europe’s security. Most of this is
 done through access to EU databases, to which access
 is limited to those with EU or Schengen membership.
 There is clearly no guarantee that the UK could have
 access to this data post-transition, and there is no
 precedent for a non-EU country having such access.

At Munich, Theresa May reminded us that the UK
 has extradited 10,000 people through the European
 arrest warrant. For every eight warrants issued by
 other member states, we issue only one. She reminded
 us that the EAW had played a crucial role in supporting
 police co-operation in Northern Ireland and is
 fundamental to the security situation there. I remind
 noble Lords that before the European arrest warrant
 entered into force, 13 out of the then 25 member
 states, including Austria, Germany and Poland, had
 constitutional restrictions on extraditing their citizens.

Some prohibited the extradition of their own nationals
 for all crimes. That is the situation in which we will
 find ourselves with those countries post our leaving
 the European Union.

In her opening remarks, the noble Baroness echoed
 a point that has been made repeatedly by the Prime
 Minister and other Ministers: that negotiating requires
 compromise. The question that the noble and learned
 Lord, Lord Keen of Elie, cannot duck in his response
 is: on what elements of security and to what extent are
 the Government willing to compromise? In the absence
 of an answer, the Government cannot expect our
 support. Nobody voted for less security when they
 voted for Brexit.

Baroness Goldie (Con): My Lords, the contributions
 are exceedingly interesting but overrun creep is beginning
 to enter the proceedings. I respectfully remind your
 Lordships of the advisory time limit of six minutes.

6.21 pm

Baroness Walmsley (LD): My Lords, it may creep
 again. The noble Lord, Lord Hennessy, asked us to be
 optimistic. I would not be a Liberal Democrat if I
 were not.

I have great respect for the House of Commons and
 am optimistic that next week honourable Members
 will do the right thing. They will vote against making
 their constituents poorer, damaging the future of their
 young people and removing this country’s influence in
 Europe. They will vote against Mrs May’s deal and
 reject the disaster of leaving the EU without a deal.
 Let us be clear, to use a favourite phrase of which the
 Prime Minister is so fond, especially when she is about
 to obfuscate: our economy would suffer both from her
 deal and no deal.

Our economy is not just some economist’s theory. It
 provides the means to protect the most vulnerable, the
 young who need education, the old who need care, the
 unemployed who need benefits and jobs, the poor who
 need affordable homes, the workers who need efficient
 transport to work and decent pay, and all of us who
 rely on the NHS. All this is threatened by every
 possible form of Brexit. It has become clear over the
 past two and a half years, to all who are not too blind
 to see it, that the deal we have as members, and could
 keep if we wish, is the best we could get with our
 biggest trading partner, neighbour and friend. Let us
 not be lured by the fantasy that we will negotiate
 beneficial trade deals around the world that would
 more than make up for loss of trade with the EU. This
 is a typical unicorn promised to the electorate by a
 campaign funded by money about which very serious
 legal questions are being investigated. Through our
 EU membership, we have trade deals, not just with
 27 other countries, but with 88. All those would go if
 we left the EU without a deal.

I respect the way in which Mrs May has tried to get
 a good deal while leaving the EU. But she became the
 architect of her own failure when she stated her red
 lines, which made it impossible for her to take us out
 of the EU without damaging our economy and curtailing
 opportunities for our young people. She has given two
 and a half years of respect to the “will of the people”

[BARONESS WALMSLEY]

as she puts it, although I find it hard to understand how someone who is so keen on the will of the people is so reluctant to ask them for it.

Let us look for a moment at the will of the people. In 2016, those who would be most affected by the referendum were not allowed to vote: British citizens who were too young at the time but are now on the electoral register; British expats of more than 15 years, many of whose jobs or pensions will be at risk if we leave; and legal EU residents who could vote in local and European elections but not the referendum. All these people were disfranchised. Of this flawed electorate, just over a third voted to leave—17.4 million people out of a population of 65 million; about one in four of the population. On that basis, Mrs May is making the choice—yes, the choice—to lead us over a cliff edge when, as she knows it will be, her deal is rejected in another place.

How do the public feel now that they could give informed consent, or not, to what this minority Government plan to do? We need to postpone Article 50 and ask the public by giving them a vote on the matter in a final say. I say a final say, not a “neverendum” as some Brexiters are suggesting, because most people would support the outcome of such an informed choice. The Prime Minister has said she wants to unite the country, a laudable aim. I can suggest to her a way in which she could do that because the deal she is proposing now will not do it. The solution is to put it to the people. We know what our current membership package is but what we might have in the future when she has finished negotiating our future relationship with the EU is vague. It is really a matter of trust, because the withdrawal agreement is only the beginning. After we have left, and are in a weaker position to negotiate, the Government will have to start discussing that future relationship within the laundry list—excuse me, the political declaration. Given the poor negotiating record of this Government, as demonstrated by the mess that is now on the table, do we trust in their ability to come out of the next five to 10 years with a set of good deals? I and most of the public think not.

What the businesses that create our wealth require is certainty. The only certainty we would have if we left on Mrs May’s terms is years of further negotiations following a short transition period during which we would be rule takers rather than rule makers. In other words, no certainty. If we left without a deal, there lies chaos, not certainty. The only way in which business can get certainty is if we do not leave and continue as a member of the EU with a voice, a vote and a veto. We would not have any of those under Mrs May’s deal. “Ah”, say the Brexiters, “but we would have full control of our borders, our money and our laws”. Not true. Our borders would be jammed with trucks and we would lose all co-operation from France in the effort to stop illegal migration across the channel. We would be sending away valued EU citizens, who have been contributing to our economy and public services, in exchange for unknown migrants from elsewhere because we need immigration. As for our money, there would be less of it because our trade in goods would be knocked sideways. As for our laws, we would have no say in the 12% of our laws that originate in the

European Union but, if we want to continue to trade with it, we would have to abide by its standards and regulations. To coin a phrase “No, no, no”.

I would prefer a voice, a vote and a veto about how the EU develops over the coming years. Europe wants our influence and we should be there wielding it because we will be affected by it whether we are a member or not. We will be affected by how it deals with mass migration, with crime, how its environmental policy develops, whether it thrives economically, and our security will be affected. We will be affected by the EU’s politics, where already we are seeing dangerous right-wing tendencies. We will be affected by its attitude to us—risky, given that we still need to attract the brightest and best, even if we insist that we do not want those valuable people who earn less than £30,000 a year. Why give away a say in all that? It does not make sense, and now there is strong evidence that today’s electorate believe that too. We have convincing polling results about what people want now. A YouGov poll of 25,000 people over Christmas showed that a majority want a final say, including 75% of Labour voters. When the choice is staying in the EU versus the Government’s proposal, remain wins by 63% to 37%, a margin of approximately two to one. If the choice was remaining on current terms versus no deal, remain wins by 58% to 42%. The will of the people now is clear and must not be ignored. We should reject this deal and vote to remain in the EU.

Finally—

Noble Lords: No!

Baroness Walmsley: My Lords, I did not speak in the first debate. The speaking time is advisory. A number of noble Lords who took seven minutes before Christmas have taken another seven minutes today. I have not spoken on these issues at all, and after 19 years in this House, I think I have a right to finish my brief remarks.

Finally, to those who say another referendum would be divisive, I say this: what would be divisive is to allow a minority Government without the consent of the people to take us into a situation that would make us poorer and less influential in the world. That would be unprecedented, undemocratic and a betrayal of future generations and the will of the British people.

Baroness Goldie: Well, my Lords, the overrun creep has just crept to a gallop. I can only plead with your Lordships that in deference to those who have still to speak, can we please try to respect the advisory speaking time? I think all noble Lords want to try to comply with that advice. We have to consider the position of those who are still to speak whose contributions we want to hear.

Baroness Walmsley: I ask the government Whip to bear it in mind that the Government have unnecessarily shortened the speakers’ list for tomorrow. If they had not done so, we would have several more minutes.

Baroness Nicholson of Winterbourne (Con): My Lords—

6.31 pm

Lord Craig of Radley (CB): My Lords, many noble Lords will recall the story of when Queen Victoria was on the Throne and a storm cut the radio link between Europe and the British Isles. The next day, a *Times* headline reported the breakdown: it read “Continent Isolated”. That sense of superiority, once referred to as “All foreigners start at Calais”, is long gone. Now it seems to some that Brexit has turned that all on its head, that it is the British Isles which are about to be isolated from Europe.

But is it right to equate Europe with the European Union? Yes, there are many ways in which the flag of the EU flies for all within continental Europe. It is a convenient and pragmatic way of conducting political, cultural and economic business and activities, but that bypasses the much longer and lasting relationships built, not over the past few decades, but over the past many centuries between the British Isles and their continental neighbours.

In days gone by, this country sought to make alliances to help balance power in Europe, whether against Napoleon 200 years ago or Germany in the past century, so as to protect our own interests and future security. It is not inconceivable that one day other EU members will decide to follow the UK in exiting the Union. Collaboration with them thereafter would be to retread our historic path of securing our best national interests by seeking out strategic balances within the continent of Europe.

That security self-interest persists today, of course. It persists within NATO and other bilateral agreements on defence issues and more widely through the historic recognition and value of our contribution to culture, the arts, the English language, sciences and the law. In today’s lexicon, that is a galaxy of very considerable soft power. This rich heritage has worldwide application, not just in continental Europe, to our great benefit and renown. It is a proactive form of soft power that reaches across national boundaries and continents. Modern communication makes it that much easier and faster to reach out with this compact of influence.

We have all these tools and blessings, but we need voices to embrace and extoll them, to focus our own people on this positive, exciting vision for the future. So I share the feelings of regret and disillusionment about the fables of doom and despair which have so characterised the past year or 18 months. Surely there should be greater encouragement and belief in ourselves and in what drawing on our heritage and contemporary skills can provide.

I was glad to note that some recent journalistic coverage is beginning to address the positive, rather than the negative, aspects of where we are now and where we shall go after 29 March. I embrace that new-found optimism. Nothing should limit the vision to just the balance of payments with the rest of the world. This country and its brightest have much to contribute to a wider future in the fields of security, academia, arts and culture as well as in businesses of all descriptions.

Traditionally, and long before the EU, these have involved individuals and groups working bilaterally or multilaterally with other individuals and nations. Will

this not long continue, even after this particular European Union passes into history? Why should these types of links not persist? The freedom to make such relationships, to seek them out, to foster them and to benefit from them is a blessing of our free society. Let that search be the new year resolution for this country, regardless of the decision reached in the other place. Whatever it is, it will not be true to say that the British Isles are now isolated.

6.36 pm

Baroness Nicholson of Winterbourne: My Lords, it is my turn now. I apologise for my earlier mistaken intervention. The latter part of this afternoon has been a little confusing.

As a former Member of Parliament and a former Member of the European Parliament, I feel strongly that the voter has spoken and the bell has tolled. I believe powerfully that, in this Chamber and in the House of Commons, it is our duty to put through Brexit in whatever way is best for the United Kingdom. I see here colleagues who have studied the political declaration more closely. Yes, it has some significant black holes. There is no doubt that one feels fearful about the position of Gibraltar, for example, and about the unexplored deep black hole of data protection.

For example, we wish to have a major trade deal with the United States of America, and that is contradictory to the United States’ approach to data protection. The European Union has a very significant data protection position, drawn from its experience in the last world war and delving deep into what happened in Germany with data then. Although today’s international electronic world rather gives the lie to data protection—we only have to see what has happened in Germany this week, with the data of the German Members of Parliament and political aficionados displayed everywhere—there is nevertheless a profound belief in the European Union about data protection and the protection of the individual. That is very different from the USA’s position.

We wish to have a strong and powerful deal with the USA and as near a free market agreement as we can have with the European Union. Both things are going to be difficult, and naturally they have therefore not been tackled in the rather rapidly drawn political declaration and draft agreement. I say rapidly because, having been fortunate enough to have worked on such agreements when I was in the European Parliament, I know they take years to put together.

Article 50, which I believe one of our colleagues on the Cross Benches, the noble Lord, Lord Kerr, was heavily involved in, looks exactly like a scribble on the back of an envelope which really does not make sense. It is very short. The treaty of Lisbon, which was not even signed by the British Prime Minister, is desperately weak. That is where the European Union started to unravel in 2006, 2007, 2008 and 2009.

I suggest that the central purpose of the European Union is one that we need to think about very carefully indeed. I am sure we will be leaving. The lunacy of a second referendum would dramatically undermine the primacy of the other place which should be omniscient in our system, but will not be any longer if it keeps having referenda.

[BARONESS NICHOLSON OF WINTERBOURNE]

Once we have left, we will need to consider very carefully how we support the European Union that we leave behind. The original purpose of the European Union is still there. It is not completely fulfilled, and that may be why so many people feel a sense of loss in advance of leaving. The very strength of Germany alarms the rest of Europe, most particularly in its eternal differences with France, which is the weaker partner. That has enlarged and heightened the fragility of the European Union, along with continued land issues: between Poland and Germany, between Hungary and Romania, within and beside the Balkans, between Spain and the UK—I have already mentioned Gibraltar—let alone the continuing disputes within the individual member states, such as between Spain and Catalonia, and within the neighbourhood of member states, of which Cyprus and North Cyprus is a very clear example.

The European Union has successfully held the ring for a growing EU population to live and work in peace. It has enabled France and Germany to meet and reach agreement on a near-daily, and sometimes a near-hourly, basis. In consequence, both nations—perhaps for the first time in hundreds or thousands of years—now work in partnership and not in conflict. This in itself is, I suggest, a truly magnificent achievement—one of which we too should be rightly proud as we played our part therein.

Yet, commanded by the British people, our Government are struggling with the complex manner of us handing in our EU membership and becoming a third-party state outside of the EU, albeit with high-level benefits. Certainly, the withdrawal agreement, which the Prime Minister has painstakingly agreed, is perhaps the best we can expect today. We should be proud of the large body of civil servants who have spent months working on this, in partnership with fellow members of the European Commission secretariat, another fine body of professionals. We should be very proud and grateful to them for their work, even if we do not firmly endorse the outcomes that they have reached.

But what next? What concerns me is, once we have left, a huge and continuing piece of work approaches for us: forging new relationships, opening up fresh trading opportunities, exploring distant horizons and refining relationships nearer to home. We in Britain are indeed up for the job. Our nation has never been so successful nor so at ease with itself, since the last world war ended, as we are today.

So why is this dramatic change required? Why should we pursue this tricky and perilous alteration to our European status? The most reverend Primate the Archbishop fears that it will harm millions and all end in tears. The reason, of course, lies within the European Union itself. It has grabbed competences far wider—more intrusively invading and destroying rights and privileges, customs and local ways and means—than ever before. Its legislation is a daily diet that is both detailed and proscriptive. Massive centralisation has overwhelmed the original and praiseworthy concept of Europe of the regions against Europe of the nation states. It is far away from the founders' creation of an intergovernmental body, on the lines of those post-war institutions which did not set out nor plan to become a model of democracy. No parliament was foreseen, nor was the creation of

any legislation at all anticipated. The opposite took place, and we now have this enormous centralised body; and it is right, therefore, that today the European Union should be our partner but not our owner.

I support leaving. I do not foresee an easy ride, but I hope we will end up with the most powerful solutions that fit our nation, as well as our future relationship with Europe.

6.44 pm

Baroness Henig (Lab): My Lords, this has already been a very wide-ranging debate. I listened with great interest, as I always do, to the noble Lord, Lord Forsyth, and particularly to his mountaineering analogies. He mentioned Ranulph Fiennes, and I wondered whether this was the same Ranulph Fiennes who said in March 2016 that Brexit would be “utterly stupid and pathetic”.

As we have already heard this afternoon, most of us in this Chamber and in the other place strongly oppose a no-deal outcome. So to see the Government wasting billions of pounds of taxpayers' money preparing for it is not just profoundly depressing but a massive indictment of our political system.

Where do we go from here? What is the best course of action for this country? We should acknowledge, first of all, that there is no single pain-free solution to our self-inflicted predicament. There are too many parliamentary colleagues on all sides of the argument who claim there is one true path, and that it would be economically beneficial and widely popular if only everybody else could see it. Such a path may indeed reveal itself to historians in 30 years' time, but it is certainly not visible here and now, and I say this as a historian of modern international history.

We face four broad choices: no deal, the Prime Minister's deal, a people's vote, or the extension or revoking of Article 50. As is clear from my introduction, I cannot support those urging no deal, whether as a negotiating ploy or in the ludicrously named “managed” no-deal scenario. Moving, with little preparation, from a highly integrated market of nations to an abrupt no-deal exit will inevitably cause extremely serious problems, particularly for small and medium-sized businesses providing goods and services to the EU, and more and more of their owners are telling us that.

But I think the political aspect is equally important. What does it say about the United Kingdom that we cannot reach an agreed settlement with our European neighbours? The United Kingdom has been an active player on the European mainland in one form or another for 1,000 years. By embracing no deal, we would be turning our backs on all that history and pulling away from the European mainland. That is not a position we will be able to sustain for long, unless the intention is to apply to become the 51st state of the United States of America. Even at the height of our Victorian splendour, as the world's leading trading nation, we knew to keep a watchful eye on developments in Europe, to maintain contacts and to join in regular diplomatic discussions with our major European neighbours. We are now much diminished from that era—though some in the other place appear not to have noticed our steady decline—but how much more necessary is it, therefore, to remain on friendly terms

with our EU neighbours, especially when so many of them are actively pleading with us to continue our collaboration with them?

What to say about the Prime Minister's deal? It is now widely recognised that she made two fundamental errors from the outset of negotiations: putting party unity ahead of the interests of the country, and making little or no effort to construct a cross-party consensus on a Brexit deal. If her deal did actually achieve what she claims—securing our economic future, smoothing trade with the EU, gaining the potential for new trade deals globally—she might still have won support, but even a cursory analysis of her deal reveals that she has achieved none of these objectives. Her deal postpones the resolving of all these issues, merely creating at least one other cliff edge for the end of 2020, if not a further cliff edge in 2022. We surely cannot agree to this: the deal does not deserve to be passed.

A Prime Minister backed by a parliamentary majority could perhaps obtain an improved deal—for example, a commitment to exploring how EEA membership could work for the UK, and whether it would be compatible with no Irish border. I cannot, however, with this dogged, stubborn Prime Minister, see any prospect of a change of approach, so we are stuck with this deal or something close to it, no deal, a people's vote or no Brexit.

In relation to a people's vote, I am conflicted. As I argued in this Chamber in 2016, direct democracy undermines our parliamentary system—as we are now finding to our cost. A second vote might resolve our crisis, but it could also make it worse and weaken parliamentary democracy still further. I believe that Margaret Thatcher was right in 1975 to warn of the dangers of referenda trading liberal democracy for majoritarianism, going on to say that she agreed with Attlee that they were a device of dictators and demagogues. Although I do not agree that another vote would be undemocratic or an unfair repudiation of the 2016 referendum, I am concerned that it would be extremely divisive and that the debate would—how can I put this?—in no way resemble a Socratic dialogue. We cannot even agree among ourselves here this afternoon on the relevant facts. What chance is there of a fact-based discussion breaking out across the country during a second referendum campaign?

Therefore, although I would not vote against a second referendum, my preference would be to strengthen parliamentary democracy, not to continue to weaken it. That leads me to favour either extending or revoking Article 50 and explaining to the electorate as clearly as possible why this is now the only viable choice, why it has so far not been possible to deliver on the promises made in the 2016 referendum campaign and then to use the time gained to find new ways to resolve our conflicts.

As the UK is a parliamentary democracy, this decision could be overturned in a subsequent general election. Yes, there would be an outcry but there would also be strong support. I really believe that it is time that we as politicians gave leadership, which so far has been sadly lacking. In this, we would have strong support from the under-40s, and that matters to me more than anything else—that the under-40s continue to have access to European universities and to

European cultural networks and economic opportunities. None of us can deny that we are in a mess, and this is the least damaging way that I can see for us to get out of it.

6.51 pm

Lord Roberts of Llandudno (LD): My Lords, those who argue for this deal say that the people have voted and that we must honour that. The people voted two and a half years ago, when they were a different constituency. Many of them have now departed and millions more are now eligible to vote. Therefore, we are disregarding the views and the future of many of these young people. Not only that but we are withdrawing from the European Union, which means that we are withdrawing their European citizenship. These young people were born into European citizenship.

Lord Lilley (Con): Does the noble Lord intend to have a referendum every two and a half years?

Lord Roberts of Llandudno: That is not my intention, of course, but I shall mention something in a moment that might go in that direction. As I said, we are denying young people their voice in this issue. People change their minds. Even Prime Ministers can change their minds. The Commons were to have a vote in December; now they will have a vote in January. If the people are not allowed to change their minds but the Prime Minister and parliamentarians are, we are denying a democratic right to the people.

We know all about referenda in Wales. In 1979 we voted against having a Parliament for Wales—900,000 people voted no and about 200,000 people voted yes—yet we now have a Parliament. Why is that when the people voted against it? It is because in 1987 we had another vote and the people changed their minds. People are allowed to change their minds. The same thing happened in Scotland. People reflect the era and the thinking that they are part of. To deny them the right to change their minds is to make them fossils. Therefore, we really have to think about whether we are reflecting the views of the people today or those of the people of yesterday.

Noble Lords will be glad to hear that I will not keep them for long. We have had other votes in Wales. We voted against opening pubs on Sundays. In, I think, 1891 we had a licensing Act that closed the pubs on Sundays and it was another 70 years before, in 1961, we had the Licensing Act that gave local authorities the right to open the pubs in their area on a Sunday. I remember it well. I was in the Llŷn Peninsula, and being a Methodist minister I knew which side I was going to battle for. Most local authorities in Wales said, "Yes, let's keep Wales dry", yet between 1961 or 1962 and 1990 all the pubs in Wales opened on a Sunday, although the people had voted for that not to happen. During that time, we had six ballots. Here, we are asking for two but in those six ballots the Sunday opening campaign was squeezed forward. I was in the studio when the count came in from Carmarthen. We thought, "Oh gosh", but these things happen—people change their minds. Only one local authority claimed to keep Sunday dry and that was Dwyfor on the Llŷn

[LORD ROBERTS OF LLANDUDNO]

Peninsula. The only reason that pubs there started to open on Sundays was that the local government boundaries changed.

Therefore, people change their minds. Are noble Lords going to say that people are not allowed to do that? Are they going to say, “No, we’re going to be as we were. We’ll go ahead with slavery and women won’t have the vote”? People change their minds and we as a Parliament should be ready to reflect that change. That is why we need another opportunity, following which we will be able to say, “Yes, the people of 2019 have decided”. I hope very much that when the vote takes place in this House on Monday, we will be able to reflect the need for an opportunity for the young people who were disfranchised last time to cast their votes.

Lord Forsyth of Drumlean: The noble Lord talked about people changing their minds about a Welsh Assembly, where the vote was very narrow—just over and just below 50%. The young people did not have a chance to vote on that, so, following his logic, shall we have another vote on the existence of the Welsh Assembly?

Lord Roberts of Llandudno: If the noble Lord wants to organise another vote, he should do it.

6.56 pm

Lord Kerslake (CB): My Lords, if we take the period from the start date of the EU referendum campaign to the end date of the implementation period—if the Government’s proposed deal goes ahead as planned—the whole Brexit process will have taken close on five years. That is five years in which Brexit has completely dominated the political debate in this country to the exclusion of almost every other important issue. It is sobering to ask what we will have to show for investing so much of our collective effort into this one issue: a more divided country, a weaker economy, a fractured politics and a much less influential role in the world. I find it hard to think of a more dispiriting period for Britain in its recent history.

The Second World War lasted six years and left an utterly devastated Europe, but out of that war came a new economic, political and social order. Does anybody really think that we can have the same sense of optimism about what will come out of Brexit? I say “if” the current deal goes ahead as planned because there is every prospect that it will be voted down when the Commons votes next Tuesday. Even now, we do not know what concessions the Government might scramble to secure in the final days before that vote but, as things stand, the Government will be defeated and, in my view, they deserve to be defeated. The deal negotiated is not an acceptable basis for the United Kingdom to leave the European Union.

The objections to the deal have been well rehearsed in this House today—and indeed on other days—and elsewhere, so I do not need to repeat them all here. Put simply, it concedes too much power now and leaves too much to be resolved for the future. I did not personally feel comfortable with the use of the term “appeasement” by the former Governor of the Bank

of England, the noble Lord, Lord King, but there is no doubting the sense of defeat here. It is hard to see this deal as worthy of the sixth largest economy in the world.

The Government’s defence of the deal has focused less on the merits of the deal itself and more on the potentially dire consequences of the alternatives. On the risks of a no-deal Brexit, I would agree with them. Much of the debate on a no-deal exit has been on the immediate disruptive effects and the state of our preparations to handle them. This is indeed a real issue, and I have argued before that preparations would have needed to start a lot earlier, and a lot more money spent, for us to be confident about our ability to manage this effectively.

However, by far the bigger issue is the risk of an economic shock at a time when the global economy is faltering and the UK economy is fragile. The *Global Economic Prospects* report by the World Bank, published today, makes sobering reading. While I can see the attraction for ardent Brexiters of a clean break—in one bound we are free—the risks of a severe economic shock are simply too great to contemplate.

I observe that the most prominent advocates of the no-deal option are what I would call people of means—people who are able to manage the economic consequences whatever they are. Some can even decamp to their homes on the continent if the going gets really rough. Most of the population of this country are not in this happy position. Our primary concern should be with the economic interests of those people and we should not be putting their livelihoods at risk. I say to those who advocate a no-deal Brexit that simply putting the word “managed” in front of the words “no deal” does not change the level of risk by one iota. So, I support the amendment and I will vote for it on Monday night.

If you eliminate the current deal and no deal, there are two potential ways forward: to go back to Europe and seek to renegotiate a very different deal, or to have a second referendum. These are not mutually exclusive options. Both would require a significant extension or revoking of Article 50. At the very minimum, the Government must recognise the reality that if they lose next Tuesday there must be an extension of Article 50. Not to do so at that point would be a complete abdication of their responsibilities. Even if the deal were agreed next week, the timescales for passing the remaining legislation are extraordinarily tight. Further delay following a defeat would make them impossible.

If we seek an extension to the timetable on Article 50, we will need a clear reason for doing so. In my view, the clearest and best reason would be to hold a second referendum. I did not start out with this view at the beginning of the process but the grievous misjudgments by the Prime Minister along the way, and the unpalatable choices now facing us, make it the only plausible option. It has significant difficulties, but I do not buy the apocalyptic predictions of some Ministers. It is perfectly reasonable—indeed, not uncommon—in countries where referenda are more regularly used to give people the opportunity to express a second opinion. We are a parliamentary democracy. It is not an insult to the British people to ask them to look again at the choices now that we know the tangible options rather than the theoretical ones we were presented

with at the time of the referendum. The bigger insult would be to suggest that their view would remain rigidly the same regardless of what we have learned since.

The most recent YouGov poll, reported in the *Observer* at the weekend, suggests that, faced with the current choices, people would now vote to remain. But that is not the main issue. Those campaigning for a second referendum, whatever their individual reasons for doing so, are fundamentally right on one key point: Parliament is at an impasse and it is time to let the people decide.

7.04 pm

Lord True (Con): My Lords, the great paradox today is that everyone comes here to lament uncertainty, yet, 930 days after the referendum, hundreds of people—Members of this Parliament—come to Westminster every day to debate and plot how to prolong uncertainty. The truth is that if we want to end uncertainty swiftly we can cut the Gordian knot, make a clean break—as Parliament has already voted to do—and leave on 29 March. Frankly, millions of people would delight to wake up on 30 March not having to hear the name Juncker ever again. Clouds of uncertainty and the stench of increasingly incomprehensible parliamentary intrigue would begin to dispel on the breezes of a British spring.

I do not accept a commination, from whatever quarter it may come, that that choice is not a moral one. I was taught in a Christian home to keep my word, and “leave” is a short, English word. I agreed with the powerful speech of the noble Lord, Lord Grocott. No one who loves this country and Parliament could view the present constitutional crisis without deep sadness. In the past we have had Peers against the people, but this is the first time—with the arguable exception of the 1640s—that we have had a crisis of Parliament against the people.

We had the people’s vote that Parliament voted for; we heard the verdict Parliament asked for in referendum and general election. Yet, since then, instead of acting as required, a majority in this Parliament have behaved as if the British people had never spoken. No wonder there is disillusionment with politics. We are also seeing the emergence in Britain of a separate political class, embedded in the comfort zone of a wider capital establishment. Perhaps this flows in part from a new sense of untouchability. Those in this House are not elected but now those in another place, who for the first time since the 17th century cannot be dissolved except by their own will, know they are secure for years and can play whatever games they choose.

How extraordinary it seems that this great Parliament, having been asked by the people to recover powers for itself to make our own rules and laws, should shy away from what our predecessors in this place fought for, for generations. Have we so little trust in ourselves and in our nation’s capacity? How shaming and arrogant I find it that, at the same time, we duck and weave to evade the choice of the electorate in 2016 and 2017. Frankly, I have led too sheltered a life to know much about swingers but I do know a little about the Vicar of Bray. A promise given should be kept. Have we so little trust in the people and their good sense? This way no good lies for the future of our Parliament.

There are only two ways to end swiftly the uncertainty that everybody laments and which has dragged on for two and a half years. The answer is not this deal, which, far from ending uncertainty, ties us into years of more negotiation on unfavourable terms with no guarantee that the torment or EU interference in our affairs will ever end. It is certainly not a second referendum, which, far from healing, would scour our body politic further, and it is not delaying the date of leaving. Does anyone believe that most of those who voted to remove 29 March from our law would ever reinstate another date? The two choices to end uncertainty swiftly are these: to ignore the people, reverse Article 50 and stay in; or to respect the decision already taken by Parliament and people and come out on 29 March—not with “no deal” as it is absurdly styled but on WTO terms, on which most of the world trades.

We could offer a no-tariff arrangement with the EU for a limited period while seeking negotiation for a Canada-style deal—a deal already offered and which might be easier to strike after the European elections in May. I see little sense in shackling ourselves to the ancien regime in what may be the 1788 of the federalists’ ever-closer union.

The BBC talks of falling off a cliff; that is the modern equivalent of the flat earth theory, disproved by an Italian working for Spaniards and ready to sail uncharted waters long before anyone thought we needed 27 unelected suits in Brussels to be able to co-operate across borders. The world out there is as big and round now as it was in 1492 and people are waiting to do business with us. Of course, leaving the EU regulatory framework has economic risks, but it is a choice that looks to the future, not the past. Listening to some, you would not begin to think that since the single market began, exports to countries we trade with on WTO terms have risen three times faster than those with the EU.

The referendum changed our future. It was a statement about what sort of country the British people wanted to see—one free to make our own laws, control our own borders, strike our own deals and be judged by our own courts. We are condescendingly told that ignorant people did not know what they were voting for. But after 40 years’ experience, they certainly knew what they were leaving: an EU rooted in the past and institutionally incapable of reforming itself, a devastating democratic deficit and the slowest-growing part of the world in the 21st century, where the economic and social time bomb of the euro is still ticking and the crisis of mass illegal immigration is unresolved.

Risk there may be in leaving on 29 March, but when in the history of our nation did the prospect of choppy water deter us from setting our course to the open seas? Let us weigh anchor boldly and with confidence on 29 March and take our place again as a sovereign Parliament and people, and arbiters of our own destiny.

7.11 pm

Lord Watson of Invergowrie (Lab): My Lords, despite the many hours spent discussing this country’s exit from the European Union in your Lordships’ House, I have not dipped my toe in the water. I used my Front-Bench role as a shield, thinking I could get

[LORD WATSON OF INVERGOWRIE]
through the entire debate without participating. However, a particularly surreal interview on the “Today” programme on Monday involving Iain Duncan Smith claiming—preposterously—that not a single job would be lost in this country after we leave the EU, finally propelled me into the fray.

Education is my subject so I will say a few words on that first. It is important to highlight Brexit’s collateral damage to universities and colleges, the loss of EU-funded research and the reduction in student applications from the rest of the EU. UK students need to know whether they will still have access to things like the excellent Erasmus scheme which, since 1987, has allowed more than 200,000 students to study in Europe as part of their UK degree. What fees will EU students be charged? Who can say? How can universities plan in the face of such uncertainty?

I think there is a sinister agenda at play in this whole debate, which has not been highlighted to a great extent in the debates in your Lordships’ House. It is the sort of free-trade deal held up as the Brexit prize of the hard Brexiters, which is contained in a blueprint published by the right-wing think tank, the Institute of Economic Affairs. It is called “Plan A+”—itself a sinister term. The priority areas for removing “anti-competitive” EU regulations highlighted in Plan A+ include GDPR data protection rules introduced by the EU to ensure privacy. It is also believed that services and government procurement should be opened to international competition, with protections designed to prevent workers being exploited or undercut by cheap migrant labour removed. The same goes for environmental protections, food standards and the precautionary principle that the EU favours when assessing risk. That is before we even look at the Plan A+ plans for financial services after Brexit, which they seek to fully deregulate. Let us not forget it was deregulation of the financial sector that enabled the 2008 financial crash.

This agenda will be familiar to anyone who has read Naomi Klein’s seminal book *No is Not Enough*, which is a chilling volume. She wrote of what she called the “shock doctrine”: the exploitation of a crisis to push through highly controversial policies while everyone is too distracted to fight them off. The plans for ultra-free trade, advocated by many Brexiters, look very much like shock doctrine and we should be aware of what they will mean for the UK as a stand-alone player on the global stage. What chance will we have to resist the predations of Trump’s USA?

That is the world we are facing. The USA was never the bedrock of liberal values but none the less it was a major player in the post-World War II social democratic consensus. It has now gone rogue under a president who is openly and unashamedly racist and misogynistic and sees Vladimir Putin as more of an ally than the European Union. What unites Trump and his allies? They can be classified as anyone unwilling to stand up to him, including politicians in this country among whom Boris Johnson, David Davis, Liam Fox and Mr Rees-Mogg can be counted. They are the real hardliners who believe that leaving the EU is of absolute overriding importance, even without a deal.

What unites these people and their backers—apart, I suspect, from the dream of a return to the days of Empire—is an antipathy towards the EU’s ability to rein in their power and that of their backers. The EU is the target because it signs up to climate agreements, is prepared to legislate for a financial transaction tax, chases down corporate tax dodgers and challenges tech giants and hedge funds. Who will do that after we leave? That is not what people voted for, or even realised they were being asked to vote for, in the referendum.

That is why I am dismayed to see some of my party colleagues in your Lordships’ House as well as in the other place, and indeed not a few trade unionists, argue in favour of leaving the EU, claiming it will benefit this country. It cannot and will not, and it will certainly not benefit many of the people who have traditionally voted Labour. As my parliamentary colleague Chris Matheson MP argued powerfully this week, there is simply no left-wing justification for Brexit. Those who believe differently have short memories, which do not go back to the years of Margaret Thatcher when it was often only EU law that prevented greater attacks on environmental and workplace protections.

After 29 March, the Brexit extremists will no longer have the restraining influence of the EU to hold them back. Those extremists will not sit back after that; they will congratulate themselves on a job well done, but will see it as just the first step. They regard tearing us out of the EU and all of its institutions of solidarity and co-operation as merely the first step. They will not be satisfied, they will never be satisfied and they will no longer have the restraining influence of the EU.

But the looming economic slump seems to be of no concern to Brexiters, for whom no deal is regarded as acceptable, even—laughably—being described as “manageable”. If there is any fantasy in this whole sorry episode, that best encapsulates it, surely. My noble friend Lady Smith admirably set out the case for ensuring that no deal must not be allowed to happen and she was warmly supported by the noble and learned Lord, Lord Hope, on behalf of the Cross-Benchers. Yet the Foreign Secretary stated recently that he believes this country will flourish and prosper under a no-deal exit. We should perhaps take some comfort from the fact that a few months ago the same man said that no deal would be a, “mistake we would regret for generations”.

Perhaps his confused state of mind should be seen as a metaphor for this apology for a Government, who have all the sense of purpose of someone stumbling around in a thick fog.

So where does this leave us? I confess I do not know and anyone who claims they do is not to be taken seriously. I do not recall Mr Johnson or Mr Gove mentioning during the referendum campaign that leaving the EU could involve putting troops on the street, stockpiling medicines to keep the NHS operating or establishing websites for people to consult when faced with food shortages, but that is where we are today. Nobody voted for this and that is why the only option—I believe this is likely to be the conclusion ultimately reached by the Prime Minister—is a return to the people. I do not like the misappropriation of the term “the people’s vote”; we had one of those in 2016.

I have reluctantly come round to the position that the knowledge that the people have today is so radically different from that presented to them by both sides in the referendum that it has become appropriate for us as politicians to say to people: “We heard what you said; a majority of you wanted us to leave the EU. We got that. We have tried to put together the best possible terms under which we can do so, but we cannot reach agreement among ourselves or with the EU, and we are now gazing into the abyss that is a no-deal exit. This is what it will mean. Do you still believe leaving the EU is the best option?” This is neither undemocratic nor a threat to democracy. There is nothing wrong with anyone echoing the words of John Maynard Keynes:

“When the facts change, I change my mind”.

That is now what we should do.

Baroness Barran (Con): I respectfully ask your Lordships to consider those speaking later in the debate and respect the advisory speaking time of six minutes.

7.18 pm

The Earl of Sandwich (CB): My Lords, I thank the Whips and the usual channels for rearranging and extending this debate to allow the House to offer its advice at a critical time. I only hope that in our own confusion and obvious divisions we can still convey a meaningful signal to another place, but I have my doubts.

As a remainer, I would vote to stay in the EU given half a chance, because it is and was by far the best deal. However, I do not think that chance is on offer, nor do I agree with a second referendum. My noble and learned friend Lord Hope gave us the reasons for this. Even if we had 55% for remain, we would still have nearly half the country up in arms. We surely do not want to waste time going through that process all over again. I was always against the use of the referendum. I follow Lord Higgins in this. He was very clear on the position of even the advisory referendum.

What still beats me is the attitude of the ERG, or those who see themselves as the clean Brexiteers, who seem to think that leaving the EU is as simple as kicking a rowing boat offshore. Those who are not half mad have an exalted sense of their own superiority and, of course, of the purity of their brand, but it is not a brand anyone will follow. Pure brands are unavailable because we have entered a compromise and that means that none of us will get what we want. Perhaps this is why the Brexiteers are now clinging to no deal as a means of jumping off the cliff into what they believe are the waters of free trade.

I would like the PM to survive in the next few days and weeks, because at least MPs are now being given the chance to discuss her offer thoroughly before the meaningful vote or votes take place. Changing the leader is a complete waste of time. I also hope that she retains the support of the many liberal-minded Tories and pro-Europeans who have been tested to the limit by the ERG. The Conservative Party has been divided since 1964 and before that, so there is nothing new there. But I can offer the Prime Minister some advice,

if she is listening. She did not get her Dominics quite in the right order: a little less Raab and a larger dose of Grieve and she still might get there on Tuesday. As my noble and gallant friend Lord Craig sensibly said, we need more resolution and optimism, as well as leadership.

What has happened to the idea of the indicative vote, said to be entertained by senior Cabinet Ministers? Was this just a pre-Christmas media spree? Perhaps the Minister could answer this on Monday. It was sensibly proposed by the Institute for Government as a means of identifying the consensus on Brexit. Noble Lords will remember the 2003 Lords reform report, which created a series of seven options on composition. It could be a valuable way through the present labyrinth because it would sound out MPs in a non-binding free vote on the various options for Brexit: the present deal, Norway, Canada, WTO and, as a last resort, Article 50 and the people’s vote. In fact, yesterday’s vote against no deal was an indicative vote. We need more of this to attract people across the floor. We need more cross-party consensus.

The Labour Party is of course in a conundrum because it has no more of a unified policy or leadership than the Tories have. However, there is common ground if only people will cross it. Sir Keir Starmer seems to understand what compromise means and he is sensibly heading for a customs union, which we all know may be the only way to solve the Irish problem. Another general election is surely the last thing we want.

The withdrawal agreement is, thank goodness, accompanied by a political declaration, which at least means that almost anything can now happen during the transition stage, especially if it is open-ended. You could call it a fudge, but it is a well-tryed political manoeuvre. It is a fudge because policies of enormous concern to this country are being put on one side to placate Brexiteers. I refer to the outright rejection of the single market and the four freedoms, of institutions such as OLAF and the European arrest warrant, and the CJEU influence on our courts.

We can surely improve on the present deal, as Dominic Grieve has said, but we must also hold on to it. If the Prime Minister can see off the Brexiteers quickly, the political declaration can be given some meaning and all these vital questions can be—will have to be—carefully re-examined over the next two or more years.

As we all know, what business wants is certainty. So do the public. This has been made clear repeatedly in Parliament. We need at all costs to avoid no deal by accepting the withdrawal agreement and moving as soon as possible into a proper, enduring relationship with the EU. As the noble Baroness, Lady Nicholson, reminded us, whatever we think about the excesses of the EU, we must remember how many policies and standards we ourselves put into it. We must take care not to lose all those elements that we once espoused and with which we can continue to be associated.

7.25 pm

Lord Kirkhope of Harrogate (Con): My Lords, it is a great pleasure to follow the noble Earl, who has displayed some useful calmness in a difficult area of discussion. This is an important debate, even more so

[LORD KIRKHOPE OF HARROGATE]

now than when we set out on it before Christmas, as we witness the activities in the other place and indeed among countless groups of citizens who have now realised how little time remains between now and the end of March. But it is also important to acknowledge that, so far as the withdrawal agreement is concerned, we here have a secondary role. We certainly do not vote on the substantive issue; neither for meaningful or meaningless Motions; nor are we able to partake in any ratification process if it comes to that. If the other place rejects the agreement, it has now decided on a process and time limit for the Government to produce other plans, which, again, we can only debate.

One of the reasons why I currently do not support a second referendum is that I believe strongly in representative democracy, which has been referred to by other noble Lords and noble Baronesses this evening: an elected Chamber where, regardless of outside influences, our Members of Parliament can and must make decisions for the people they represent—indeed, all the people they represent. When I was a Member of Parliament in Leeds it was certainly my duty once elected, normally not by an overall majority, to reflect on the needs of all the constituents in that place and to represent them in a changing environment. Whatever I had done or said during an election, it was vital for me to recognise the changing circumstances of the people and of Parliament and to make decisions on their behalf, for which I would be accountable when there came another election.

Noble Lords might therefore think that that is a remark in support of another referendum, but it is not. It seems the responsibility lies squarely with the elected representatives. They must get it right. They will bear the consequences if they do anything that severely, seriously damages the people of this country. I openly admit that I, as a remainder—someone who would like us to remain in the European Union—nevertheless believe that that responsibility lies there.

When David Cameron came back from Brussels before the referendum with the terms he had discussed and agreed for our ongoing membership of the EU, they were regarded here as insufficient and insignificant. But as a Member of the European Parliament at that time I can assure noble Lords that that was not how they were regarded in Europe, the European Parliament or, indeed, the Council. Had they been implemented, they would have changed permanently the way Europe went about its business. That was very much along the lines of the way we in Britain had been involved in the European institutions over many years.

Indeed, I am pleased that my noble friend Lord Callanan is on the Front Bench because he and I shared a long period as Members of the European Parliament. Many of the things that were done that enhanced the reputation of this country were done by him, others and myself, working very hard with our European friends. Britain's reputation was never higher, particularly once the Soviet system had been destroyed and the countries that had been under that yoke had their independence and freedom restored. They looked to Europe because they wanted not to become part of an ever-closer union as such, but to retain their independence won back from repression.

I want to mention Article 50, and do so with great fear and caution. The noble Lord, Lord Kerr, the secretary-general of our European Convention in 2002-03, is the well-known expert on this matter. I was merely a UK representative on that Convention. Article 50 was terribly important because at that time it was necessary to give some support to new countries coming into the European Union, so that in certain circumstances they could decide to change their minds. It was important and, as he and I have always believed, unilaterally revocable. That is the position. While it is a matter for sovereign discretion, to me, it has to be considered by the present Government as a vehicle to give us time to gather thoughts and actions together if we are left with what looks like a major impasse at this time. It is vital, and I hope the Government will not discard it or see it as anything other than a very useful apparatus in certain circumstances.

Finally, what saddens me—as someone who has openly admitted my preference for this country to be at the heart of Europe—is that, at this point in our history, we seem to be disengaging from Europe in such a way that it is breaking hearts needlessly and negligently. Although this House should recognise its limitations in constitutional terms, we should not forget that our reputation here for good common sense and pragmatism has never been more needed than it is now.

7.32 pm

Lord Griffiths of Burry Port (Lab): My Lords, my hearing is not what it used to be. I am struggling to recognise whether, in what the noble Lord, Lord Kirkhope, has just said, he was speaking positively of the noble Lord, Lord Callanan—who is now leaving the Chamber—who contributed, through the wonderful institutions in Brussels, to the well-being of the British reputation on the continent and beyond. If I did hear that, then before he goes let me pay a tribute to him.

I share with my noble friend Lord Watson of Invergowrie the need to confess the stimulus that brought me into this debate, when I had not felt I wanted to add to the amount of words being spoken. For him, it was an interview with Iain Duncan Smith on the “Today” programme on Monday; it was nothing as esoteric for me. For me, it was the need to mention that in neither of the documents that lie behind this debate—neither the agreement nor the political statement—are Wales or Scotland mentioned. That is worth saying.

I know there is a debate next week, brought by the noble Lord, Lord Lisvane, about the effect of leaving the European Union on the stability of the United Kingdom's union. That may well be a better place for me to make my remarks, but I wanted to register my concern in this debate as well as contribute to that one. There is a consequence—it may well be an unintended one, but one we can perhaps see coming—that the union of the United Kingdom, forgetting about Europe for a moment, will come under serious threat once we have to cope with new realities, and the strains that already exist within the countries of the United Kingdom will become even more apparent then.

In Wales, within a few short months of the referendum more thinking was being done, with White Papers being prepared and position papers being discussed, than happened here for a very long time. One of those rather key discussion papers, called *Securing Wales' Future*, laid out some of the core principles that the devolved Government of Wales would be looking for in any agreement reached between the United Kingdom and Brussels. I will not spend much time on it, but the bullet points drawn from that paper speak their own message.

The first refers to participation in the single market and customs union, which was thought to be essential for safeguarding trading and other arrangements. We must remember that, since devolution came about, nearly all the Welsh and Scottish lawmaking that has happened has been in a context where we belonged to the European Union. Unpicking something that is so completely integrated in that way is going to be very difficult. We are very afraid that in Wales we are going to lose, since 60% of our trade is done with the European Union.

The second bullet point is:

“A new migration system that links migration more closely to employment ... while protecting employees from exploitation”.

A link to employment means that anybody who could show that they have a job, or a reasonable chance of getting one, would be entitled to come. There was no mention of £30,000 as a threshold figure before they come—which is a ridiculous figure when you think about those who will be excluded from thinking of coming.

Other bullet points include:

“Maintaining ... social and environmental protections ... The vital importance of a transition period to avoid a ‘cliff edge’”,

and,

“Wales not to lose a penny of funding due to Brexit, as promised during the referendum”.

There were lots of promises made, and we need to do some fact checking, if and when all these things come to pass, as to how many of them are even vaguely addressed, let alone kept. For Wales, European funding has been vital to the regeneration of large parts of the country, so not losing a penny of funding is going to be a point that we come back to again and again, as we look at the actual proposals that come in subsequent legislation we have to consider. Another bullet point refers to the need for,

“A fundamentally different constitutional relationship between the devolved governments and the UK government”.

Having been involved in the European Union (Withdrawal) Bill, especially with the devolution clauses and in looking at how we could relax with what was promised and establish frameworks for the business we could not solve before we passed that Act, I recall that the Welsh Government were satisfied with those promises. Good work is being done within those frameworks, but in a debate in December in the Assembly the Welsh Government put forward some Motions that noted the agreement that is before this United Kingdom Westminster Parliament. When the Assembly debated it, amendments overturned the decision to “note” these agreements, in favour of rejecting them.

There is a head of steam in Wales, which when it sees more and more of what will come in its direction off the rich man's table, is getting very agitated indeed. It feels marginalised. It is not core to the considerations. Who has mentioned it in this debate, among all these hundreds of speakers? We heard about Welsh pubs; that is about as near as I recall. We should note the legitimate concerns of the devolved Governments, and the legitimate anxieties about the future of the United Kingdom and its constituent elements, and avoid consequences that would be harmful to us all, wherever we can.

7.38 pm

Lord Campbell of Pittenweem (LD): My Lords, it is a pleasure to follow the noble Lord, Lord Griffiths, not least because he drew attention to the absence to any reference either to Wales or Scotland in the documents with which we are concerned.

I have wondered to what purpose I would be here, and I suspect my purpose now is served by the opportunity to support the amendment put down by the noble Baroness, Lady Smith of Basildon. Nothing of substance has changed since the earlier debate. Although I have had the opportunity to look very quickly at the document produced in relation to Northern Ireland just before this debate began, I can see why the Government perhaps chose not to put it out before, because it really does not bear any serious interpretation, not least of course because the matter of the protocol is still covered by the advice issued by the Attorney-General on 13 November last year. Paragraph 16 states that—I am reading short—

“in international law, the Protocol would endure indefinitely until a superseding agreement took its place, in whole or in part”.

That remains the legal position. The document of today can have no effect of any kind on that.

As we consider these matters, the authority of the Prime Minister diminishes almost before our eyes. There was a government defeat last night and another one this afternoon. One thing which has certainly changed as a result of Brexit—and I hope your Lordships do not find the advice too alarming—is that you can throw away your copy of Dicey and, if you are lucky enough to have a copy of John Mackintosh's seminal work, *The British Cabinet*, you need not have much regard to that, because the doctrine of Cabinet responsibility has now been abolished by this Cabinet. It reminds me of the old Latin tag, “Quot homines, tot sententiae”—although, in these more enlightened days, one should perhaps say, “Quot personae, tot sententiae”. The Cabinet is now apparently at liberty to contradict the Prime Minister and to take issue with Cabinet colleagues, and for all that to be played out in public. It is no wonder that the Prime Minister's capacity for negotiation has been adversely affected. If she loses next week's vote on the document with which we are concerned, it may not be a constitutional crisis, but it will most certainly be constitutional chaos.

I am passionate about remaining in the European Union. I venture to observe that I am just as passionate about remaining as those who are passionate about leaving. I respect their passion and, in turn, I expect them to respect mine. I listened carefully to the speeches

[LORD CAMPBELL OF PITTENWEEM]

of the noble Lords, Lord Grocott and Lord Forsyth. I suppose that, in a sense—I hope that I do not do them any injustice—they see these as matters of conscience. Well, I too see this as a matter of conscience because, in my view, the case for remaining has only been confirmed by the conduct of the negotiations, studded as it was by the resignations of Cabinet Ministers. Now we have a deal that is neither in nor out and gives some of the obligations but not all the advantages of membership.

Promises were made. On a previous occasion when I introduced a debate in relation to the people's vote, I referred to them, but they are well worth describing again. On 9 April 2016, Mr Michael Gove said:

“The day after we leave we hold all the cards and we can choose the path we want”.

On 10 October 2016, Mr David Davis said:

“There will be no downside to Brexit, only a considerable upside”.

On 20 July 2017, Dr Liam Fox said:

“The free trade agreement that we will have to do with the European Union should be one of the easiest in human history”.

Where in the Prime Minister's deal is any delivery of those promises of utopia or Arcadia? If Mrs May's deal had been on the ballot paper on the occasion of the referendum, how many people do we think would have voted for it?

I pause only to observe that one advantage of the Government's behaviour—although I do not see it as such myself—is that they have managed to keep the issue of Scottish independence on the agenda, which is rather an uncomfortable prize from a party which is pledged to the union of the United Kingdom.

I want briefly to address the international consequences of leaving the EU. Our closest ally, the United States, is now led by a President whose serial iconoclasm is matched only by his unpredictability. Russia is led by Mr Putin, whose aspiration is to establish a sphere of influence in Europe. In China, President Xi leads a country determined to erase the humiliations of the past by the strength of its economy and its military capability. All those three have the same characteristic: they have disdain and disregard for the rules-based system of world order. In due course—be in no doubt—the United Kingdom will be challenged on some of these issues. Our natural allies are in the European Union, but outside the European Union we will be outside the room where the discussions are held and the decisions are made. Talk about co-operation if you will, but co-operation has never the same value as participation, deliberation and formation of policy. In my judgment, the geopolitical case for our continuing membership of the European Union is overwhelming.

7.45 pm

Lord O'Neill of Gatley (CB): My Lords, I want to start by flattering the noble and learned Lord, Lord Hope, for his very wise words early in this debate, which have given me a little more belief in my own hunches. As suboptimal as the Government's deal is, it might be the least suboptimal of them all.

Based on my experience of thinking about the world economy and world trade, I think it important to remember that the biggest determinants of a country's

trade performance are its domestic savings performance, the size and growth rate of domestic demand in other markets as well as at home and, specifically for exports, the quality of goods and services that it has to sell. While the precise terms of a trade agreement are important, they are nowhere near as important as those factors. For the past two or three years, Germany has sold more goods and services to China than to Italy. EU membership has neither caused nor hindered this outcome.

That said, leaving a well-established, large, rules-based trade area such as the EU will undoubtedly cause major problems in so-called global supply-related businesses, our auto industry being a particularly good example. In this regard, the idea of the UK leaving the EU with no agreement whatever should surely be for the birds and resisted at all costs, as it will potentially lead to major dislocation of the UK's central position in any such industries as well as causing all the havoc that has been discussed recently.

I would describe myself as unexcited remainder. The biggest point that I want to make, linked to my opening comments, is that membership of the EU is not the most important issue facing Britain's economic future. Our persistently poor productivity performance, and with it our severe regional geographic inequality, our intergenerational inequality, our education and skills challenges and our tremendous housing crisis are all more important. Being a member of the EU, and its usefulness in opening up further the UK to international trade and investment, has probably boosted UK productivity compared to if we were not members—I repeat, probably—but it has not stopped the ongoing relative decline in our productivity performance.

The underperformance of UK productivity just since 2008, compared to the pre-crisis trend, accumulates to being between 15% and 20%. This is larger than any single estimate that I am yet to see about even the hardest of Brexits, although my own hunch is that if we went down that ridiculous path, it would probably feel like it in the first year. Our trade position should not be an end in itself but part of an overall economic and broader policy aimed at boosting the country's productivity, incomes and equal opportunities.

Since the 2016 vote, it is concerning how so few new government initiatives have appeared and how many existing ones have essentially become frozen, including, crucially, many of those that relate to our productivity challenge—of course, I cannot miss the chance to mention here the northern powerhouse and the Midlands engine; I am sure that there are many others like them. It is surely unacceptable that Brexit requires so much time and resource that there is no scope for things that in my view are more important. Whatever the outcome of the current EU debates and plans, this needs to urgently change.

I also continue to suspect, in this regard that, if previous Governments had pursued such goals with rigour and vigour, it is entirely possible that the results of the referendum might have been somewhat different. The way I put these comments might lead to a conclusion, as I hinted in my admiration of what was said by the noble and learned Lord, Lord Hope, that the Government's withdrawal Bill should therefore be

supported. Certainly the quicker we get on and do something about what that vote showed, we should be able to more seriously turn to these issues. If the evidence were that the Government had not been able at all to focus on these issues, then I would lean towards that conclusion. As suboptimal as the Bill may be, as highlighted by so many, this would suggest, “However, let us just get on with it”.

Against this, I am also open-minded and easily persuaded, of course, by those who argue the case for seeking a more substantial agreement or an alternative one which might further minimise negative trade and labour consequences of our departure. Indeed, the case for yet more time with a delay to Article 50 so that Parliament could eventually find some sort of majority also has its merits. Like many others, at least superficially, the case for a second referendum, on the presumption that people who voted to leave would change their minds, has some appeal. However, contrary to what I have heard a number of others say this afternoon and this evening, surely this would require a much more substantial regular shift in the opinion polls to take such a risk with delicate aspects of our democracy.

While none of these alternative options is especially appealing, despite what I have just said, if they mean a continued lack of government attention to issues that I have outlined, they should be avoided. However, they certainly should not be avoided if they are done to stop the ridiculous idea of crashing out without any deal.

I will finish by reiterating my central point, that we must no longer neglect so many crucial domestic policy issues, whatever our end relationship with the EU.

7.52 pm

Baroness Mallalieu (Lab): My Lords, I have a clear impression that the country outside Parliament is totally fed up with Brexit. They just want us to get on with it. They are fed up with the scare stories, they are fed up with the threats and the hand-wringing, they are fed up with the uncertainty, and they are totally sick of those who, after having agreed that the result of the referendum must be respected, persist in trying to poke sticks in the spokes of legislative progress.

Surely the time has come now, in this House and of course in the other place, to look for solutions and not just to create and look for further problems. I wholly agree with two out of the three parts of the Motion in the name of the noble Baroness the Leader of the Opposition. The Commons will determine this matter on Tuesday if it is allowed to vote. Mrs May’s proposed deal simply will not do. It is not even a compromise; it is a capitulation with a wish list attached. Not only is it a recipe for prolonged uncertainty, as the Attorney-General’s advice—of which we have seen only a snippet—made clear, it puts us in a substantially worse position to conduct negotiations on the items in the wish list in the future.

I wish the Prime Minister the very best of luck in trying to secure some improvements, but if she thinks some nebulous reassurance about the Northern Ireland backstop will do the trick, she is going to have to think again.

On the second part of the Motion tabled by the noble Baroness, Lady Smith, which calls for a rejection of a no-deal outcome, I regret that I cannot agree. That surely is precisely the mistake which our negotiators made at the very outset of these talks. For any successful deal, you do not rule out at the outset walking away with your money. A negotiated clean break may still prove to be our best option or, indeed, our only one.

Where do we go from here? Please do not let us go to another referendum. Surely democracy works only if, having given the electorate a role on an issue, both sides agree to respect and implement the decision. If you reject a democratic mandate, you both fuel contempt for politicians and, much more seriously, undermine democracy. I know another referendum is, for some people, a last straw to grasp at in the hope of a different result but, whatever the result, the present problems would be worsened. If it was a vote for leave, we would be back trying to negotiate with the Commission with no reason to think that it would have softened in the least. If remain, we would set in concrete the current resentment and divisions and herald the start of an even less pleasant campaign, of which the most reverend Primate the Archbishop of York has, I think, correctly warned elsewhere.

Despite the touching faith in polls shown by the noble Lord, Lord Newby, I suspect that the result would likely be the same, despite a campaign of fear. There are three reasons for this. First, there is no indication that 17.4 million electors who voted to leave now want to be part of a single European state with its own army. Yet that is the direction of travel in which Monsieur Juncker and the Commission are driving the train at speed. Secondly, during the recent negotiations, neither he nor Monsieur Barnier, who have been the face of the EU over the past two years, has endeared himself to the British people. Thirdly, as has already been said, the EU has itself changed since the referendum. Many of us now look with increasing concern—as the noble Lord, Lord Forsyth, pointed out—at some of what is happening in France, Germany, Italy, Greece, Spain, Poland and beyond, which is alarming. The Commission appears to have no answers—if, indeed, it is even listening.

History has shown time and again that, when politicians stop listening to people, people turn to extremes. A better deal seems unlikely, much as we would all wish it, so it must be right, surely, to intensify the preparations here and the discussions with the EU and the individual states to overcome the immediate difficulties and inconveniences. I do not make light of them at all. We are trying to extract tentacles which have forced their way into the way we run our country for many years. I do not criticise the money by which the Government propose to make sure that we are ready for what is going to happen on 29 March.

Surely the time has come for us to set our own agenda and timetable and not ask the EU’s consent—to spell out in terms what we are going to do here, albeit for a limited period, during which a long-term agreement can be reached with the Commission on Mrs May’s wish list. We should be generous with the terms of trade with the EU—no tariffs, no hold-ups at our end, generous arrangements for EU citizens here, and an

[BARONESS MALLALIEU]

immigration policy which ensures that our health service, our agriculture and industries which need seasonal workers can get them in. I understand that the Government have started to do this, and I applaud them for doing so. They will need to do it with greater intensity and more publicly before 29 March, and indeed they would be rightly condemned if they were not spending money now to do so.

The time has come to look for the solutions. The electorate has asked this Parliament to make changes to our relationship with the EU. Whether we like them or not, surely it is time now to show courage and not to retreat or try to cop out with a further referendum. Brexit can and, I believe, will be a success, but it would be greatly helped if the vast experience in this House was turned to lending a hand to create and embrace new opportunities and to retain the good bits of the EU—there were some—instead of simply trying to capsize the boat.

7.58 pm

Lord Trevethin and Oaksey (CB): My Lords, it is a great pleasure to follow the noble Baroness, and I agree with just about everything she said, but I shall address some similar points in my own way.

The withdrawal negotiations were unquestionably always going to be very difficult. They represented a negative-sum game, and we had two significant cards to play. One was money. Inexplicably, we tossed that card away on day one, before the talks really started, so that one has gone. The other card we had to play still just about exists, although it has not been played as it might be. That is the threat of no deal. No deal is bad. It is bad for this country. I entirely agree with much that has been said on the other side of the argument about that.

It is also unquestionably bad for the other 27 and particularly bad for our Irish neighbour, which is taking a central part in the negotiations. That card has been greatly weakened because we failed to make very visible preparations for no deal at an early stage. I am forced to wonder whether the Prime Minister and her negotiating team have played much poker in their lives, because there was scope here for a certain amount of constructive bluffing, which might or might not have been called by the EU negotiators. That scope is much reduced but has not entirely disappeared because, contrary to what has been said by some speakers, it remains the default position that in about 80 days we will come out of the EU on a no-deal basis unless something happens to stop that. Clearly, things may happen in the other place that prevent that admittedly undesirable outcome, but the possibility remains and it is to be hoped that something will turn up in respect of an adjusted and better deal over the next few weeks. Something needs to turn up because the present deal is, I suggest, plainly unsatisfactory and unacceptable. It is not really a deal at all; it is an agreement to enter into an agreement at some point in the future.

I note that reliance has been placed by those who speak for the Government on the existence of a best-endeavours clause. I have spent some time over the years, in various cases, trying to enforce best-endeavours

clauses in much simpler, bipartite cases in front of hard-headed commercial court judges. I have not had much luck. They are very nebulous, slippery things. They are, I respectfully suggest—I will listen with great interest to anything the Minister may say about this—simply impossible to enforce in a case involving 27 different counterparties with 27 different sets of interests and involving a rather nebulous arbitration process, as opposed to proceedings in these courts. So something needs to turn up.

We know from this and earlier debates that many in the House hope that what will turn up is referendum mark 2, and I shall conclude my remarks by making some observations about the desirability or, as I see it, the extreme undesirability of a second referendum. I am very doubtful—I agree with the noble Baroness about this—that the proposed second referendum, if the questions that are to be posed in it can ever be formulated, will lead to the result that the campaigners desire. I suggest that the dodgy figure on the side of the Boris bus will be replaced in the second referendum by three other figures: the impressive but slightly condescending Monsieur Barnier, the frankly preposterous Mr Juncker and the unspeakably smug Mr Tusk. The British people have watched those three gentlemen negotiate with our representatives over the last two years and I foresee that they will be asked if they really want to go back to those individuals and kowtow. I am not at all sure that the answer to that question will be yes.

Let us suppose that I am wrong about that. Let us suppose that referendum mark 2 achieves the desired outcome, which would be regarded as a triumph by many in this House and the other place. How would it be regarded by 17.4 million who thought that this issue had been disposed of in 2016? I am sorry to be blunt but I suggest they would regard it as a fix, a stitch-up, a plot against democracy and a monstrous breach of trust. Why a breach of trust? They have, in writing, a document the Government sent to every house saying that this was a once in a generation decision—I emphasise the word “once”. “It is your decision and we will enact what you decide”. If that promise is broken, the consequences will be serious. The question for all of us, which should trouble all of us, is not whether this talk of a plot against democracy is objectively valid. That is an interesting question but I am not addressing it. The question is different. It is: does such talk, in the event of a second referendum, appear sufficiently plausible to be believed by a large part of the 17-odd million who voted to leave? The answer to that question is plainly yes—it would be believed by many millions of our country men and women.

Time does not permit me to develop all the arguments that would be deployed by those whose interests lie in fostering talk of conspiracies and plots, but I shall just identify three or four. First, the EU has form in ignoring and then reversing democratic decisions it regards with disfavour. Ask the French, the Dutch, the Danes, the Greeks and the Irish. Secondly, the recent decision of the Court of Justice of the European Union which held that the Article 50 notification can be reversed will be seen by many as rather odd—convenient for some, but rather odd—given that the

Supreme Court, in an entirely proper and carefully reasoned decision in the Miller case, based its decision on a premise that was common ground between the litigants that the notification could not be withdrawn. Thirdly, there is the hapless conduct of the negotiations. It will be asked: were their hearts really in it? Fourthly, there will be difficulties about the formulation of the question or questions to be put in a second referendum. Those difficulties will require the attention of the Electoral Commission and may lead to litigation. They will certainly generate suspicion among the leave contingent.

Where does this all lead? I doubt he has been quoted in this Chamber before, but at the Sex Pistols' last concert the lead singer said, "Ever feel you've been cheated? Goodnight". If, in the events I am contemplating, that question is asked of the British people and the answer is yes, democratic processes in this country will be poisoned for a generation. Those are stakes even higher than those involved in the Brexit process itself.

8.07 pm

Baroness Neville-Rolfe (Con): My Lords, as a member of the EU Committee and its Financial Affairs Sub-Committee, I thank our chairmen, our chief clerk and their team for the superb work that they have done: 40 respected reports since the referendum, guidance on the detail of documents from the EU and the Government and many well-organised visits. I know from my business life that one sees a different perspective at the front line. I also know from business how important it is to have a plan B in case the various Commons votes consign us to gridlock and no deal. So I am glad that the EU Committee is moving on this month to look further at no-deal preparations.

A lot more has been and is now being done to prepare for no deal than has, I think, been appreciated. I know from my time at the Treasury that work started very early there and at the Bank of England. Outside financial services, things are gathering pace: Michael Gove says he is now spending 40% of his time on no deal and I know that it is more than that for many EU-facing civil servants. Indeed, I was somewhat reassured back in September when I heard a complaint from the horticulture industry that the portaloos used by food farms had all been hired by Whitehall for use by lorry drivers on the M20 after Brexit day. This House can play and is playing its part in responsible preparation. So the Trade Bill is due to resume on 21 January and must be supported, along with the SIs coming through to bring EU rules into UK law so as to avoid a legal vacuum.

I turn to the Labour amendment, which calls for an emphatic rejection of hard Brexit. To my mind it would be difficult to devise a more misguided suggestion. Advancing such a proposition will have only one effect; namely, to encourage the EU to become even more intransigent, on the basis that we will accept whatever they offer. Perversely, it also makes no deal more likely since the EU will be encouraged to overplay its hand, which arguably it already has. So I believe the Government are right to be accelerating no-deal planning.

I want to dwell on future opportunities post Brexit, but I will comment briefly on the withdrawal deal. My conclusion, like that of some others today—the noble

Lord, Lord Grocott, and my noble friends Lord Dobbs, Lord Forsyth and Lord True—is that it does not represent a satisfactory way forward at present for a number of reasons. The Irish backstop is the most prominent. I have been astonished to hear government lawyers advising that circumstances could arise, which we would be powerless to prevent, in which there would be no legal way for the UK ever to exit the backstop, but that it was right to press ahead because these circumstances would probably—probably—not arise.

The time to say no and negotiate the key detail is at the marriage, or in this case the divorce. We have leverage now that we will not have again. Under the agreement, we are paying over £39 billion in the next two years and countenancing a leisurely return to the UK of our €3.5 billion share capital in the European Investment Bank. This rundown will take until 2030, during which time we will receive no benefits. While the political agreement contains some good features, it is very general, has omissions and is not legally binding. Unfortunately, it also puts the EU, led by a new EU Commission, in an even stronger negotiating position than hitherto. I am sure we will be asked to pay heavily for anything substantive.

Another disadvantage is that it will prevent us developing trade relations with non-EU countries—for many years, at any rate. This is a great pity since, if Brexit is to be a success, we need to do things differently. I fear that the mindset of those conducting the negotiations has been wrong. They appear to have assumed that the closer we are to the EU, the better. I am among those who believed that we would have been better remaining in the EU as a full partner and I voted accordingly. But it does not follow that the next best thing is to be as close as possible to the EU, especially when we have lost the ability to influence the direction of travel and the detailed rules. A half Brexit is a recipe for frustration and long-term failure, and I fear that that is what is on offer.

I have a different vision, which is to use our independence to build a more successful, less divided nation, which looks after its own people and shares the fruits of their success. There are risks and it may take more time than I would like, but I believe we must seize the opportunity of Brexit to become more inventive and entrepreneurial and to increase clarity, simplicity and efficiency in the way we govern. It is depressing to hear Ministers competing to declare how such and such a regulation will remain in full effect after Brexit or that controls and regulations will be added to.

A second opportunity is to foster enterprise. The most recent example is the EU plans to force us to make hundreds of thousands of small businesses pay more VAT. We should not be reducing but doubling the threshold at which businesses pay VAT. I have been reading a book by the opposition MP for Birmingham Hodge Hill, Liam Byrne, about the talent, risk-taking and value creation of British entrepreneurs from Matthew Boulton to William Lever. They would never have achieved so much and remoulded business and Britain under today's blanket of onerous and ever-changing rules. The UK has a strong digital sector, but it is no accident that today's leading innovators mainly come

[BARONESS NEVILLE-ROLFE]

from the US. A free Britain—not under Jeremy Corbyn, I hasten to add—can build a tax and economic framework that supports investment. We must look to ensure that new rules and regulations favour smaller and scale-up businesses and the middle-sized companies that do so much for the German economy—rightly highlighted by the noble Lord, Lord O’Neill.

Thirdly, we need a sensible system for the movement of people. I believe that the failure of the EU on this visceral issue was a prime reason for the Brexit result. I am worried that the Home Office’s latest proposals are also doomed to failure. I believe the warnings of the noble Lord, Lord Green of Deddington, are given too little weight.

Fourthly, and related, we need a decent infrastructure and skills based on honest projections of future population. Advances in housing, transport, education, health, digital and data and an apprenticeship system that works to help the younger generation could all be part of a post-Brexit dividend.

Finally, on security, it is in everyone’s interests for the UK to continue to have a collaborative relationship with the EU. But in any likely scenario we will be giving every bit as much as we receive. Demonstrating less enthusiasm might be a better approach.

8.14 pm

Lord Hutton of Furness (Lab): My Lords, I shall certainly be supporting the Motion in the name of my noble friend the Leader of the Opposition. We have heard some excellent speeches on all sides of the debate this evening, but I will add one or two thoughts of my own. I know it has often been said of these debates that everything has already been said but not everyone has said it, so I will take my ha’porth now and add a few thoughts on this extremely challenging moment for our country.

It is true that our country and our Parliament are more divided and polarised today than at any time in living memory. Our politics have never been as toxic. I am not sure we have faced a graver or more serious challenge to the future of our country and its prosperity in the last 50 years than we do today. In short, we are in a hell of a mess. We do not have to look very far for the reasons. The 2016 referendum was both a triumph of democracy and a colossal failure of democracy. It was a triumph of democracy in that it produced a huge participation rate and turnout. Hundreds of thousands or millions of people voted who do not normally vote, and that is an amazing thing. But I fear that it was also a serious failure in our democracy. Many people were seriously misled about Brexit, and the advocates of the UK remaining inside the European Union ran an entirely negative and inevitably doomed campaign.

So how can we bring ourselves back together? Can we do that? I think it is clear to all who have taken part in this debate and have watched the news and followed events in the last few months that we will not be coming back together as a country under the terms of the Prime Minister’s agreement. That is pretty clear. She has at least managed to unite Brexiteers and remainers in opposing it. Sadly, the agreement reflects

many serious errors of judgment, negotiations and communications. It has inevitably led us to this low point in our history. Invoking Article 50 when we did, with no plan and very little planning, was one of those mistakes. Her speech to the Tory conference in 2016, her later Lancaster House speech and her red lines—which effectively prioritised the ending of free movement over every other objective—were catastrophic errors. There has been a complete failure—we have heard a repetition of that today—to understand the perspective of other member states of the European Union in this process. We have been living in cloud-cuckoo-land. These are huge errors for which, I am afraid to say, the Prime Minister cannot escape criticism. I believe she has pandered throughout to what the Chancellor of the Exchequer recently called the “extremists” in her party, and it is now far too late to stand up to them.

There could never be any such thing as frictionless trade if we were to leave the European Union and refuse to accept free movement and the jurisdiction of the European court. We chose to believe something else—that the European Union would eventually concede to everything we wanted if we simply refused to budge. This is the Davis-Johnson strategy, and it was pitifully inept. When this strategy failed, the inevitable compromises enshrined in this agreement were seen by the extremists as a betrayal. What a farce. A no-deal Brexit championed by the ardent Brexiteers would effectively involve a British Government renegeing on their clear legal commitments under existing EU treaties and breaking the Good Friday agreement. This is absolutely unthinkable.

The Government’s fundamental problem is this: the Prime Minister, who we all wished well in these negotiations, is now trying to appeal very late in the day, at the last possible moment, to the centre ground—to people like me, who wanted to respect the outcome of the referendum but who want us to leave on the best possible terms. Sadly, her scorched-earth policies have destroyed that centre ground.

Now that we have all digested the terms of the Prime Minister’s agreement, at least 21 months of voiceless rule taking leading, at best, because of her red lines, to what can only probably be described as a bog-standard free trade agreement at some indeterminate time in the future, it just does not represent a good enough deal. We remain, sadly, as divided as ever. Exhortations for us to come together will not work because this deal is not good enough.

It is pretty clear to all of us, and I am sure we know this in our hearts, that the Prime Minister will have to put a different policy to the House of Commons if she seriously wants an agreement to leave the European Union to be accepted. There is no alternative in front of us, so I think the Article 50 process will have to be suspended. If she cannot get House of Commons agreement for a deal, I see no other option than a general election or a second referendum. That will not be straightforward. Ivan Rogers said quite rightly in his excellent speech at Liverpool University that there was nothing likely to be more toxic for British politics than a second referendum. He might be right that there would be nothing more toxic than a disorderly Brexit.

8.21 pm

Lord Chidgey (LD): My Lords, I congratulate the noble Lord, Lord Hutton, on his robust speech and reassure him that I too will be supporting the Motion in the name of the noble Baroness, Lady Smith, although not necessarily for entirely the same reasons.

I make no apologies for being a committed European, for fundamental and, in my view, irrefutable reasons. In short, through the European Union, we are able to address issues that recognise no national boundaries on a global scale. As a committed European, I founded the Hampshire branch of the European Movement, way back in 1989. Much later, as an elected parliamentarian, I served on the European Convention on Human Rights, and on the Parliamentary Assembly of the Council of Europe—both very informative.

For over a decade, I was the UK member of the advisory council of the Association of European Parliamentarians for Africa, working with parliamentarians primarily from other EU countries, managing programmes for capacity building, accountability, and transparency, among our counterparts in developing countries throughout Africa.

Introducing and managing the process of parliamentary accountability, where Governments are subject to the sovereign will of Parliaments, in representative democracies, was a massive step for many, and from current events here in the UK, one that we seem to have almost discarded. Here I agree with the earlier comments made by the noble Lord, Lord Howell, on parliamentary responsibility in the democratic process.

I would like to put a personal slant on this. Before entering Parliament, I had the good fortune to enjoy a successful career as a partner and director in one of the UK's leading international consulting engineering practices. I was responsible for the business development and project management of our interests throughout much of francophone Africa, the Middle East and Europe. Working with African clients, ruled by Marxist politicians, whose engineers were trained in Russia, and administered under a French bureaucracy with little knowledge of English was particularly challenging. The fact that the funding agencies based in Saudi Arabia insisted on communicating solely in English made it even more so.

I calculate that at today's prices the capital value of this portfolio would have been some \$2.5 billion. Much of this business was won in the face of fierce and implacable competition, including dire financial and occasionally personal threats. I mention this in passing, because it taught me just how difficult it can be to win export business, even in our established markets and traditional areas of expertise. In due course, I was invited to join the board of a major UK utility with over 2,000 employees and a turnover of around three-quarters of a billion pounds as its global director for business development and exports.

Noble Lords will not be surprised that this background gave me an extensive network of contacts across Africa, Europe, the Middle East and south-east Asia. Since the referendum, not one has said to me: "What a jolly good wheeze it would be for the UK to leave the EU to venture into the supposedly unclaimed markets across

the sunlit uplands of the developing world"—not one. Without exception, each and every one who has talked to me believed that we had lost control of our senses, forsaking a major part of our export income lying just on our doorstep for intangible, unpredictable and, in many cases, inaccessible world markets.

The world outside Europe is not queuing up, eager and expectant, waiting for our re-entry into the markets that we abandoned so many years ago. For example, at the recent London CHOGM, the then Australian Foreign Minister, Julia Bishop, said to the gathered crowds: "We are considering trade talks with the UK, but we are in negotiations with the EU". Apparently, we have to leave the EU to access China's market. As the noble Lord, Lord O'Neill, pointed out, how is it that Germany is already China's fourth largest trading partner, with total trade rising to €187 billion in 2017, up by nearly 10% from 2016? In India, the WTO ranks Germany sixth, while the UK is a lowly fifteenth. There has been some increase in our trade figures in some cases, but nowhere near enough to fill the huge financial chasm that a post-Brexit situation would create.

For example, Belgium, Germany and Ireland are the second, fourth, and eighth largest traders in Nigeria. While UK trade increased by 23%, trade with France increased by 57%. This is not Project Fear. These are trading facts from the WTO. Is it not time that we started to face up to the facts? It was John Maynard Keynes who first said:

"If the facts change, I change my mind".

But the facts have not really changed. It is just that they have now been revealed, warts and all.

The obfuscation, the misleading data, the fake facts, the targeted multimedia propaganda, the illegal election expenditure in the campaign, all stripped away to reveal that, in economic terms, we will be better off staying in the EU rather than leaving. Leaving the EU will make this country poorer and those who are least able to will bear the greater burden.

In this debate, we have had a wide range of quotes. May I add some of my own about parliamentary democracy versus delegatory plebiscite? When Edmund Burke was defending representative democracy, he said:

"Your representative owes you not only his industry, but his judgment and he betrays instead of serving you, if he sacrifices it to your opinion".

Today, it seems as if governance by plebiscite will eventually come to depend on the number of likes on Facebook. Nevertheless, a people's vote is becoming the least worst option for getting out of the bind that we are now in.

Finally, nationalism is beginning to grow again in our western democracies, driven by austerity, poverty and exclusion. Surely if we are to defeat this and lift the burden from the shoulders of the poor and the resentment and hatred that accompany it, it will be through the nation states of Europe working together for the common good under the umbrella of the European Union.

8.28 pm

Lord Vaux of Harrowden (CB): My Lords, I declare an interest, as I am a farmer who receives payments under the CAP. I commend the Prime Minister for doing exactly what she said she would do when she became Prime Minister. In really difficult circumstances, she has successfully negotiated an exit deal with the EU. I agree with her that it probably represents the best, or at least the least bad, exit deal that could realistically be agreed. The EU is also very clear that negotiations are now at an end.

It may be the best deal available, but is it a good deal? This is where I start to struggle. Every reputable economic analysis shows that we will be worse off. I would be prepared to live with some short-term damage, but the Treasury's long-term economic analysis clearly shows that we will still be materially worse off after 15 years. This pernicious long-term decline concerns me more than anything else.

These are not just numbers. It is very easy for a rich fund manager who can move his business to Ireland, a billionaire engineer who manufacturers in Asia, or—dare I say it?—a retired politician with a gold-plated state pension to say that a 3% lower GDP is unimportant or worth risking, and that we will survive. They have nothing to lose. But what about the car worker in Sunderland or the small sheep farmer in Cumbria? What about the rural business providing services to that small farmer? It is the poorest who will feel the impacts of this. These numbers will translate into real job losses, real impacts on livelihoods and, most importantly, reduced opportunities for our younger generation. Like many noble Lords, I have enjoyed the right to study, live and work in Europe, and I greatly regret the loss of this right for our young people.

Our public services depend on a strong economy to generate the tax to pay for them. As just one example, our financial services industry generates total tax of around £75 billion a year, 11% of our total tax take. Most financial services businesses have already had to execute their plans and, with the uncertainty of outcome, have had to assume no deal. In fact, the political declaration refers only to third-country equivalence rules anyway, which is close to no deal in itself. It is not just about losing 5,000 jobs, or whatever the figure is. The activities that these companies are moving are revenue-generating—revenue that is currently taxed here. I assume that a responsible Government would have carried out an analysis, so perhaps the Minister could tell us how much of that £75 billion they expect to lose and how they propose to make up for it.

As has often been rightly said, this is not just about economics. Will this deal heal our divided society? I fear not. It simply pushes the most important decisions about our future down the road, a process likely to drag on for years and with all the same acrimony. The political declaration is full of the usual platitudes we have come to expect: “ambitious”, “broad”, “deep” and so on. They are all very laudable but meaningless and non-binding. I am quite surprised to find myself in agreement with the noble Lord, Lord Forsyth, on this. We have agreed to pay £39 billion up front just for a period of transition, with no certainty of where we will end up.

The Prime Minister has told us that the alternatives are no deal or no Brexit. No deal is clearly disastrous. The arguments have been well made by other noble Lords and I will not repeat them. The Government, however, continue to threaten us with no deal, and to spend billions of pounds of taxpayers' money on increasingly farcical preparations, the latest being driving 89 lorries from Manston to Dover—apparently, it was supposed to be 150 lorries, so presumably the missing 61 are still waiting for ferries at Ramsgate.

I find it really difficult to understand the Government's position on no deal. They acknowledge how damaging no deal would be, say that they do not want to do it, and, as we now know with absolute certainty, have the power to prevent it. No deal can happen only if the Government actively decide to do it. It is high time that the Government ruled it out and stopped wasting time and taxpayers' money on it. I will therefore be supporting the Motion in the name of the noble Baroness, Lady Smith.

I do not like this deal, and no deal should not even be an option. That leaves me with a referendum on the deal, with remain being the alternative. I find myself supporting this with a very heavy heart and some misgivings. I hear clearly what other noble Lords have said about how divisive another referendum would be. However, as I have said, I do not believe that this deal will heal the divisions. Perhaps a clear result, in either direction, in a referendum on the deal, might provide the closure we need.

I am also deeply anxious about creating a precedent for Scotland. Sadly, though, I think that cat is already out of the bag. If we go ahead with Brexit, the SNP will say that it was against the will of the Scottish people, and if we have a referendum, its members will argue that we have set a precedent.

I find the argument that letting the people make the final decision is somehow anti-democratic entirely bizarre. We now know what deal is proposed, not just the general concept of Brexit, and we have a much clearer picture of the consequences. My noble friend Lord Lisvane put it best in his brilliant story last year about his timid aunts. I fear for his aunts now—they are in danger of being made to sit through a double bill.

People are allowed to change their mind in a democracy. There are also over 1.5 million young people who have turned 18 since the referendum. It is their future we are talking about and they should be allowed their say. So let us trust the people.

8.34 pm

Viscount Trenchard (Con): My Lords, it is often said that the principal reason people voted leave in the referendum was concern about immigration. However, subsequent research has shown that an even more important reason was that most people want control of our laws and regulations returned to this Parliament. Unfortunately, the agreement in its present form fails to achieve that, because the Irish backstop threatens to reduce us to the role of rule-taker, without a direct voice in the formulation of those rules, as was clearly explained by the noble Lord, Lord Kerr of Kinlochard, in his speech on 6 December. Even if it is true that the EU does not want the backstop to be applied, its

existence as the default position hands all the cards to the EU in the negotiations over our future trade relationship, which was, after all, supposed to be largely agreed by now but is not.

I do not believe that the apocalyptic predictions of serious and sustained damage to jobs and to the economy, as suggested by many, would be the result of leaving the EU and trading under WTO rules. Many predicted from the outset that the only deal that the EU would offer us would be a bad deal, and we should have done more preparation for the no-deal scenario. We should not call a clean Brexit “crashing out”. There would of course be difficulties, but economic necessities would ensure that the worst impediments to trade, whether accidental or wilful, would be fairly quickly sorted out. We need to remember that it is not Governments who make trade; it is businesses. The advantage of a clean break would be that we would be able to negotiate the new trading relationship we want with the EU without our hands tied behind our backs. We would of course honour that part of the £39 billion that is due and for which we are liable. We would anyway not have to pay the £20 billion net contribution for the two-year implementation period. We would not be crashing out but cashing in, as explained so well by my noble friend Lord Lilley in his excellent paper *30 Truths about Leaving on WTO Terms*.

Whatever economic challenges may arise, the UK economy is well placed to adjust to them. It is among the most flexible and open of the advanced economies in its product and labour markets, and it has both a flexible exchange rate and an independent monetary policy. We also have full control of our fiscal policy and, at the moment, a highly competitive exchange rate.

Although we have debated the withdrawal agreement for many hours, comparatively little has been said about security and defence. I have a high regard for Sir Richard Dearlove, a former head of MI6, and take seriously his warning that the withdrawal agreement clearly puts British forces and our intelligence and security interests under the rules of the common foreign and security policy. The European Commission has apparently also confirmed to the Government of Cyprus that the proposed future security and defence co-operation with the UK would not involve decision-making.

Noble Lords may also have noticed that Germany, the Netherlands and six other member states tried unsuccessfully in December to prevent the adoption of the new directive permitting member states to require telecoms companies to provide them directly with e-evidence on criminal suspects anywhere in the EU without requiring judicial approval in the host country. As the German Justice Minister explained, the principles of the rule of law are not respected equally everywhere in the EU. The first duty of the state, above trade, is the security of its citizens. Does the Minister believe that the security and defence aspects of the withdrawal agreement do not in any way impede the ability of the state to carry out its first duty?

Does he not also accept that they would have a damaging effect on the Five Eyes intelligence partnership? I would much rather we leave the EU under an agreement to enter into a future relationship similar to CETA or, better than that, a Canada-plus-type deal, such as has

been clearly offered by Messrs Tusk and Barnier. My choice would be Plan A+, proposed by the IEA. This sensible and comprehensive plan explains how it is possible with existing technology to conduct the necessary border checks without installing new infrastructure. We have allowed the EU to blow up the question of the Irish border to a level of significance far greater than it warranted. This has been used by the EU because it quickly understood that it is our soft underbelly, and by the Irish Government because it assists them in their objective of prising Northern Ireland away from the UK. The excellent speech by my noble friend Lord Trimble on 6 December pointed out that it is not the act of leaving the EU that is damaging the Belfast agreement; rather it is what the EU is attempting to do by way of reprisal that threatens to damage it.

I admire the Prime Minister’s resilience and determination and I have stood loyally behind her throughout the two and a half years since the referendum. As your Lordships may have noticed, Mr Abe, the Japanese Prime Minister, who arrives in London tomorrow morning and will hold talks with our Prime Minister tomorrow, has on several occasions stated that Japan is a strong advocate of the UK’s accession to the CPTPP, six of whose 11 founder members—Australia, New Zealand, Canada, Singapore, Malaysia and Brunei—are Commonwealth countries. Under the proposed deal, I fear, the prospect that we will be bound to align our standards and regulations closely to those of the EU will make us unattractive as a potential trade partner. Indeed, Gavin Barwell acknowledged this as a point of concern in reply to my question at a meeting in December. Will the Minister confirm that it nevertheless remains government policy to seek accession to the CPTPP, and confirm that the Government think that other countries will still be interested in entering into trade agreements with the UK under the terms of the proposed deal? I strongly recommend that your Lordships read the excellent paper *Trading Tigers*, published by Policy Exchange, which explains well the case for UK accession succinctly and concisely, in just 12 pages.

As the most reverend Primate said on 5 December, quoting from Proverbs:

“Where there is no vision, the people perish”.

I would like to see more vision, more optimism and more confidence shown by the Government. This is not a damage limitation exercise. It is a great opportunity for this country to revert to our natural state as a strong advocate of competitive free trade throughout the world, which is the best way to achieve economic growth and prosperity for future generations.

8.42 pm

Baroness Kennedy of The Shaws (Lab): My Lords, I do not support this withdrawal agreement and I will be supporting the idea of a second referendum. My first and preferred choice would be that we acted in our traditional way with representative democracy, meaning that we just sent back our letter of withdrawal from the European Union. But that is unlikely to happen—even with renewed vigour of the House of Commons. I support the Motion of the noble Baroness, Lady Smith, saying that we should take no deal off the table because of its catastrophic consequences.

[BARONESS KENNEDY OF THE SHAWES]

I have a number of questions for the Government. Do they agree that if we head towards no deal, it will be necessary for there to be legislation to address the implications of that trajectory, given that the withdrawal Act did not contemplate or put in place steps to deal with no deal? I ask that because of the great experience of the learned counsel who sits on the Front Bench to answer such questions. If there is no deal, do the Government agree that the political declaration cannot be prayed in aid by no-dealers, because it does not apply, as it is part and parcel of Mrs May's withdrawal agreement? Therefore, it falls away as soon there is a vote against the Government's current deal.

I want to reiterate that, along with the rule of law, our parliamentary system of representative democracy has been one of our gifts to the world—certainly to many parts of the world. It is not our tradition to run things by plebiscite. We know that some policy matters of national concern are of such complexity that they require careful research and debate and the sharing of expertise. One thing that has happened since the referendum is that the general public have been learning, in the way that all of us have, about the sheer extent of our collaborations and the benefits that have come from our work inside the European Union and being part of that trading bloc. We have had the benefits of huge quantities of information, risk analysis and economic forecasting, and professional interventions by people in business, finance, vice-chancellors of universities, academics, doctors and scientists, researchers and inventors, agriculturists, environmentalists, artists, creators, lawyers and judges, the intelligence community and indeed the police. The evidence is overwhelming that to pull out of Europe, either with this current deal or with no deal, would have serious consequences for this country and wreak havoc. I am rather pleased to see the House of Commons asserting its powers again—indeed, taking back control, as was invoked. But it is within its power to say enough, and I hope that it will consider revoking Article 50, even if only to give us more time.

Of course people would be angry if there were a second referendum and the decision to leave were reversed, but many others will be very angry if we crash out of the European Union or find that this deal will leave our children and grandchildren with dire consequences. Mrs May's deal is being presented now as the moderate middle way. I hear that coming particularly from the Cross Benches and I want to remind people that it is not a middle, soft Brexit: it is a hard Brexit that will provide us with no protection from the economic woes coming our way. As President Trump ratchets up pressure on China through the expansion of trade tariffs, we not only have to face the consequences that other countries will have to face, but the consequences will be worse for us than for other parts of the world. The exposure of UK banks to China's downturn exceeds the exposure of the US, the euro area or Japan and Korea combined. Analysts in the World Bank and the Bank of England have already reported on their deep concerns.

We have been told that we are ready to embrace a new golden age. Mrs May said that, "our best days lie ahead of us".

Who is she kidding? That is all to save face, partly because her own Ministers proved such incompetent negotiators. The markets in the UK and the US experienced their worst year last year—the worst since the financial crisis in 2008. A few lucky hedge fund managers have made fortunes from the nosedive in the values of companies in recent months but, for most, the sharp downturn is bad news—lower pension values, falling taxable revenues and greater corporate pressures. That all adds up to serious problems ahead. A lot of companies such as Apple are already feeling the pain. A lot of that is to do with the slowdown in China's economy. Is this the time for us to leap into the unknown? Do we really trust Mr Trump and his cronies? Are we happy that Putin is so pleased with our direction of travel?

I said in the last debate that this is an elite globalisation project wrapped in a flag of nationalism and populist concerns. It is motored by ideologues, and of course they have joined forces with those with the sentimental, nostalgic feelings that many of our fellow Peers have expressed. Basically, the ideologues want deregulation at all costs. They want small government and to tear up the social contract that provides solidarity, community values, social services and care. They are people who want, as has already been said by the noble Lord, Lord Campbell, to tear up the rules-based progressive internationalism of which we have been a part that was forged after World War II. They see those who do not agree with them as losers. This is the world of Mr Trump, Mr Bannon and Mr Farage, and the world of Messrs Johnson and Rees-Mogg. They are basically unpicking so much of the stuff that we have worked for since World War II.

The people of this country were lied to. I would say to the noble Lord, Lord Trevethin and Oaksey, that this is a plot against our democracy, but not by people who want to remain in Europe. It is a plot by people like Dominic Cummings and the people who put together that campaign, which lied to the British people and defrauded them. He asked, "Have you ever felt cheated?" Well, people will feel very cheated when the full extent of Russia's involvement, of foreign money involvement, of the Mercers, of Cambridge Analytica and the whole ghastly business of the corruption of that first referendum will come to light. Then people will seriously feel that there was a plot against their democracy.

I am therefore going to vote down this withdrawal agreement and hope that our colleagues in the other place will receive resounding encouragement from all of us in this House to say that there should certainly be no question of no deal, but also of no withdrawal agreement as it is currently being presented.

Baroness Goldie: My Lords, I respectfully draw your attention to the advisory time limit. Mission overrun is with us again.

Baroness Kennedy of The Shaws: Nothing was said about two previous speakers, who spoke for far longer than I did from the Conservative Benches.

Baroness Goldie: My Lords, I endeavour to try and keep an eye on the general pace of progress. All I am observing is that we have re-entered an arena of overrun. I am in your Lordships' hands. This is a self-regulating Chamber but the advisory time limit is six minutes.

8.50 pm

The Earl of Glasgow (LD): My Lords, before the Christmas Recess I had convinced myself that there was no point in adding my name to the long list of speakers taking part in the Brexit withdrawal debate. Potentially, every view had already been expressed anyway but now, as the Brexit situation worsens and time is running out, I feel the need to make a brief contribution—"brief" being the crucial word—and put down my marker, even if I find myself saying some of the things that many others have said.

Like almost everybody in or out of Parliament, I am approaching despair at the Government's inability to come to an agreement with the EU that can satisfy a majority of MPs. I am beginning to think that any deal would be better than nothing. That view is, I suppose, what Mrs May is counting on. At least she has a deal of sorts to offer but if it is rejected by the Commons, as most pundits believe it will be, the best way in which the country can get out of this mess, in the short term anyway, is to continue as a member of the EU in the hope that, by working from the inside, in time we can reverse and amend some of Brussels's restrictions that so frustrate us.

However, because of the result of the last referendum, there is no way in which this Government, or any other for that matter, will allow Britain to remain in the EU without holding a second referendum or people's vote, as we like to call it. It would need to result in a clear majority for the remainers. Would any Government risk this? After all, we remainers regarded holding the first referendum, or at least its result, as being responsible for the ghastly mess in which we find ourselves. Who dares to call another one? Certainly not this Government, it seems.

I have only two firm convictions that I have stood by from the beginning. One is that a no-deal Brexit would be a catastrophe for this country. Here there is a majority in agreement on that. The second is, whether we like it or not—and I happen to like it—we are part of Europe. Our future and that of our grandchildren depend on us being part of Europe. Any influence we may have in this ever more threatening world depends on us being part of Europe. Ideally, on many issues, we should be speaking for Europe.

However, many Brexiters seem to believe that we can go it alone and just float ourselves out into the middle of the Atlantic and, being such a plucky and resourceful little country, we can thrive on our own—free from restrictions imposed on us by foreigners. They are living in a dangerous fantasy world and their unrealistic optimism must be resisted.

8.53 pm

The Earl of Clancarty (CB): My Lords, I shall return, as least for part of my speech, to the question of free movement of people within the EU, and I do so because the Prime Minister has made the ending of free movement perhaps the central argument for delivering

Brexit, as the noble Lord, Lord Hutton, noted. I wish also to develop further my argument from the first debate.

The White Paper on immigration published since that debate presents only half the story—the effect of a proposed skills-based immigration system on European citizens. The other half would outline the effect of such a system on British citizens and how it affects our rights with regard to the EU, because we would expect any agreement to be reciprocal. It is the half of the story with which the Prime Minister consistently refuses to engage and that of course will not be published because that story is negative—as, indeed, the effect of Brexit already is on the European citizens who live here in the UK, as well as those who wish to work or study here in the future. What will then also stem domestically from the severe restrictions proposed is the effect on our own economy, including the loss of significant work that is carried out across many areas of the economy on salaries of less than £30,000, including in the creative industries, and the loss of that talent, many of whom will be young people.

The Prime Minister has repeated that the only choice, which seems increasingly unrealistic, is between her deal and no deal but, because of the loss of freedom of movement, with both those alternatives young people will lose everything that is most important to them with regard to the EU: the loss of the automatic right to travel, work, study and live abroad at will. Freedom of movement is now quite rightly regarded among young people in Europe as no less than a democratic right. For British workers, both in the EU and here, especially those in the service industries, there is particular concern about onward movement which, if not enabled, will put at risk the livelihoods of many of them. Will the Minister address this important concern in his response? This question was also posed during Question Time today by the noble Lord, Lord Collins of Highbury, and it was not properly answered.

Knocking down walls and barriers or, better still, not erecting them in the first place needs to be understood in the 21st century as an integral part of the process of the betterment of society, because society crosses borders. The effect since 1951, when freedom of movement humbly began within the limited scope for workers within the coal and steel industry, has been peace and increasing understanding between those European nations and cultures who have been part of it, yet now it appears that there are, not just within the UK, those who seem intent on wrecking that project. At the political level, too, we should not be abrogating our responsibilities within Europe. If there are things wrong with the EU, which there are, we should be in there helping to improve it. We cannot do that from the outside.

During the 2016 referendum campaign, the right of free movement for people across Europe was buried. It was something the remain camp did not want to talk about too much. If there is another referendum, the right of freedom of movement across our own continent should be shouted from the rooftops as something we should be immensely proud of having. The EU passport—the travel, work, study and residence permit rolled into one—is one of Europe's and Britain's greatest achievements. This needs to be said more often, and it would be a tragedy if British citizens lost it.

[THE EARL OF CLANCARTY]

The Government presently say that they do not countenance a people's vote. That may change, but I join others in saying that a fear of further behaviour of the sort that has taken place this week outside Parliament or, indeed, worse is no reason whatever not to have another referendum. That attitude is accommodating those who have participated in or condoned such behaviour and, of course, it would not stop there.

It is becoming ever clearer that the policy of austerity pursued since the financial crash and the discontent and sense of abandonment that it has caused were factors that contributed hugely to the result of the referendum. A report last month by the Institute for Public Policy Research North estimated that £6.3 billion has been cut from public spending in the north since 2010, and that has happened in those areas where the Brexit vote was strongest. The use of food banks, which is surely the blackest mark on our country, has risen from tens of thousands of food parcels in 2010 to millions today. It is vital that austerity is reversed, and despite the Prime Minister saying in October that austerity was over, there is no real sign that that is happening.

I do not accept the mood of resignation which some noble Lords appear to have fallen into, particularly those who say that they voted remain but accept that the Prime Minister's deal is the best there can be. That is not so. There is increasing hope. My noble friend Lord Kerr provided evidence earlier that the Prime Minister's deal and no deal are not the only options. I remain convinced that the solution is to remain in the EU, and I support a second referendum.

8.58 pm

Lord Lamont of Lerwick: My Lords, Charles James Fox once observed that no man worth his salt ever lost a night's sleep over the fate of the nation. I cannot say that I have lost a night's sleep over Brexit, but I worry because we do indeed face an extremely serious situation.

In principle, if possible, I would like to support the Prime Minister's deal, but it is very difficult. However, whatever criticisms may be made of the Prime Minister's deal, to my mind it has one great advantage. On 29 March, we will be well and truly removed from the threat of any further political union. I voted leave in the referendum primarily for political, not economic, reasons. Like, I suspect, millions of other people, I did not like the transfer of power away from our own national institutions to ones I regarded as less effective, less accountable and in which we had only a partial say. I voted for sovereignty.

Although I did not vote primarily for economic reasons, I do not accept the view, which has been the common assumption in this debate, that we will be worse off outside the EU. Those who argue that have to explain certain points. How is it that Switzerland, with such a high standard of living, is more integrated with the EU than we are and exports, per capita, four to five times as much as we do? How is it that non-members of the EU, such as the US, Japan or Australia, have increased their exports to the single market since it was created by considerably larger amounts than us, who are members of it? No doubt I will then be referred to the forecasts by the Treasury and the Bank

of England. Leaving aside past criticisms of their forecasts, these forecasts, of course, have not been universally accepted. They have been trenchantly criticised by the noble Lord, Lord King, the former Governor of the Bank of England; Paul Krugman, the Nobel Prize winner; Andrew Sentance, formerly of the Monetary Policy Committee; and Roger Bootle. Among the points they have made have been the apparently exaggerated border costs of being outside the customs union. To some, those seem excessive when compared with Switzerland's estimate of the cost of border compliance with the EU as only 0.1% of its trade.

Members on the Liberal Democrat Benches scoffed when the noble Lord, Lord Howarth of Newport, pointed out that the Bank of England forecasts did not actually show a reduction in living standards, as had been claimed, but a slower increase. He was, of course, quite right, but I accept that that poses the question: is this a risk worth taking, and is it likely to be proved right? It is worth noting that the calculations of the Bank of England and the Treasury came up with some very small differences in outcomes for different policies. They then multiplied them by a figure of eight years or 15 years in order to get a more visible, tangible number. It used to be said that economists put decimal points in their forecasts to show they had a sense of humour. Obviously, these economists took that point very seriously; does anyone really believe that it is possible to forecast what will happen to the economy 15 years ahead?

The key point about our economic future, is that the importance of external trade can be exaggerated. Trade matters of course, but our future does not depend on trade alone, let alone trade with the EU. Our future and what our living standards will be in 15 years, as the noble Lord, Lord Macpherson, has pointed out repeatedly, depends much more on the domestic policies that we follow: supply side reforms, investment in infrastructure, increasing competition and having sound finances. Our future is in our own hands.

The Prime Minister's proposed deal, alas, seems largely likely to fail in the House of Commons because of the Irish backstop. I shall not repeat the objections, other than the inability of the UK to withdraw unilaterally from the backstop with no fixed date. Does this matter? Some noble Lords have argued that they would never have expected a unilateral right of termination, but many trade deals have such a right of termination, and the absence of one leaves us in the position where, having paid our ransom money of £39 billion, we are highly exposed in the next stage of the negotiations. If, by any chance, the negotiations did drag on, as some forecast, for many years, could we really accept that for all that time, companies in the UK would not be able to send goods to another part of the UK without checks? We are rightly very sensitive about the border between Northern Ireland and the south, but we should also be sensitive to unionist concerns about an invisible border in the Irish Sea. The Prime Minister seems to have signed up to something she said no Prime Minister of the UK could sign up to. We are told, "Don't worry, the EU won't want the back stop to continue indefinitely". If so, why does it not alter it? We need a change in the mechanism or the exit from it. I believe many MPs

who at present cannot accept the deal would swallow it if there were changes in the exit mechanism and it could be shown that the backstop was temporary. If the backstop were temporary, many things that are objectionable in the deal would also be temporary.

The Government seem in a terrible muddle over no deal. The Prime Minister says that it is this deal or no deal, which she implies means chaos. Why did she ever say that no deal is better than a bad deal? If she did not believe it, it is hardly surprising that it did not carry any weight in the negotiations. If she did believe it, she must have believed that preparation was possible in the time available, and, if so, why have the Government not made proper preparation? Or perhaps the situation is as a civil servant has written in a national newspaper: “We’ve made preparations but the Government do not want people to know that”.

No deal or trading on WTO terms has never been my first option, and I do not say that there are no issues, but it has been ridiculously demonised—almost literally so by the most reverend Primate the Archbishop of Canterbury, who seems to think that anyone who supports it should go to hell. No deal might be challenging, and I accept that there might be problems with it, but the director-general of the WTO, Mr Azevêdo, has said that changing to WTO terms,

“doesn’t mean that we’ll have a vacuum or a disruption”.

There have been a lot of Don Quixotes tilting at imaginary windmills. If Parliament rejects the withdrawal agreement and we leave the EU without a deal and have to trade on WTO terms, that is not the only or automatic option for trading with the EU. In those circumstances, we should keep all tariffs with the EU as they are now—at zero—and say that we would like to take up Donald Tusk’s offer to negotiate a free trade agreement with the EU. Provided that both sides agree that they want to negotiate such an agreement, under Article XXIV of the GATT agreement both sides would be able and allowed legally to keep tariffs as they are, at zero, for a prolonged transitional period. It should not take that long, as we start from a position where we have already harmonised regulation and free trade.

I wait to see what comes out of the Prime Minister’s talks. I hope that there will be something that makes the agreement more acceptable, but we should not talk ourselves into a crisis and imagine problems that will not be as great as are sometimes portrayed. The solutions and answer are there and in our own hands.

9.07 pm

Lord Campbell-Savours (Lab): My Lords, this is my 12th intervention in the Brexit debate and since the day of the referendum I have argued a consistent case in this Chamber. I was on the doorstep and worked for Common Market entry in the 1970s campaign. I have supported the institutional changes brought about through the various treaty revisions, and then in 2016, as a remainer, I voted leave, taking a lot of flak from colleagues.

I suspect that millions of other European Union supporters did exactly the same, their primary reason being developments in Europe following the migration crisis and fear of its impact on the United Kingdom.

The polling data, almost without exception, for the six-month period prior to the referendum indicated that concerns over border controls, free movement, ID and entitlements were at the heart of the leave vote. The people had lost confidence in our systems for monitoring and managing population movements. These population movements, without doubt, have given real lift and impetus to the development of intolerant and sometimes extreme movements throughout Europe from the Atlantic to the Urals—in particular, in Austria, Sweden, Germany, Italy, Denmark, France, Holland, Croatia, the Czech Republic, Slovenia, Latvia, Hungary, Greece, Estonia, Poland and Bulgaria—all potentially dangerous movements in their infancy, and we ignore them at our peril.

Cameron, realising the dangers, tried his best to dilute concerns at home by negotiating a deal with the European Union in early 2016. He failed because our European partners did not want to know. It was that failure that led me, with liberal views on immigration, to vote leave, and I believe that millions of others responded in exactly the same way and did likewise.

My hope has been and remains that the UK leave vote will, in this period of brinkmanship, trigger a discussion on a review of trans-European migration issues and Schengen, not only in Brussels but throughout the Union. We are told that this community pillar is not up for negotiation. I do not believe that. The Visegrad states, many of which are on the front line in the migration crisis, are facing ugly developments at home. Germany’s Government are destabilised. The magic of Macron has evaporated as he faces not only street demonstrations but, we now learn, a war of words with the Cinque Stelle movement in Italy over its support for his demonstrating opponents.

Former Prime Minister Blair has let it be known that he believes there is potential for flexibility over policies on managed migration and that Europe would respond positively. Even former Liberal Democrat leader Clegg has stated that he believes the door is open for further discussion. The former president of the Federation of German Industries, Hans-Olaf Henkel, has entered the fray with his bold statements supporting a special deal on free movement for the United Kingdom. I suspect he has a wider free movement and Schengen reform agenda in mind for other European states.

So how should we now proceed? I believe we should drop all this nonsense on the backstop, Canada-plus, Canada-plus-plus, Norway, WTO terms et al and concentrate on this one issue at the heart of the leave vote which is winding up the British people. We should go into Europe, build a support base with individual nation states—it is still possible even at this late stage—and push the Commission for a new deal on managed migration; our recently published White Paper is a good starting point.

Initially, our focus should be on an EU/UK deal; in the longer term, something wider. I believe we can secure that deal, which should be the basis for a referendum. The choice would be: remain, on the basis of a managed-migration deal which I would support, or leave on the basis of the May deal. Without that deal, a second referendum victory for remain is more problematic; I would even foresee another referendum later this year.

9.12 pm

Baroness O'Neill of Bengarve (CB): My Lords, I spoke at the beginning of December so I really shall try to be brief. At the start of today's debate, a number of noble Lords said, "Nothing has changed". I think some things have changed and not for the better. There is more bitterness, polarisation, hostility and tension; we saw signs of that with Monday's reports of remarks made to Members of the other place. There may be some issues here of common concern to remainers and Brexiteers, and of common interest.

At the other end of this Palace we have what my noble friend Lord Hennessy called a great showdown in the House of Commons. The showdown seems to have a common assumption behind it: that it would be a good thing if there were, somehow, a vindication of democratic process. The assumption comes in two varieties: noble Lords on the Liberal Democrat Benches hope that a second referendum might be a solution; and some noble Lords on the Labour Benches are hoping not for a second referendum but that a vote of no confidence might lead the way to a general election and that that democratic process could rescue us from this situation.

I wonder whether both assumptions are mistaken. We are seeing a quite unprecedented challenge to democracy itself, not because of Brexit but because of the impact of digital technologies on electoral process. What we realise now is that the democratic process is being undermined and hijacked by those technologies; non-citizens are influencing votes systematically and all over the place, not only in this country but in many others including the US, in its elections.

These are serious issues. We need to realise that democracy is now being manipulated, not merely by rich individuals, but by companies, interest groups and states, including their security apparatuses. In this situation, when our fellow citizens are being digitally micro-targeted by means not apparent to them, we need to think very carefully about saying that more democracy is the solution. More democracy may not be attainable. We need to work out what we ought to do.

I have a question for the Minister. Does he have any views about what the Government could do to ensure that these technologies are not used to subvert democracy in further processes that bear on Brexit? I think the same questions arise for the Lib Dems and for Labour. Are we sure that democracy can be kept safe in present circumstances? I am losing my voice, so I shall stop.

9.15 pm

Baroness Ramsay of Cartvale (Lab): My Lords, if the noble Baroness really is finished, I will get to my feet. Of all the many things that could be said about the situation we are in, certainly no one can say that our political system is having one of its finest hours. We are in a situation which is perhaps inevitable when you use a referendum—a very blunt instrument—to answer a complicated, multifaceted question, especially in a political system like ours, which is a representative democracy without a written constitution. But we are where we are; we are in a mess. I agree with what my noble friend Lord Hutton said about that earlier. It is a mess which demands decisive action from a Parliament

which seems to be going round in ever-decreasing, fractious circles. That is a rather messy mixed metaphor, but it is a very messy, mixed-up situation.

We should be very clear about our role in this House in this mess of a situation. We are a bicameral Parliament, so in this House, we are not just entitled to give our opinion—which may or may not be in opposition to decisions made at the other end of the building—we have a duty to do that. We are supposed to give our advice and opinions based on the very varied experiences we all have, and we must do that. Of course the elected House at the other end of the building must make all the decisions, but at the moment we have to hope its Members find the courage to remember that while it is wholly legitimate for them to be very concerned about the views of their constituents, they are representatives not delegates. That is the basis of our democracy and it is what representative democracy is supposed to be about. I sometimes think that is lost sight of in the constant talk about the will of the people as expressed in the referendum.

To be told that only two choices for the future development of this country are open to us is frankly political blackmail, and I do not accept that premise for one minute. Of course we have more than two choices about where the country can now go. Instead of either the inadequate and very poor deal the Prime Minister has produced from the woefully inept negotiations of her Government, or the disaster of crashing out of the EU with no deal at all, we could decide that the best of all possible deals is the one we have now, as a full EU member. We could then revoke Article 50—there is absolutely no doubt that we have the power to do that, unilaterally—and work to reform the EU and do whatever we would like to make it better than it is. Nobody in Europe thinks the EU is perfect, but it is better to work from the inside to change it than to walk off in a huff and make things much worse for ourselves. As the right honourable Kenneth Clarke repeatedly explains, nothing prevents applying for Article 50 again some time if we withdraw now. Or we could do what is, for me, a second-best option: we could decide to have a people's vote and ask the other 27 EU members to agree to us delaying Article 50 to do that.

In my opinion, the best option for the economic, political and strategic future of our country is to remain a member and work to reform the EU from within. As a Scot, I add that I am also very conscious that, by leaving the European Union, we are handing the SNP a nuclear political weapon in its battle for independence. It is no use hopefully shaking one's head about this, as the noble Lord, Lord Forsyth, is doing from a sedentary position, because that is exactly what the SNP is hoping for. I know, as someone who fought hard during the independence referendum in Scotland, how we used the idea that if you leave the United Kingdom you will be leaving the European Union. That will be complete denied to us as an argument.

Lord Forsyth of Drumlean: Would the noble Baroness give way?

Baroness Ramsay of Cartvale: I am pushed for time.

My second-best option is to go back to the people for a people's vote. I see no option other than those two that does not threaten the well-being of all our citizens in every aspect of their lives. I support the Motion in the name of my noble friend Lady Smith of Basildon.

Lord Forsyth of Drumlean: As the noble Baroness still has a minute left, on the point she made about—

Noble Lords: Oh!

9.21 pm

Lord Bridges of Headley (Con): My Lords, as the tail-end Charlie, I will try to keep my remarks short so that we can go home to bed. At the core of this debate lies a very simple question: do we wish to fulfil the wishes of the 17.4 million people who voted to leave the EU and withdraw on 29 March? Obviously, as we have heard today and in preceding days and weeks, some people do not want to leave, period. While I totally disagree with them, I respect their honesty. We know where they stand. They will reject every deal. But if like me, who voted remain, you believe that the referendum result should be honoured, should we agree to this deal?

As we have been hearing, this deal is the result of indecision, muddled thinking and a failure to answer clearly the core Brexit question: what matters more, access to EU markets or parliamentary sovereignty? As a result, we have the backstop—a concept that we should never, ever have agreed to—and a political declaration that still leaves a multitude of questions unanswered. It is a gangplank into thin air, but the direction is a little clearer. We now know that it is attached to port, not starboard.

That said, let us not forget some very basic points about what we have before us. This agreement will ensure that we leave the EU on 29 March. We will then enter a transition agreement, at the end of which we will be out of the EU's political union. Today's payments to the EU will stop. According to the political declaration, we would have complete control over immigration. The UK would, it seems, remain close to the EU on the regulation of goods, but we would have more control over our services. The supremacy, but not the entire role, of the ECJ would be over, and we would be out of the common agricultural policy and the common fisheries policy.

It is a compromise and, unsurprisingly, like most compromises it is disliked by both sides. There is a devil in the detail, but it is a devil we know. The core point is that it means we will leave the EU and enter a transition in just 80 days' time. Contrast all that and those imperfections with the consequences of rejecting this deal entirely: a growing constitutional crisis, with Parliament demanding we must not leave without a deal; increasing economic turbulence; and growing

pressure to have what I believe would be a highly divisive second referendum, or worse still, simply revoking Article 50. Maybe I am wrong and Parliament will suddenly accept the risks of leaving without a deal. Maybe those risks about the impact of no deal are just fear mongering. But on an issue of this magnitude, for me "maybe" and "fingers crossed" are not good enough.

That brings me back to my core point. If, like me, you believe that the imperative is to honour the result of the referendum, is it worth risking this chaos by rejecting this deal? I have a strong suspicion that the majority in the other place are prepared to take that risk, and next week they will reject the agreement as it stands. If this happens, and if the EU still does not budge and change the treaty, what then? If you want to honour the result of the referendum and leave the European Union; if you believe Parliament will defeat a vote of confidence and oppose leaving without a deal; if you agree on these points, then something will have to give here at Westminster so the withdrawal treaty is passed by Parliament. The only way I can see this happening is by building a solid parliamentary consensus around a position for the next phase of the negotiations that finally, honestly and clearly answers that basic question: what matters more, trade or sovereignty?

Given the parliamentary arithmetic, this might well mean acknowledging that the Prime Minister's red lines—drawn up before the Cabinet had properly considered what it wanted to achieve, and before the Conservatives had lost their majority in the Commons—would now be preventing a deal and putting at risk the democratic imperative: leaving the European Union. There are a number of options being mooted. My preference, under this scenario, would be to be part of a customs union and abide by EU regulations for goods and agricultural products, as this will deliver on the core aim of leave voters—to take complete control of immigration while delivering free and frictionless trade. We would be in, for want of a better term, a common market.

The irony is that the basic building blocks of this position are there in the political declaration. I fully accept that this approach is not perfect. For example, it would probably mean we would be unable to strike trade deals covering goods on our own. But to coin a phrase, we cannot have our cake and eat it. If this deal is defeated next week, if the EU still does not make any concessions, those of us who prefer compromise to chaos and wish to honour the result of the referendum will need to put party interests to one side and put the national interest first, second and third. But as things stand, I support this deal. With all its imperfections, it will fulfil what I see as the democratic imperative: to leave the EU on 29 March and honour the wishes of 17.4 million people.

Debate adjourned until tomorrow.

House adjourned at 9.28 pm.

Grand Committee

Wednesday 9 January 2019

Arrangement of Business Announcement

4.15 pm

The Deputy Chairman of Committees (Viscount Ullswater) (Con): My Lords, if there is a Division in the House, the Committee will adjourn for 10 minutes.

Human Fertilisation and Embryology (Amendment) (EU Exit) Regulations 2019 *Considered in Grand Committee*

4.16 pm

Moved by Baroness Manzoor

That the Grand Committee do consider the Human Fertilisation and Embryology (Amendment) (EU Exit) Regulations 2019.

Baroness Manzoor (Con): My Lords, we are debating three sets of regulations—

Noble Lords: Object.

Baroness Manzoor: Which are critical—

Lord Adonis (Lab): I am grateful to the Minister for giving way. Could we ask that these are degrouped and that we consider them each individually, please?

Baroness Manzoor: I understand the issue that is being raised. Perhaps I may say that the three sets of regulations bring in very similar provisions but have been drafted separately, as they amend different legislation. I am happy to take each statutory instrument separately. However, just to give advance notice, my speech will be the same.

Perhaps I may begin again. We are debating three sets of regulations which are critical in maintaining patient safety for organs, tissues and cells used to treat patients. The regulations have been developed as part of contingency planning and will be needed if we leave the EU with no agreement in place. If the UK reaches a deal with the EU, the department will revoke or amend these instruments to reflect the deal.

Lord Foulkes of Cumnock (Lab Co-op): The Minister has confirmed that these regulations would have a purpose only if there were no deal, so all the time that she and the excellent five civil servants behind here have put in—and they have done a lot of work—will be unnecessary if a deal is agreed. Is that right?

Baroness Manzoor: With all due respect to the noble Lord, of course, as the Government, we have to put in place contingency planning. If the noble Lord will allow me to finish what I am going to say, he will understand what the regulations relate to and the reason why we are putting them down.

Lord Foulkes of Cumnock: The Minister has just said that these will be required only if there is no deal. Is that correct?

Baroness Manzoor: As I have said, yes, that is correct.

Lord Foulkes of Cumnock: So the corollary of that is that all the work that she has done, and that of her predecessor, the noble Lord, Lord Shaughnessy—who we miss; sadly, he is no longer a Minister—and all the work that the civil servants have put in is nugatory: it will be forgotten and wasted if a deal is agreed, which is the Government's policy. Is that right?

Baroness Manzoor: My Lords, I do not know what the deal will be, if it is agreed. All I can do is deal with these SIs. I am not here to talk about the deal or the no-deal. We have done contingency planning as to what would happen to ensure patient safety and organ donations, imports and exports. The SIs relate to that. Perhaps I may continue, if the noble Lord is happy with that answer.

Lord Foulkes of Cumnock: Not really; I am not clear about this. If there is a deal, does it include something that deals with human fertilisation and embryology which would mean that we do not need this SI? Does a part of the deal negotiated by the Prime Minister—not yet agreed by Parliament but negotiated by the Prime Minister—already cover the substance of this SI, and this SI is relevant only if there is no deal? Is that correct?

Baroness Manzoor: Yes, I have confirmed that to the noble Lord already, but we have to make contingency plans. That is why I am standing before the Committee to explain what we are doing.

Perhaps I may begin again in order to provide the context. We are debating three sets of regulations. They are critical in maintaining patient safety for organs, tissues and cells used to treat patients. These regulations have been developed as part of contingency planning, and will be needed if we leave the EU with no agreement, and I am happy to confirm that again to the noble Lord. If the UK reaches a deal with the EU, the department will revoke or amend these instruments to reflect that deal.

Lord Adonis: My Lords, I am grateful to the Minister for giving way. In view of the fact that the House of Commons voted yesterday against no deal being taken forward—and it is the elected House, we are the subordinate House—does she not think that the right thing to do is to not proceed with these no-deal preparations, but instead to devote the time of the Grand Committee and the House to issues where we can make a difference? Many of us were not able to be present in the Chamber for the opening speeches in the debate on the EU withdrawal deal because of this debate. I might respectfully say that her department would not have to waste all this money and time, and her great devotion to duty, on something which is clearly against the will of the elected House.

Baroness Manzoor: My Lords, I understand the point the noble Lord is making, but I disagree with him. This is about contingency planning, and we will

[BARONESS MANZOOR]
move forward in that way. It is right and proper that the Government do this, and any sensible Government would be planning for any eventuality.

Lord Foulkes of Cumnock: My Lords—

Lord Adonis: Will the—

Baroness Manzoor: I want to get to the end of what I am going to say. Both noble Lords will have the chance to make their contributions then.

Lord Adonis: There is another one here.

Baroness Manzoor: Well, they may well get answers if they allow me to finish.

These instruments, which will come into force on exit day, will ensure that UK law on organs, tissues and cells functions effectively after exit day, and maintains the same high standards of safety and quality. The instruments are intended to maintain the current regulatory framework across the UK, so UK organisations such as hospitals, stem cell laboratories, tissue banks and fertility clinics will continue to work to the same high quality and safety standards as they did prior to exit.

Lord Adonis: I am grateful to the Minister for giving way again.

Baroness Manzoor: I have not given way. I am sorry but I need to finish. I need to make some progress. I have given way on a number of occasions, so forgive me.

The instruments are being made under the European Union (Withdrawal) Act 2018. They make appropriate amendments and revocations to correct deficiencies in UK law and retained EU law. Regardless of one's views on EU exit, we can all agree that UK patients should have every opportunity to access the life-changing therapies covered by these regulations, such as: organs, including hearts to treat heart failure; stem cells used to treat blood cancers; corneas to restore sight or skin grafts to treat burns; and eggs and sperm to treat infertility.

Some organs, tissues and cells move between the UK and the EU. The proposed amendments are critical to ensuring that this movement can continue if we exit the EU without a deal in March 2019—and I stress again for noble Lords, if we leave without a deal.

A small number of organs are shared with EU and non-EU countries, with fewer than 30 organs on average being imported or exported each year. Tissues and cells are imported from and exported to EU countries less often than they are imported from and exported to countries outside the EU. There are around 5,000 imports of tissues and cells from the EU in a typical year. That includes around 600 imports of stem cells and 3,000 imports of bone products. The UK imports donated sperm, primarily from commercial sperm banks in the USA and Denmark.

To be clear, these instruments are limited to the necessary technical amendments to ensure that the legislation is operative on EU exit day. The instruments confer powers from the European Commission to the Secretary of State and the devolved Administrations to make technical changes. However, no policy changes

are made through these regulations and we have no intention of making any at this point. I hope that that reassures noble Lords.

The main changes that these instruments would introduce are as follows. First, in the event of no deal, the UK and the EU will consider each other to be third countries; the regulations redefine the term “third country” to include EU countries and Gibraltar. As a result, licensed establishments will need to make administrative changes to continue to import organs, tissues and cells from EU countries and Gibraltar. For example, establishments may need to put new agreements in place with their EU supplier.

Secondly, the regulations amend a number of references contained in current UK legislation that will no longer be appropriate once the UK withdraws from the EU, such as references to obligations with which the UK must comply as an EU member state. For example, the instruments remove the obligation for UK regulators to share information on serious adverse incidents with the European Commission, as this was meant to be a reciprocal obligation of information sharing and we cannot keep an obligation that can only be fulfilled by one side. However, licensed establishments that exchange organs, tissues and cells with the EU will still have the obligation to report any serious adverse incident that may have affected their quality and safety to the UK regulators within 24 hours. That obligation extends to activities carried out in the EU.

Baroness Thornton (Lab): Can the Minister clarify something for me? I may have missed something. Who is the obligation on? Is the obligation on the EU to tell us, us to tell the EU or both?

Baroness Manzoor: Both.

Baroness Thornton: That is rather important.

Baroness Manzoor: Yes, it is critical. The obligation applies to both sides within the 24-hour period I mentioned. UK regulators will therefore continue to receive information on serious adverse events.

Baroness Thornton: I want further clarification on that point. Why will the EU be obliged to tell us things if we crash out?

Baroness Manzoor: Obviously, our licence and the agreements we have in place will enable that to happen on both sides. We hope that those close partnerships will continue after we exit if we exit with a no-deal agreement.

Lord Adonis: My Lords, can the Minister tell the Committee whether those licences are already in place? It sounds as though the Minister is expressing an aspiration for those licence agreements to be in place. We are talking about arrangements that will need to be put in place in just two months' time.

Baroness Manzoor: I will come back to that when I speak later.

The UK regulators will therefore continue to receive information on serious adverse events and reactions related to organs, tissues and cells imported from the

EU and the national reporting systems that the UK competent authorities operate will not be affected post exit. I hope that that answers the noble Lord's question.

4.30 pm

Lord Adonis: Is that a fact or a statement of aspiration? I ask that because there is a very important difference. Is the Minister talking about what she hopes will happen or what she can tell the Grand Committee is in fact the case because of licence arrangements with our European partners that are currently in place?

Baroness Manzoor: I can say to the noble Lord that if we leave the EU with a no-deal Brexit, licensed establishments are obliged to report all incidents whether they occur in the UK or in any other country. I think that the question the noble Lord is asking is why we would have licences anyway. Why would they talk to each other if we are no longer part of the team? I think that that is what the noble Lord is saying. Because these agreements are already in place, they will continue. There will be a six-month period, if we leave without a deal, to ensure that all the licences with whichever parties they are with are updated and put in place.

Baroness Barker (LD): Perhaps I may ask for some clarification of that. The licences will continue to exist for only six months. Is that what the noble Baroness has just said? I repeat: the licences that we are talking about will continue for only six months.

Baroness Manzoor: Perhaps I may revert to that because we are getting into the questions when I would like to move forward. Noble Lords will have a chance to come back to me with questions.

The regulations also modify how some of the requirements in the directives which are referred to in our domestic legislation are to be read post exit. We are talking about the scenarios if there is no deal. This is necessary to ensure that the requirements referred to function properly post exit.

Thirdly, these instruments transfer powers from the Commission to the Secretary of State and the devolved Administrations, where these are within their competence, to allow the Government to respond to emerging threats, changes to quality and safety standards and technological advances. Legislative competence for the donation, processing and use in treatment of human reproductive cells—sperm, eggs and embryos—is reserved to Westminster. Competence in respect of all other human tissues, cells and organs is devolved and the relevant instruments are being made on a UK-wide basis with the consent of the devolved Administrations. NHS Blood and Transplant oversees organ donation and transplantation on a UK-wide basis, and we have UK-wide regulators in this area.

The changes in these instruments were discussed with the UK regulators, the Human Tissue Authority and the Human Fertilisation and Embryology Authority, along with issues of operational implementation. The regulators have been working with their licensed establishments to consider the changes introduced by these instruments and no issues of concern have been

raised. The impact of these instruments on businesses and public bodies will be low. Only establishments that import from or export to EU countries will be affected.

I turn now particularly to organs. NHS Blood and Transplant is the UK transplant organisation. NHSBT and the Human Tissue Authority will work together to put any new arrangements in place as needed to allow organ exchange to continue post exit. There is no impact on organ transplant centres. In terms of tissues and cells, licensed establishments that import tissues and cells will need to put new agreements in place so that they can continue to import tissues and cells from EU countries. That is what I have said already in answer to a question put by the noble Lord, Lord Adonis. The instruments give a six-month transition period to give them time to do this, which is what I pointed out previously in response to a question.

Lord Adonis: What will happen if—

Baroness Manzoor: I am sorry but I really want to finish. I will then be happy to take any questions.

During this period, imports and exports will continue to take place as long as the regulatory authorities are satisfied that equivalent standards are met—that is on both sides. We estimate that all these establishments will also import tissues and cells from third countries and so will be able to use their existing written agreements as a template. Licensed establishments that export tissues and cells will also need to put new agreements in place. The timings for this will be determined by the requirements in the relevant EU country. Again, we estimate that all these establishments will also export tissues and cells to third countries and so should be able to use their existing written agreements as a template. The UK regulators will continue to advise and support all tissue establishments in preparing for exit day. In addition to ensuring that the regulations are operable, we continue to proportionately prepare for the continued safe supply of organs, tissues and cells across the UK in all potential EU exit outcomes. I beg to move.

Lord Tyler (LD): My Lords—

Baroness Thornton: My Lords—

Lord Adonis: Before the Minister sits down and my noble friend makes her speech—which I am much looking forward to—a number of key concerns were raised about these regulations in the House of Commons when they were debated there, which the Minister has not referred to at all. There was the issue of the costs that will be incurred by establishments and how that will be met; the issue of what happens with problems in the ports, because of course a lot of this involves very sensitive movements of materials such as organs and tissues, and no satisfactory answer was given on that; and the issue of licensed establishments applying for new import/export relationships. It would help the Committee enormously if the Minister were able to give us some information on those three crucial issues. Those central issues were raised in the consideration of these regulations by the House of Commons.

Lord Tyler: My Lords, may I seek clarification? As I understand it, the Grand Committee is currently discussing only the first regulation. The Minister drifted into the other two regulations, which are the responsibility of her department, but have I got it right that we are currently looking only at the first instrument?

The Deputy Chairman of Committees (Viscount Ullswater) (Con): The noble Lord is correct.

Baroness Thornton: Indeed, I intend to address only that regulation. I do not intend to make the same speech about all three orders. My noble friend is quite right about the issues that he has mentioned, and that applies to all these three orders, so I will not go into that detail.

I thank the Minister for introducing this SI, which, as she said, is necessary only if we crash out of the European Union. I say to the Minister—as I said to her colleague the noble Lord, Lord O’Shaughnessy, whenever I have had to deal with these sad statutory instruments—that this is a gross waste of public money and time, and expertise that could be better used elsewhere. I put that on the record again. This set of SIs, and particularly the one about human embryology, deal with hugely important issues for people’s personal lives in different ways, and to get them wrong would therefore be potentially devastating for the people concerned.

On the first regulations, on embryology, the UK currently imports sperm primarily from sperm banks in the USA and Denmark, as the noble Baroness said. How will that traffic in particular be affected by Brexit and these instruments? The regime that we currently have in the European Union obliges us to inspect third country premises. As the UK will no longer be an EEA member, we will become a third country. I ought to explain that to the Committee because, although the Minister alluded to it, that is the truth. That will happen if we crash out at the end of March. I would like the Minister to confirm that that is correct.

We are very fortunate in the UK to have two reputable bodies, the Human Tissue Authority and the very experienced Human Fertilisation and Embryology Authority, which was the first in the world to be dealing with this. It is currently the body that inspects UK premises on behalf of the European Union, which makes sense. So what is going to happen? Who is going to carry out the inspections of all the different premises? And what happens the other way round? Are we entitled to inspect those premises across the European Union that deal with the Human Fertilisation and Embryology Authority? Will this cause delay in the production of embryos and tissues required by the Human Fertilisation and Embryology Authority? After the six-month grace to comply with EU requirements, will premises involved in these issues then be inspected by EU regulators? I will probably repeat that question on the other two SIs.

I had hoped that when the noble Baroness explained these orders to the Grand Committee, we would find ourselves enlightened, but I find myself even more concerned, and so I am going to leave those remarks on this particular SI where they are, and return to human tissues and organs when we reach those.

Lord Tyler (LD): Since we are faced with no less than 10 significant Brexit-related statutory instruments this afternoon, the first such substantial group—with implications for scrutiny of hundreds to come—and since there are important general issues here, this is my only opportunity to make some general comments and suggestions based on my service on the Delegated Powers and Regulatory Reform Committee. As the Minister has been at pains to emphasise to the Grand Committee, this is contingency planning for no deal, and I note the comments made by both the noble Baroness and other members of the Committee. But that does not relieve the responsibility on the House and on this Committee to ensure the scrutiny is as careful as it can be, and to ensure that if we find ourselves in a different circumstance, we are also prepared for scrutiny of the different issues that may arise. We have no idea what sort of Brexit there is going to be, or whether there is going to be any Brexit at all. I do not expect to contribute to the individual debates on each one of these 10 SIs, because I do not have the expertise of my colleagues here who will be addressing the individual issues. But I am advised that this is the only appropriate opportunity to make some general comments.

I am sure that all three Ministers bringing these Motions before the Grand Committee today will have read carefully—or have been carefully briefed on—the recent report of the Constitution Committee, a well-regarded committee of your Lordships’ House that we all pay huge regard to because of its expertise and experience. The Grand Committee will also be aware of the report entitled *The Legislative Process: The Delegation of Powers*. It made explicit reference to the critical importance of “effective and timely scrutiny” of Brexit-related secondary legislation, and is so relevant to the 10 instruments in front of us this afternoon—and to this special scrutiny of Brexit SIs—that it would be unthinkable if Ministers were not fully briefed on its recommendations. I do not need to read extracts to the Grand Committee, but will confine myself to key recommendations. That being said, I do not need to read long extracts from the committee’s analysis to this afternoon’s meeting of the Grand Committee; instead, I shall confine myself to key recommendations. In passing, though, I should note that the committee took extensive evidence from a host of authoritative parliamentarians, including senior Ministers, as well as from the Secondary Legislation Select Committee of your Lordships’ House and the Delegated Powers and Regulatory Reform Committee, on which I serve.

4.45 pm

I turn to a number of those very important regulations in the context of this SI. The first is a recommendation in paragraph 106:

“There is no provision for amending statutory instruments and we are not proposing one. However, this means that Parliament’s only options when presented with an inappropriate or defective statutory instrument are to accept it or reject it. This places a greater onus on the Government to respond to the concerns raised by parliamentarians, and to withdraw and re-lay statutory instruments where appropriate”.

Because this is contingency planning, these may very well be precisely the circumstances that we are addressing here with these instruments today. I am sure that all

Members here will be listening carefully to Ministers when they respond to our concerns, because this is not the constitutional equivalent of a *fait accompli*.

Lord Adonis: My Lords, the noble Lord is making a very effective speech. Does he not think that having 10 of these very important statutory instruments scheduled for one meeting of the Grand Committee is, frankly, insulting to the House in the expectation that the Government are holding as to the amount of scrutiny that we will give to each of these extremely important orders?

Lord Tyler: Looking around the Room, I can see some very experienced Members of your Lordships' House. I am sure that we will deal with these instruments in a very effective way, as it is our responsibility collectively to give them the attention that they deserve. Despite the fact that, as the Minister has made clear, this may well be a wasted exercise, we still have to do it properly.

I turn to another recommendation from the Constitution Committee in paragraph 110:

"If the Government uses delegated powers to propose secondary legislation which makes technical provision within the boundaries of the policy and has previously been agreed in primary legislation, Parliament is unlikely to wish to block statutory instruments. However, we are concerned, and this report has shown, that these boundaries are not always respected and that ministers may seek to use statutory instruments to give effect to significant policy decisions. Without a genuine risk of defeat, and no amendment possible, Parliament is doing little more than rubber-stamping the Government's secondary legislation. This is constitutionally unacceptable".

We in your Lordships' House all have a responsibility to ensure that the work that we do here is done with meticulous care. Here is an example: this instrument is the beginning of a whole sequence, a flood, of SIs coming before your Lordships' House—we are told there are going to be hundreds—and each time we have one before us we have to make a careful assessment of whether it is necessary, quite apart from whether it is effective. As the Minister has already said, the instrument before us is simply in case there is a no-deal outcome. The Government have made it so clear over recent weeks that that is not their favoured outcome—they keep telling us what dire consequences there would be for the country if it happened—that it may well be asked whether we are spending our time profitably in this circumstance, so that is particularly appropriate to this section of our discussion today.

Lord Adonis: I hope the noble Lord will forgive me; he is much more experienced than I am about the consideration of statutory instruments. The House of Commons Procedure Committee produced its sixth report of the Session on 4 July last year on the scrutiny of delegated legislation under the European Union (Withdrawal) Act, which is of course precisely what we are engaged in here. It said in paragraph 56:

"We estimate that the latest day on which an instrument subject to negative resolution can be laid so that praying time expires on 29 March 2019 is Monday 18 February 2019. The latest day on which a proposed negative can be laid before Parliament so that the period for consideration expires before 18 February 2019"—

which was what the Government had then said was their aspiration—

"is Friday 25 January 2019".

That is respectively three weeks and six weeks from the present date. Does the noble Lord, with his great experience of these matters, think it credible that these hundreds of instruments which apparently are going to be needed to implement the no deal could conceivably be laid in time for these procedures to be conducted by either Friday 25 January or Monday 18 February?

Lord Tyler: Friday 25 January is even sooner than the noble Lord said, I think. Not for the first time, the noble Lord has jumped ahead of my speech for me. I shall come back to this point later because I share his concern. I served in the other place on the Procedure Committee and I have the greatest respect for the very professional way it looks at matters of procedure. I have to say, though—and this comes out very fully in the report of our Constitution Committee—that I do not have the same respect for the extent to which it scrutinises secondary legislation, which lays an additional responsibility on your Lordships' House to do this with extreme care. So I shall come back to the point about the timetabling that the noble Lord has referred to.

Yesterday in the Chamber, in Committee on the Financial Services (Implementation of Legislation) Bill, there was a succession of exchanges between my noble friend Lady Bowles of Berkhamsted and the noble Lord, Lord Bates—who is here; he is always here at exactly the right moment, as we all know from previous experience—on this very relevant issue. Indeed, the advice of the Delegated Powers and Regulatory Reform Committee was referred to on a number of occasions so I pay tribute to the noble Lord, Lord Bates, because he undertook, at col. 2144, to come back to the concerns of the Committee on Report. I hope he might be prepared to extend the discussions he is undertaking to set in motion beyond the Members who took part in the debate yesterday to include those of us who serve on the Delegated Powers Committee, and to consider more generally the issues that were raised by it.

The Constitution Committee recommends in paragraph 111:

"The Government already has a mechanism to remedy faults in statutory instruments which are identified by parliamentary scrutiny. SIs subject to the affirmative procedure are made only when signed by a minister after parliamentary debates have taken place; until they are signed, they can be withdrawn, revised and re-laid. SIs subject to the negative procedure come into force on the date specified on the instrument, but the Government already has the power to lay a second SI to revoke and replace the first".

That is particularly relevant to the SI before us because it is highly likely that in its present form, it will not be as effective or possibly even as necessary as the Minister is now saying, because, as she admits, this is all contingency planning for an outcome that the House of Commons has already said it does not wish to see and the Government keep telling us is such a dire consequence that we should be blackmailed into accepting some other outcome. On all sides, the circumstances are likely to change and in those circumstances this SI may be totally obsolete and an anachronism, or it may need to be revised. But in such circumstances it is the responsibility of the Government to come back to your Lordships' House with a new proposition.

Lord Adonis: My Lords, I am grateful to the noble Lord for giving way again. Of course, a big issue is what happens if the Grand Committee is not persuaded that we should agree these regulations this afternoon. It is certainly my opinion, and I think it may be the opinion of some of my noble friends, that we should not do so at the end of this debate. I am unfamiliar with the procedures of the House—this will be important; I think it will also impact on many other statutory instruments—as to what will happen in that event. My understanding is that the Grand Committee has to agree proposals by unanimity because it cannot vote, so if we do not agree on approving this statutory instrument, does it automatically go to the House itself? I assume that that would be the acceptable procedure. Is there a guarantee that we would then get to debate it properly and fully and get the fuller explanation and the revisions which may be necessary, as the noble Lord has just set out, in a full debate in the Chamber itself?

Lord Tyler: My Lords, I am getting worried the noble Lord seems to be able to read my mind. I am no expert on that particular issue, because it is unusual, but I think he is technically correct. We cannot vote within the Grand Committee, so it has to go back to the Floor of the House. Time has to be found for that, but we have very little time before the projected, but totally unrealistic, date of 29 March.

I revert back to the Constitution Committee's recommendation, which is a timely reminder for all of us—especially Ministers and their departments—that it is totally unacceptable for Parliament to be forced to approve a defective SI. The mechanisms are there to make sure that does not happen, with no excuses of time pressure, complexity or expediency. How often we hear that argument in present circumstances: "Oh, but it is expedient". Is it really expedient? Is this particular instrument before the Grand Committee expedient? We are told it is only to be used in extreme circumstances which everybody says they want to avoid.

We have a responsibility, and have to ensure that the eventual legislative product avoids defects. Incidentally, there are several potential incidents of Henry VIII powers in the 10 orders with us this afternoon. It is always difficult to see precisely whether Henry VIII is raising his head, if I may use that expression. There are some such powers there, and that should give us cause for concern.

At the end of this SI, and of some of the others we are coming to later, there is a statement to the effect that:

"A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen".

I have read speedily the Explanatory Memorandum for this particular order. I cannot see any persuasive argument for why it is not possible that there could be a significant impact. Who makes that decision? What are the criteria for deciding whether something does or does not have a potential significant impact? We are right to question the extent to which this particular SI is in order.

I turn to recommendation 112 from the Constitution Committee's recent report. It states:

"However, for these processes to work, the Government must take account of the scrutiny of statutory instruments and respond promptly to remedy any deficiencies. Where it does not do so, in exceptional circumstances Parliament may use its existing powers to block such instruments. The Government should recognise that parliamentary defeat on a statutory instrument need not be considered momentous nor fatal. It does not prevent the Government subsequently tabling a revised SI having listened to and acted on parliamentarians' concerns".

This is an important recommendation. It is, of course, the constitutional position, so they could not avoid it. I served on the Joint Committee on Conventions, which reported in 2006. Its recommendations were approved unanimously by both Houses. In particular, at paragraph 228, it states:

"The Government appear to consider that any defeat of an SI by the Lords is a breach of convention. We disagree. It is not incompatible with the role of a revising chamber to reject an SI, since (a) the Lords (rightly or wrongly) cannot exercise its revising role by amending the SI or in any other way (b) the Government can bring the SI forward again immediately, with or without substantive amendment, as described by the Clerk of the Parliaments, and (c) the power to reject SIs gives purpose and leverage to scrutiny by the Joint Committee on SIs, and by the new Lords Committee on the Merits of SIs. The Government's argument that 'it is for the Commons, as the source of Ministers' authority, to withhold or grant their endorsement of Ministers' actions' is an argument against having a second chamber at all, and we reject it".

That was a Labour Government, and I hope the present Ministers would not have made such an absurd proposition.

5 pm

Lord Adonis: My Lords, the noble Lord continues to make an extremely powerful argument. Does he not think that after the action of the House in rejecting the former Chancellor George Osborne's tax credit changes two and a half years ago, and when the Government then promptly withdrew those regulations and did not proceed with them, that actually constituted a very important constitutional precedent for how this House should behave? However, to all intents and purposes, all that your Lordships did was to ask the House of Commons to think again. Because the Government believed that they would not be able to mobilise a majority in the House of Commons they withdrew those regulations. That, I think, was a powerful vindication of the scrutiny role of the House of Lords and dealt with the issue of our rejection being somehow unconstitutional because it was regarded as being favourable. But the reality, of course, is that the Government reintroduced regulations in the House of Commons and could carry them there. They would then come back to us with a renewed majority which would significantly influence how your Lordships behaved. The implication of that is that it would be perfectly reasonable for us to reject statutory instruments the first time in order to test the opinion of the House of Commons as to whether it wished to proceed with them. That is particularly important in the case of these no-deal regulations because it is not clear to your Lordships whether it is in fact the will of the House of Commons that we should proceed with no deal.

Baroness Manzoor: My Lords, perhaps I may help the Grand Committee. Noble Lords are not being asked to approve the instruments on behalf of the

House. As noble Lords, in particular the noble Lord, Lord Tyler, will know, Motions have to be brought back to the House and if the House then wishes to go to a vote, it can do so. My point today is to set out the arguments for the SIs and the importance of why we need to take this action. However, the SIs will be brought back to the House for approval.

Lord Tyler: I understand that and I am grateful to the Minister for making the point. However, I think that the point the noble Lord has made is perfectly reasonable.

Lord Foulkes of Cumnock: The noble Lord has been in this House for a long time. I hope that he is not being taken in by what the Minister has said. If we accept what she has said and we let the regulations go through on the nod, they go on to a list and will go through the House on the nod. However, if in the end we object, as I did, to a previous instrument, there has to be a proper debate in the House at an agreed time. That is the important issue.

Baroness Manzoor: My Lords, I am very much a newbie so I offer my sincere apologies if I have misunderstood. However, my understanding is that all statutory instruments go back to the House and any Member can get up and ask for a vote. It is not simply a nod from the House. The noble Lord is fully aware of that and I have heard him say so himself in the Chamber.

Baroness Thornton: Perhaps we could have some clarification from the Deputy Chairman of Committees.

The Deputy Chairman of Committees: Perhaps I can help the Grand Committee. I should remind noble Lords that the Motion before them is to consider the regulations. I must emphasise the word “consider”, not to approve them. Whatever happens in the Grand Committee, the Government will need to table an approval Motion in the Chamber where any Member can properly register disagreement and table an amendment to debate the Motion.

Baroness Manzoor: I thank the Deputy Chairman for that clarification and I am pleased that his words bear out the point I have just made to the noble Lord.

Lord Tyler: I want simply to respond to the point made by the noble Lord, Lord Adonis. Technically, of course, the House did not reject that particular statutory instrument. The noble Lord may recall that the Motion was very carefully phrased in order to delay its implementation until certain circumstances had been approved. That same evening, a straight rejection was voted down in the House, so I do not think that that situation is strictly comparable to the one that we now face, with this stream of contingency planning SIs—I emphasise the point that the Minister has made this afternoon. These are speculative SIs, if you like, dealing with situations that all of us now must surely think are unlikely. From what the Minister has said, it appears that the House will be subjected to a whole stream of SIs that may never be required. That is an extraordinary way to treat your Lordships’ House.

Finally, I turn to paragraph 113. As I am sure your Lordships will be glad to hear, this is shorter—

Baroness Manzoor: Perhaps I may again interrupt, because I do not feel that we are considering the regulations. Of course, I bow to the much greater experience of the noble Lord on constitutional issues. As I said, I am very much a newbie, relatively speaking. However, neither the Joint Committee on Statutory Instruments nor the Secondary Legislation Scrutiny Committee drew to the House’s attention anything special in the three SIs that we are considering. I bring that to the attention of the Grand Committee. We can spend a lot of time looking at processes and procedures relating to SIs, but perhaps I may put in a small plea. This is about considering the three SIs before us, which are important for contingency planning, and I would like us to move forward, if we can.

Lord Tyler: I hear what the noble Baroness says, but she is technically not correct. At the moment, we are considering only one. Setting that on the table for a moment, I wanted to—

Lord Adonis: I hope that the noble Lord, who is making a powerful case, will in no way be dissuaded from applying his full powers of scrutiny to these regulations. It would be totally unacceptable if the Grand Committee were in any way influenced by a Minister into thinking that it should not fulfil its constitutional responsibility to give full consideration to each of these instruments individually, not least because, if this issue is to go to the House for a proper debate, as it appears it will, Members of the House will need to be informed by the debate in the Grand Committee and we should not suppress full consideration of the issues at stake.

Baroness Manzoor: My Lords, for the record let me say that I am not for a minute suggesting that we should not have full and proper scrutiny of any legislation, whether in Grand Committee or in the Chamber. I value that. At the moment, however, we are talking about processes regarding SIs and not the regulations before us.

Lord Tyler: My Lords, it is unfortunate that we have not had an opportunity to have a general discussion in the Chamber about this process; otherwise, I could have made this speech then. The report was published by the Constitution Committee of your Lordships’ House on 20 November last year. It is on process and is extremely important. Had the Government made time for that discussion, we could have approached these issues in a different way.

Finally, let me come to the recommendation in paragraph 113, which says:

“If the Government’s current approach to delegated legislation persists, or the situation deteriorates further, the established constitutional restraint shown by the House of Lords towards secondary legislation may not be sustained”.

That is the Constitution Committee of your Lordships’ House putting down an extremely important warning marker. It is intensely important that the whole process on the stream of SIs coming down the track to us is approached with that in mind. It will be up to your Lordships’ House to decide whether the Government are responding appropriately to these recommendations as they bring forward this avalanche of Brexit-related secondary legislation.

[LORD TYLER]

The complacency shown by the Minister on Monday in the Chamber, when challenged by my noble friend Lord Newby and others, does not encourage us to be optimistic. He claimed that 50% of the necessary Brexit SIs had been tabled. He also reported that the number had been reduced to some 600. I understand that this has been achieved by a great deal of amalgamation and compositing. The result is that some very long and indigestible SIs are on the way to us, perhaps with as many as 600 pages, in one case. I am told that the Home Office calls these “portmanteau SIs” because they are so general, and they will be extremely difficult for your Lordships’ House to deal with in an adequate manner.

When my noble friend asked the Minister how many SIs had been passed in both Houses, he was unable to give an answer. He did not know it—I hope he does by now. It is clear from the excellent briefing we had this afternoon from HM Treasury on the financial services legislation—indeed, it is also true of the Explanatory Note for these regulations—that we are doing complex and important work. It is not something that can go through on the nod, as the noble Lord, Lord Adonis, said. Therefore, it is right that we take stock of what exactly is happening.

It may be, as the Minister has been at pains to say, that because this is simply contingency planning for an outcome that the Government do not want or expect to happen, and do not want to have to deal with, all this will turn out to be a largely wasted exercise—in which case, we also have a concern. It is a common perception across the House that the Government have not a hope of delivering properly scrutinised Brexit primary legislation before 29 March. However, as the noble Lord, Lord Adonis, said earlier, they have even less chance of providing proper time for rigorous scrutiny of secondary legislation, where the devil is so often in the detail. The overall timetable is beyond the scope of this debate, but if anyone is under the illusion that it would be responsible for the Prime Minister to charge on towards any form of Brexit by the end of March, they should sit down quietly and just look at the proper scrutiny role that we as Members of your Lordships’ House have to exercise on behalf of the nation.

The Deputy Chairman of Committees: For the convenience of the Committee, perhaps I should read out something from the Standing Orders:

“Debate must be relevant to the Question before the House”—

I believe that that is what the Minister suggested; it must be relevant to the question that I have put from the Chair—and:

“No Lord is to speak more than once to any Motion”.

Lord Foulkes of Cumnock: My Lords, perhaps this can be my speech, then. The noble Viscount in the Chair was looking at me, but there are other Members of the Committee who might need his admonition even more than I do.

The Deputy Chairman of Committees: My Lords, I said it for clarification.

Lord Foulkes of Cumnock: But the noble Viscount was looking at me. He should clarify it to everyone. I will be brief—I have only three points to make, which I hope the Minister will find useful.

If Members were in the House the other day, they would have heard the noble Lord, Lord Callanan, trying to twist things in relation to the number of SIs, where they are and how quickly they are going through. He wants to rush all these things through, and I am worried about that. It is even more worrying now: he is so keen to rush them through that he has turned the heating down in this place. The clerks are having to wear scarves to keep warm and survive. But this is a serious matter.

First, to take up the point made by the noble Lord, Lord Tyler, is it right that we should be dealing with the amendment of primary legislation as an SI in Grand Committee and not in primary legislation on the Floor of the House? It is astonishing. I have never known this to happen before; perhaps the Minister can tell us when this has been dealt with in this way before. As the noble Lord, Lord Tyler, rightly said, because we are dealing with it as an SI, we cannot amend it but can only accept it or reject it, and that makes it very difficult. It may be that my noble friend Lady Thornton on the Front Bench, who is an expert on this, would have liked to put down a number of detailed amendments, but she is not able to do that because of the way we dealing with this.

Lord Winston (Lab): Me too. With respect, these are very complex areas of medicine and clinical science, and they are changing rapidly with increasing advances. It is clear that the existing legislation, which in some cases dates back to 1990, is no longer entirely fit for purpose. It is therefore important that the House reconsiders this legislation. It is a marvellous opportunity, and we cannot simply do this en bloc. It would be a travesty of what this Committee should be doing.

5.15 pm

Lord Foulkes of Cumnock: I am grateful to my noble friend; as he is a world expert on these matters, it is useful to have him in the House and this Committee.

Two things worry me if we move out with no deal. First, will the trafficking of organs—people wanting to make money out of organ trafficking—become more likely? The European Union has brought some order and respectability to this, ensuring that it does not happen as it had done in the past, particularly with some countries which came into the European Union relatively recently.

Secondly—and perhaps my noble friend Lord Winston can help on this—are there increased dangers to health? In this SI we are dealing with stem cells, corneas, heart valves, eggs and sperm, skin grafts, and bone products—very sensitive, important issues. Is there scope for commercialisation in relation to that? Again, this is something we could deal with if we were not just rushing it through.

That is all I wanted to raise. I do not think we should be trying to extend this unduly. I know we do not address the Chairman in this way, but there are genuine concerns. With respect to the noble Baroness, Lady Manzoor, who has been rushed into this at short

notice because the noble Lord, Lord O'Shaughnessy, is no longer a Minister, there are very serious questions which so far she has not been able to answer. The only way to deal with this issue properly is for it to go to the Floor of the House, where, in a proper debate, experts such as my noble friend Lord Winston can ask specific questions. It would have been even better if we could have dealt with it by primary legislation; then we could have had some amendment. But I think if we do not do this, we are storing up unforeseen dangers that might cause genuine difficulties, and that concerns me.

I hope that that was not too long and it has dealt with the matter before us.

Lord Winston: Before my noble friend sits down, may I ask him an important question? Is he aware there is a specific example of British patients leaving these shores to go to the rest of the EEC for treatments which are not regulated by the Human Fertilisation and Embryology Authority? In some cases, for example, they return from Spain with three embryos re-placed in their uterus and end up having triplets on the National Health Service, often at massive cost. One occurred just last month; the health service probably spent hundreds of thousands of pounds on such babies, after a procedure which would not be allowed by this legislation as we set it up in 1990. That is why this is too complex an aspect of our new relationship with Europe to be discussed without very careful consideration.

Lord Foulkes of Cumnock: I am really grateful to my noble friend, who has dealt with this precisely and with knowledge rather than the broad brush I was using. This shows what an advantage it is to have people such as him in the House and this Grand Committee. It would have been better if he could have dealt with it through primary legislation in a proper, considered way; then we could have dealt with it in Committee, amendments could have been tabled and we could have considered the most appropriate way of dealing with it.

Lord Adonis: My Lords, before my noble friend sits down, does he not also think it would be advantageous to the Grand Committee and the House for us to have a procedure whereby we could discuss amendments to these regulations rather than having to accept them in full or not at all? This is a big problem that we have been struggling with throughout the consideration of these regulations and our wider consideration of the EU withdrawal arrangements.

Lord Foulkes of Cumnock: I certainly do. I see that my noble friend Lord Tunnicliffe is present. He has much greater experience in the House of Lords than I do, and he reminds me that there is a danger in using what I think he called the nuclear option of moving against statutory instruments because of the implications. If we were able to consider amendments to them and amend them in some way, we would not have that worry; we would be able to deal with them in a more specific, detailed, thoughtful and effective way. This is a difficult issue. A lot of people have become increasingly concerned over the years—and I know that this is not just in the Labour Party; it stretches right across the parties to the Conservatives, the Liberal Democrats,

the Greens and others—that more and more statutory instruments are just being pushed through, rather than those matters being dealt with in primary legislation.

Lord Deben (Con): Hear, hear!

Lord Foulkes of Cumnock: The noble Lord, Lord Deben, has said “Hear, hear!” in a very positive way. I remember attending a very interesting world conference on the environment that he chaired brilliantly. He allowed everyone to participate fully, which had not happened under the previous presidency and I think has lapsed under subsequent presidencies. He did it very well indeed, which allowed matters in that area to be considered appropriately. It is good to have endorsement from the other side from someone with such experience.

Baroness Barker: My Lords, like the noble Baroness, Lady Thornton, I shall confine my remarks primarily to the regulations we are currently discussing. With respect to the general debate that we have had, I will say simply that it is common with statutory instruments that there is a great deal of consultation beforehand with relevant bodies, and that is simply not the case on these. That in turn often leads to a determination of whether or not a statutory instrument is in fact controversial and where it ends up being discussed in your Lordships' House. Some of the earlier discussion about those statutory instruments that will be put into Grand Committee as opposed to being considered on the Floor of the House might therefore have to be reconsidered, given the deluge of statutory instruments that is clearly coming our way.

Because of that, I have some questions for the Minister. Like the noble Baroness, Lady Thornton, I was unclear about what happens regarding the six-month transition period. I understand that the statutory instrument comes into force if there is no agreement. Is it therefore right to assume that there is then a six-month transitional arrangement that will automatically be overtaken, and that at the end of that six months there will be a completely new set of regulations for this important area of work? It is an important area of work, in which we have led the way in the world. The consequences, not least for the research capacity in this country, are extensive.

Like the noble Baroness, Lady Thornton, I could not determine whether the Minister's statements were statements of aspiration or fact. It seemed to me that she was trying to convince us that there would continue to be equivalent recognition between ourselves and the EU—but on what basis, if we are not just no longer subject to the same agreements but no longer taking part in the development of policy and science that underlines the developing law in this area?

I have one other question on this SI. The Minister said that legislation governing reproductive cells is a reserved, UK-wide matter, but there are cells that are not reproductive but that are created for the purposes of research into human fertilisation and embryology. Is that a reserved matter or a devolved matter? If it is the latter, what discussions have been had with the devolved Administrations? In Scotland we have world-leading academic and research bodies. In conclusion, and this applies to the whole area of research, I have

[BARONESS BARKER]

to say: what a waste of time, money and effort, and what damage we are doing to our world-leading research centres in this country.

Lord Adonis: My Lords, I will make some points about the validity of our consideration of this statutory instrument. Like the nine others we are going to consider, it relates to no-deal planning. In respect of the remarks made by the Deputy Chairman of Committees, this is highly relevant to this regulation and all the others because we would not be debating this regulation and all the arrangements that the Minister explained, including very complex new relationships that are going to be necessary with our European partners, if it were not for the fact that the Government are putting in place no-deal planning for what might happen if we crash out of the European Union on 29 March without a treaty.

But there is a big question mark about the validity of that no-deal planning, for two reasons. First, the supposition of all parliamentarians when we served the notice under Article 50 was that there would be a deal. The whole purpose of Article 50 is to set in train negotiations for an exit treaty. The House of Commons has never voted—until yesterday, and I will come to this in a moment because it has a big bearing on our consideration of these statutory instruments—on a proposition that the United Kingdom should leave the European Union with no deal; nor have your Lordships. It is my contention that the whole consideration of these statutory instruments is invalid because it does not follow a clear instruction from the House or any legislative basis for the implementation of no-deal arrangements.

Lord Foulkes of Cumnock: Perhaps my noble friend will speculate on the authority under which money has been spent preparing for no deal. I have raised this with Meg Hillier, chair of the Public Accounts Committee, who tells me that the National Audit Office is looking into this to report to the Public Accounts Committee. I just do not understand how millions and millions of pounds can be spent without any authority on something that is not government policy.

Lord Adonis: I agree entirely with my noble friend. Every time we debate these issues, the sum allocated by the Treasury for no-deal planning is increased. My noble friend and the Committee may have noticed that it has now been increased to £4 billion. Apparently £2 billion of that is still to be allocated. None of this, as far as I can see, follows instructions of the House of Commons or indeed information given to the House of Commons. The first question to ask the Minister in respect of these regulations is: can she tell the Grand Committee how much the preparatory work for these regulations, and all the consultation which the noble Baroness just referred to, is costing, and what the cost will be to the NHS of having to put in place all these new arrangements, including the new licensing provisions referred to in the regulations? A key issue for the House, when it debates these regulations after our consideration, will be to know what the cost is going to be and whether in fact this is a cost that we think it is reasonable for the public to be bearing.

But the situation seems to be even more serious. As of yesterday, the House of Commons has debated whether or not it wants no deal to proceed. It had a full debate yesterday evening on the amendment tabled by Nicky Morgan and Yvette Cooper on the specific question of whether or not funds under the Finance (No. 3) Bill, which was presented to your Lordships this afternoon, should be allocated in the event of no deal. There was a long and extremely heated debate on that issue. The House of Commons voted by 303 to 296—which is an extremely large Division, one of the largest there has been in the whole Brexit process—against the Government by a majority of seven in favour of the amendment which would severely limit the ability of the Government to use public funds for implementing a no-deal outcome without the specific authorisation of the House.

We are in an extraordinary constitutional position. We are being asked to approve extremely significant regulations involving us crashing out of the European Union with no deal, which, as my noble friend Lord Winston said, in the specific instance of human embryology and tissues, involves big burdens on the NHS, questions about how new arrangements will work and costs to public authorities. That is all being done on the basis of no specific statutory authorisation and against the clearly expressed will of the House of Commons that this should not proceed in any event. I will make the same remarks in respect of all these regulations, because they apply equally, but this is a big issue and this debate will influence the House when these regulations are referred to it.

5.30 pm

On the regulations themselves, I was disappointed at the Minister's opening remarks. The regulations were debated in the House of Commons on 19 December, when many significant concerns were raised. The Minister in the noble Baroness's department, Jackie Doyle-Price, said that she would consider further the issues that were raised but was not able to give full responses. We are a revising Chamber. The whole purpose of our sitting is to reflect on the considerations of the House of Commons, to ask further questions and to bring to the attention of this House and, if necessary, the other place the issues that were raised. I would like to put to the noble Baroness a whole set of questions that were raised in that debate, in the hope that she can give the House fuller answers, which have not been provided so far.

Four questions stood out. The first was on the costs that will be borne by establishments in making the new arrangements necessary under the no-deal contingency plans. In the debate, many Members of the House of Commons raised the issue of the costs. Jackie Doyle-Price said in response:

“On whether costs need to be reimbursed, it is worth noting that we expect the costs incurred by establishments to be extremely low”.

However, she could not give any figures on what the costs would be and how they would be met. Having looked at the consultation to which the noble Baroness referred, I understand that there is concern in NHS establishments about these costs and how they will be met, given the extremely tight funding envelope within

which the NHS is working. Could the noble Baroness tell us more about what the costs will be, how they will be borne and who will meet them? Will part of the £4 billion of contingency planning that the Treasury has announced be given to the NHS to meet the costs of new licensing regimes, additional transportation expense and additional consultation requirements as this whole process goes through? If not, how do the Government expect that these costs will be met?

The second point comes from my own area of expertise, which is transport. What will happen if there are big problems at the ports, given the acute sensitivity of the materials—organs, tissues and so on? How are the Government in any position to give undertakings to Parliament that the services that are provided at the moment for the transportation of these organs and tissues will continue uninterrupted after 29 March if there is serious congestion at the ports and massive disruption to traffic going from Britain to the continent? The contingency planning on ferries—I see that the noble Lord, Lord Deben, is on to the same point—gives no one any confidence at all that arrangements are in place that could assure NHS patients and the doctors who have to give advice to those patients and put their own arrangements in place that there will be no disruption.

Let me quote the words of Jackie Doyle-Price, the Minister in the House of Commons, as they are significant in the context of the issues that we are discussing. She said:

“We have all heard the concerns about whether things will be able to get into the UK through that entry point. We are working with the Department for Transport to ensure that things such as medical supplies, including organs, can get through if there is traffic congestion. We are making such provisions—contingency plans will be in place”.

She said that, if they succeed,

“it will be business as usual and that, for example”—

this does not make grammatical sense, but this is what the Minister said, so it must be true—

“couriers are escorted so they can navigate traffic more quickly. It is very much on our agenda to ensure that we can enable that to happen”.—[*Official Report*, Commons, Third Delegated Legislation Committee, 19/12/18; cols. 9-10].

The mind boggles about what arrangements the Secretary of State for Health thinks will be put in place in the few moments that he has when he is not buying all the world’s fridges, as he is at the moment. What does it mean that couriers will be escorted so that they can navigate traffic more quickly? If the M26 and M21 are congested and you cannot move, how will these couriers get through? What special arrangements do the Government intend to put in place to enable that? The noble Lord, Lord Deben, thinks that it may be carrier pigeons.

Noble Lords: Drones!

Lord Adonis: Will the Department of Health hire a new generation of drones as part of its £4 billion for contingency planning so that if disruption takes place, these vital organs and tissues will get through? I hope that the Minister will tell us more because in the House of Commons, Jackie Doyle-Price was not in a position to give any assurances. A lot has happened since, including the debate in the House on ferry contracts. Such ferries could presumably be one of the

contingency arrangements for transporting organs, but it turns out that the contract is with a company that has no ferries and no experience of managing them. What assurance can be given to NHS patients and practitioners that there will be no disruption whatsoever in arrangements as a result of this no-deal planning?

The third important issue, which the Minister also referred to, is devolution and how it has an impact on these arrangements. When I read the debates in the House of Commons on the regulations, it was unclear to me precisely what will be devolved and what will not. What will be central government’s responsibility and what will be the devolved authorities’ responsibility? I hope that the Minister can set that out clearly because it will be of great concern to the devolved authorities. In the House of Commons, Jackie Doyle-Price said:

“Legislative competence for the donation, processing and use in treatment of human reproductive cells—sperm, eggs and embryos—is reserved to Westminster. Competence in respect of all other human tissues, cells and organs is devolved”.—[*Official Report*, Commons, Third Delegated Legislation Committee, 19/12/18; col. 4.]

Can the Minister explain why the reserved issues are being reserved and the devolved issues devolved? There does not appear to be any clear rationale for this matter, but it will clearly be significant for the relationship between Parliament, Whitehall and the devolved authorities. We have asked a lot of serious questions about the regulations to which I hope the Minister will be able to give full replies for the benefit of not only the Committee but the House when it debates these important issues.

Baroness Manzoor: I thank noble Lords very much. I was not expecting such a lengthy debate but I very much welcome this scrutiny. I want to say from the outset that although I welcome the input from the noble Lord, Lord Tyler, the reality is that I am not in a position to comment on the processes and procedures on SIs, including which SIs come before us. As I have said already, these SIs were considered before coming before the Committee and there will be an option for further discussion of them in the House if noble Lords wish. Indeed, if noble Lords wish to table amendments, that is a matter for them. I cannot say what the process is because I do not know. There was some discussion about primary legislation; this is not primary legislation, of course. We are just considering SIs so I am not in a position to talk about amendments.

Lord Foulkes of Cumnock: That is exactly the point that I and others were making. If it were primary legislation then we could amend it, but because these are SIs there is no arrangement for amendments to be considered either here or on the Floor of the House, which means that the instrument has to be either accepted or rejected. That is a take-it-or-leave-it situation that makes things very difficult in an area that, as we have heard, particularly from my noble friend Lord Winston but from others as well, is so complicated.

Lord Warner (CB): Before the Minister responds, I have a relevant point. I have sat here listening interestedly to this debate over the last 40 minutes or so; I am waiting to speak on some later regulations. If the

[LORD WARNER]

Minister could say that she was willing to take matters away in the light of the comments made in Committee for further consideration by the Government, or to withdraw the regulations while that was happening, it would speed up the consideration of these regulations. I think the Minister might take advice very quickly on that issue because we are going to go through the same issues on regulation after regulation. Unless there is some capacity for the Government to respond to the concerns that are being expressed, not just about this set of regulations but on the others as well, we are going to be here for a very long time.

Baroness Manzoor: My Lords, it will be a matter for the Grand Committee in terms of how it wishes to proceed. My role today is to enable the scrutiny of the statutory instruments and give out the reasons and the arguments as to why they have been put before the Committee for its consideration. It is above my pay grade to take them away and come back. We are here to deal with these three regulations, and I intend to do so.

I wanted to close off the wider debate because much of the debate has not really been about the content of the regulations but about the impact of SIs generally. As the noble Lord, Lord Tyler, said, he has used this Sitting because he felt that no opportunity had been given to him and others to have the debate on the Floor of the House. Again, that is of course not within my remit, but I have listened to what the noble Lord has said and I am sure the Chief Whip and others will hear it. It is open to him and other noble Lords to talk to the usual channels if they have issues regarding what debates take place and which SIs come forward.

Moving sharply on, a number of noble Lords but particularly the noble Lord, Lord Adonis, asked about cost in relation to this particular regulation, although this applies to all three. We expect the cost to be minimal because clinics that need import licences already have them. We estimate that fertility clinics will need to put 60 to 100 new agreements in place, and they will be able to use their existing agreements as templates for the new ones. We are not expecting any additional transportation costs, to which the noble Lord also alluded, because the clinics already meet transport costs for importing from the EU.

Lord Adonis: If there is serious disruption, there will be significant additional costs to these establishments. How is she proposing that those costs will be met? Are there any concerns about the impact of such disruption on patients and those engaged in this matter?

5.45 pm

Baroness Manzoor: I hope the noble Lord feels I have been generous in giving way, but I really do need to make progress. I will answer the questions, but he must allow me to answer them before posing the same questions again.

The noble Lord asked about the impact cost for regulators and businesses, and I have already said these are to be low. He also asked what these costs are exactly. I do not have the figures, but they are expected

to be very low, because for fertility clinics, it will be largely business as usual. Those importing from the EU already have import licences. The clinics will need written agreements and the regulator, the HFEA, will consider these at no cost.

Lord Winston: I am grateful to the Minister for giving way. This is a specialised area and it is quite understandable that the Minister is not fully apprised of the problems arising here. It is a question not merely of cost but also of ethical approval. For example, even for minor changes in a licence—and they can be minimal, such as a request for a three-month extension to a licence we have asked to be reviewed—it can take months just to get the approval. There are so many changes that need to be made when you do different research and find new things happening. This is a moving area of science. It is not static, and it is not like so much other regulation. Therefore, to take three completely different areas en bloc makes no sense. Each brings its own very different problems. I hope the Minister will recognise that as they need to be debated before they go to the Chamber.

Baroness Manzoor: I hear what the noble Lord, Lord Winston, says, but I want to reassure him that these instruments are about continuation of present practices, standards and patient safety. They are not introducing new ethical considerations. We are merely, if there is no deal, putting in place contingency plans so that for six months, new agreements can be put in place. The number of those agreements is not going to be significant.

A number of noble Lords raised issues about delays at ports. The noble Lord, Lord Adonis, in particular raised this on a number of occasions. I stress again, in the event of no deal, it is possible there may be delays for freight transiting via Dover, the Eurotunnel, and possibly Holyhead and other ports. The disruption to outbound traffic could have an impact on inbound traffic between EU and UK ports; I concede that. It could also lead to congestion on the road network in Kent, but we are planning for this situation and want to avoid any disruption to the supply of urgent material to hospitals in the region, and any congestion at ports or on the roads. Organs, particularly, are flown already, and that will continue. Where there is urgent need, they will be flown to the appropriate places, and those agreements will continue.

Lord Adonis: Will the Minister give way?

Baroness Manzoor: No, I am sorry. I have been more than generous today.

This is about contingency planning, making sure that if there is no deal, these will be activated. I have already addressed the cost to businesses. The noble Lord, Lord Adonis, also asked about import licences of UK establishments, and the noble Baroness, Lady Barker, asked about the six-month transition period. The six-month transition period will allow time for UK licensed establishments to put in place the agreements with EU establishments. We will try to mirror as much as we can but it will give further time. Many of those agreements are in place but that is a further six months. I remind your Lordships that we are talking about a no-deal planning scenario.

The noble Baroness, Lady Thornton, asked whether we will be a third country when we exit. Of course, we will be a third country when we exit the EU. She also asked what I thought was a very important and relevant question about who will inspect the establishments in EU countries. Of course, we want to ensure safety for patient care and that the quality is there. I reassure the Committee that EU regulators already inspect establishments in their own countries before they license them, and this will continue after exit day, so we will be able to rely on the standards in the establishments as we currently do. Regulators in their own countries go and inspect the premises and that will continue to happen, so there will be joint understandings of standards, which will not be diluted. This is a continuation. We are not making new plans.

The noble Baroness, Lady Thornton, also asked about the transport of sperm and embryos. Of course, these travel in special containers and, as I said, they are often flown by air. The containers have the appropriate paperwork, which explains what is inside, and they are not expected to be subject to extra inspections at the border when they come into the UK. That will continue.

In response to questions asked by a number of noble Lords—and this applies to all three SIs—licensed establishments are obliged to report all incidents involving adverse effects, whether these happened in the UK or any other country.

I tried to cover the question of the noble Lord, Lord Tyler. The noble Lord spent a considerable time talking about processes and statutory instruments. All I can say to him is that, whatever the outcome, any reasonable, good Government—or any company or business—must have a contingency plan. This is contingency planning. It would be poor of the Government if we did not take such action. So I do not see it as a waste of money. I see it as prudent and effective planning.

What happens if the instruments are not made? That is a matter for the Grand Committee and, of course, the House. It is such a sensitive area and I am a newbie so I am learning all the time. I say to the noble Lord, Lord Tyler—and I said it at the start—that of course the Government will reflect on what has been said, and we take the issues that the noble Lord and others have raised regarding SIs, processes and procedures very seriously.

Lord Tyler: Is the Minister prepared to make representations to the Government Chief Whip that time should be permitted as soon as possible for the Constitution Committee report to which I referred, which is so relevant to everything that has been discussed this afternoon, to be discussed on the Floor of the House? If we do not have that opportunity before this stream of Brexit-related SIs comes before us, we will not be able to do our duty as the revising House of this Parliament.

Baroness Manzoor: I am very happy to give that undertaking. I will ensure the Chief Whip is aware of it, as was my intention, and I am sure he will be. These statutory instruments are important because if they are not made, we may not be able to share organs, tissues and cells with EU countries, and that could jeopardise patient treatment. Regarding a question

raised by the noble Lord, Lord Foulkes, I stress again that all three SIs are about maintaining the same high safety standards that we have in the NHS. We are not changing anything. We are just putting in place contingency plans. I know he has come back to me again and again on this particular issue in different ways, but we are not making new legislation, nor are we changing primary legislation. We are just ensuring we have agreements in place should a no-deal exit happen.

Lord Foulkes of Cumnock: My Lords—

Baroness Manzoor: No, I am sorry; I have been more than generous and need to move on.

Lord Foulkes of Cumnock: That is a shame.

Baroness Manzoor: It is not a shame. I am very happy if there are questions.

Lord Foulkes of Cumnock: The Minister said we are not changing primary legislation. So what does “Part 2: Amendment of primary legislation” mean?

Baroness Manzoor: Can I complete what I am saying, because at the moment what we are talking about is maintaining current standards. We are not going to be doing anything new. Any changes to UK law will be a matter for Parliament as a whole, so if we were to change primary legislation on whatever issues there are, it would come to the House.

The issue of amendments also was raised. I cannot say much about it because, as noble Lords are well aware, these are statutory instruments. The noble Lord, Lord Winston, spoke about the issue of fertility treatment outside the Human Fertilisation and Embryology Authority-regulated sector. I bow to his significant experience and wealth of knowledge in this particular area. This is an issue of concern, but while we are in the EU—and it is not solved by leaving the EU—addressing it would mean putting restrictions on the ability of individuals to travel abroad and receive medical treatment, which is well outside the scope of the Human Fertilisation and Embryology Act.

I have spoken regarding consultations. The SIs are not about making policy. They are about maintaining the status quo as far as possible, so there are discussions with the regulator rather than a public consultation, which I think the noble Baroness, Lady Barker, was asking about. There have been no issues raised. The noble Baroness also asked about embryo research and where that will sit. This particular issue is reserved to Westminster.

I have tried to answer as many questions as I can on this specific issue but my generic answers extend to all three SIs. I beg to move.

Lord Adonis: My Lords, before the noble Baroness sits down, in response to the point about disruption at the ports and what the impact could be on these highly sensitive organs and materials, she asked if I was aware that many of them go by plane. I am well aware of that. It is the main means by which transportation takes place in these cases. However, the issue of disruption at the airports in the case of no deal is every bit as serious as disruption at Dover, and the noble Baroness

[LORD ADONIS]

saying that it was all okay because this would be dealt with by air freight misses the point entirely. We have had debates in the House about this precise issue. What arrangements will be put in place? The European Aviation Safety Agency and all the arrangements by which air traffic takes place in Europe are crucially dependent on our membership of the European Union. At the moment, satisfactory arrangements are not remotely in place for the conduct of air traffic in the event of no deal.

Is the Minister aware that her response on the crucial question which will affect the lives of large numbers of patients has not given the Grand Committee confidence? Can she undertake to come back with a much fuller contingency plan for what will happen in the event of disruption at the airports as well as the ports in respect of embryos, tissues and all the other extremely sensitive products which are at stake here?

6 pm

Baroness Manzoor: My Lords, I understand the question. As I have said, organs and other urgent material already travel by air and the Government will make arrangements for them to be prioritised if there are delays at airports.

Lord Adonis: Can the noble Baroness say what “prioritised” means in the event that air traffic is not taking place at all because of disruption to the regulatory arrangements in respect of the airports? Are the Government in a position, perhaps by use of the RAF and military aircraft, to ensure that these organs, tissues and so on will be transported and that there will be no disruption? That is a critical matter for the Grand Committee and the House to consider in respect of the contingency arrangements for no deal, which is precisely the matter that we are discussing with these instruments.

Baroness Manzoor: My Lords, regarding whether airplanes will fly is well beyond my remit, but I fully expect them to do so irrespective of whether we are in the EU or out.

Noble Lords: Oh!

Baroness Manzoor: Perhaps that sounds flippant, but they will still be flying. This is a very serious and crucial matter. We are talking about patient safety and organs. We need to ensure that organs can get from point A to point B. I and the Government have made a commitment that they will be given priority. I do not have a crystal ball and I do not know what will happen; I do not know what will happen next week. What I am saying is that we want to support patient safety and the quality of the service at their current levels.

Baroness Thornton: I think that the Minister is being teased somewhat by my noble friend, but some of that is completely justified. Of course, the truth is that this is a Brexit-blind question because airports can be closed. I can remember dealing with this when I was a Minister and there was an active volcano in Iceland which stopped organs from being flown over

from Canada. Perhaps I may offer that little bit of comfort to the Minister and suggest that perhaps she might move this statutory instrument.

Lord Winston: Before my noble friend finishes, I should say that I really do not feel that that is a satisfactory point. I hope that I will be forgiven for saying this, but there are numerous examples of where the immediate relationship with Europe is important. Let me take one of those which I do not believe has been considered at all. We are aware that the Human Fertilisation and Embryology Authority undertakes to consider that no more than 10 attempts at sperm donation are made by individual donors, but we have increasingly been importing gametes from outside the United Kingdom because the regulations in this country have rather prevented males wishing, not unreasonably, to donate their sperm. As a consequence, we are importing sperm at an increasing rate and there is a great deal of evidence to show that there is an increasing risk of consanguinity in offspring because more than 10 children are produced as a result of one donor selling their sperm in different countries. That is the sort of thing which does in fact apply to the Brexit situation and it is a problem.

The three statutory instruments before us for discussion are so technical and so demanding that the suggestion which has already been made that we should perhaps withdraw them for the time being and have a proper consultation on what is important in the Brexit issues might be something that we should be thinking about today before accepting them en bloc and before we proceed any further.

Baroness Manzoor: I thank the noble Baroness, Lady Thornton, for her intervention; I very much appreciated it. I also thank the noble Lord, Lord Winston, for his suggestion. But as I have already indicated, we are considering the SIs here today, and it will be a matter for the Grand Committee how it chooses to proceed. I say again that we are not talking about changing legislation; rather, it is about maintaining the standards that we currently have. In terms of tracing organs, sperm and cells, the regulators will keep the same standards and provisions of traceability. They will not change. As the noble Lord will know, these agreements are not only in place with the EU; the regulators have agreements with other countries around the world.

I conclude with a clarification. It was either the noble Lord, Lord Adonis, or the noble Lord, Lord Foulkes, who said that we are changing primary legislation. They were right, but only to the extent that it is within the powers in the European Union (Withdrawal) Act. We are amending primary legislation in relation to HFE because the EU directives in this area were implemented by primary legislation. I just wanted to clarify that. I beg to move.

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, the Question is that the Grand Committee do consider the draft Human Fertilisation and Embryology (Amendment) (EU Exit) Regulations 2019.

Lord Adonis: Not content.

The Deputy Chairman of Committees: My Lords, I must remind the Grand Committee that the Motion before it is to consider—I emphasise “consider”—the regulations, not to approve them. Whatever happens here in the Grand Committee, the Government will need to table an approval Motion in the Chamber, where any Member who is concerned can properly register disagreement. I also remind the Grand Committee, as contained in paragraph 3.13 on page 29 of the *Companion*, that we cannot have a vote in Grand Committee. With that in mind, I put the Question again.

Lord Adonis: Not content.

Motion negatived.

Lord Tunncliffe: I refer the Committee to paragraph 10.17 on page 174 of the *Companion*:

“Affirmative instruments may be considered in Grand Committee. No referral motion is required. After the debate has been held in Grand Committee each instrument is approved by the House on a separate motion”.

Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2019

Considered in Grand Committee

6.08 pm

Moved by Baroness Manzoor

That the Grand Committee do consider the Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2019.

Baroness Manzoor (Con): My Lords, I have nothing further to add to what I said at the start of the previous SI. I beg to move.

Baroness Thornton (Lab): My Lords, I will not repeat the remarks I made on the previous statutory instrument about the cost, the waste of time and expertise, and so on of the exercise that we are going through. Instead, I will make a few points about this particular order.

European Union safeguards on public health set high standards for the quality and safety of human cells and tissue. I thank the Brexit Health Alliance for its briefing on this subject, because it and I agree that the continuation of the UK’s alignment with these standards is in the interests of citizens on both sides of the European Union/UK border. I do not know what is going to happen next, so I will not speculate. It is clear that it is in the interests of citizens that we get this right. In the UK, we have the Human Tissue Authority, an experienced regulatory body which, one assumes, will continue to be resourced and to work to the same safety standards as before exit.

The issues I raised concerning embryology cross over to the issue of human tissue, and are about inspectors, the safety of premises, the cost and how

tissues will cross borders when the UK becomes a third country. I can see from the regulations and the Explanatory Note what the Government think will happen to tissues and organs, but perhaps the Minister could walk us through what will actually happen. Will tissue that is needed in the UK from, say, Spain be able to reach the person who requires it without let, hindrance or regulation? That—and I will say the same on the next SI on organ donation—seems to be the crux of this issue for the ordinary person: whether or not these regulations will allow that traffic to take place with the same ease as today. If it cannot and does not, then these regulations will not work.

Lord Deben (Con): My Lords, the Minister has been put in an impossible position, not by this Committee, but by the Government. We should apologise to the Minister for the fact that we have only her to address in this matter, when we are trying to address the Government. It is no good avoiding the fact that these are part of contingency measures which are themselves entirely unacceptable, because they are not going to work.

The whole process we are concerned with, and to which I deeply object, is to try to shore up an entirely fictitious position. If the Government had really believed, right at the beginning, that there was to be no deal, they would not have proposed a series of measures which were about having a deal. They would have been organising themselves for what would happen if there were no deal. I am applying this particularly to the second of the SIs we are discussing. It is not my noble friend’s fault, and of course she is going to say that it is not within her competence, which I understand, and I admire her considerably. After all, she is my Whip and she keeps me under considerable control, as is noticeable. It is not fair that the Government have put all Ministers into the position in which they have to argue the unarguable. They have to argue the impossible.

Let us look at the issues here. The argument is that if we left the European Union without a deal, we would need legislation in place to ensure that life would continue as normal—but it ain’t gonna continue as normal if we do not have a deal. That is what the Committee has such difficulty in dealing with. What happens if we cannot import or export because there is no possibility of getting through the ports? The Minister said that we will use planes but, if I may say so, the plane situation would be worse because the international agreements on insurance for aeroplanes would collapse immediately and there is no mechanism to put them back into place.

6.15 pm

My noble friend is in a difficult position because so far, her right honourable friend the Secretary of State for Transport has not shown fingertip co-ordination or ability on this matter. Not being able to organise a traffic jam when the issue is one of avoiding traffic jams is one of the most mysterious situations of my political life. I have been involved in politics since the age of 17 and I was a Minister for 16 years; I have never known a situation in which it has been so difficult for the revising Chamber, let alone the legislating one, to come to terms with an issue.

[LORD DEBEN]

I will say a few things to my noble friend. First, this simply does not work, not because of my noble friend's competence, but because of the Government's competence in trying to deal with no deal. That is why the House of Commons rightly said that we cannot have no deal. Secondly, it is extremely dangerous to have such discussions based on the principle that they will not be needed, which seems to be behind all this and why we are allowing this measure to go through. The noble Baroness, Lady Thornton, might be but nobody else at the table is prepared to face the issue that this might be real, not a fantasy.

Thirdly, the fantasy that we may or may not be having is costing at least £4 billion, so anybody who talks to me about a Brexit dividend or anything else really must start to be more sensible. Again, my noble friend will say that this matter is not within her competence but it is reasonable for me to tell her that it is not good enough just to say that the costs are minimal. We must know what the costs are. I have never known such a circumstance. Every time we ask the Government about the cost of anything to do with Brexit, the answer is, "We don't know"—or, worse still, "It is minimal". I do not know what "minimal" means. For some people, thousands of pounds is minimal; for many a National Health Service operation, thousands of pounds are what they do not have, so it is not minimal but serious. My noble friend must give us confidence that she will go away and insist, as a Minister, that she is given the costs because we need to know how much this will cost. In my view, "minimal" is not a satisfactory answer.

Lord Adonis (Lab): My Lords, the noble Lord makes an extremely powerful argument about the basis on which this no-deal planning is taking place. As a distinguished former Member of the House of Commons, can he give us his reflections on how that basis has been affected by yesterday's debate and votes in the House of Commons, including a specific vote against no deal—the whole basis on which we are considering these statutory instruments this afternoon? I ask that particularly in the light of remarks made by Yvette Cooper, who moved the amendment approved by the Commons yesterday. She said that,

"I have heard some say that they want the imminent threat of no deal to persuade people to back the Prime Minister's deal, if not now, then later. But brinkmanship in Parliament is not the way to resolve this and get the best deal for the country. This is too serious for us to play a massive Brexit game of chicken".—[*Official Report*, Commons, 8/1/19; col. 263.]

That was said by the mover of the Motion which the House of Commons approved yesterday. Does he agree that this is a massive Brexit game of chicken and that there is something fundamentally immoral about the Grand Committee playing a Brexit game of chicken in pursuit of a policy which the House of Commons has now specifically disapproved of in terms?

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, perhaps I might remind the Committee of Standing Order 28 and urge noble Lords to relate their comments closely to the Motion under discussion.

Lord Adonis: This is very closely related to the matter under discussion because the issue under discussion at the moment is no-deal planning, along with the whole basis on which that no-deal planning is being conducted. I am sure that the noble Lord will agree.

Lord Deben: I say to the noble Lord, Lord Adonis, that we have a real issue here because it is very hard for the Minister to have to respond to this situation. Again, I apologise to her for the fact that I feel that I have to speak—because we cannot go on, in the politenesses of this House, ignoring the fundamental problem. The fundamental problem is that we are being led up the garden path in two different ways.

The Deputy Chairman of Committees is perfectly right to refer us to the Standing Orders, but this is central to the discussion that we having on this particular SI. The centrality of it is that, first, we are assuming that this could happen, and the second part of it is that we are assuming that the Government have made proper arrangements that if it were to happen, what is in this instrument is relevant and effective. There is actually a third thing, which goes back to the point made by the noble Lord, Lord Adonis, about whether this is legally possible to happen. That, I think, is a question which is beyond the remit of this Committee but is certainly of very great importance.

Lord Warner (CB): Can I ask the noble Lord a question? I would quite like a response from the Deputy Chairman as well. Two separate arguments are flowing here. One is an argument about whether, in the light of the latest Commons vote on no deal, we should even be discussing that. I can sympathise with the Deputy Chairman's intervention. However, there is a second issue which keeps coming up: are these changes actually deliverable? We keep coming back to that and it is where I think that not just this Minister but Ministers on the other regulations will have to come clean. If we cannot deliver these things, I would suggest to the Deputy Chairman that that is a relevant consideration. If the propositions in these regulations require a delivery mechanism that we in our judgment feel, on the evidence being presented to us, is not going to deliver what is in these regulations, it is the duty of this Committee to say that to the Government loudly and clearly, no matter how uncomfortable that may be for the luckless Minister who has to present them to us.

Lord Deben: It is natural for the noble Lord, Lord Warner, to have put his finger on exactly what I was about to come to as my final point of discussion.

I say to my noble friend that the problem with which we are faced is that this is a statutory instrument that inherently proposes that it could work, that it could be put into operation. The more I look at it, the more it seems quite impossible for the Government to say that it could work. My noble friend has been absolutely honest about this. She has said that she cannot tell what the future will hold. That of course is true for all of us. She has also said that we have her commitment that these things would be prioritised where priority was necessary. That is a commitment

which we respect, but the problem with prioritisation is that you have to be able to do it. I do not believe that any of this is in any way deliverable. It is therefore no good us having this sort of fantasy debate.

We are in fairyland, unless that is politically incorrect as a phrase. This is closer to Enid Blyton than anything I have ever been involved in—it is the Faraway Tree, it has nothing to do with reality. When the noble Lord, Lord Winston, makes an intelligent and sensible contribution about some of the problems which occur when you try to transmute something which is to something which is different, so that it is not quite what people may think, actually in a curious way he is being irrelevant. The truth is that none of this is possible. Arguing about whether it is going to be exactly right or not is a further lunacy. We are even further away from it, because we are now introducing rationality into the discussion. That is one thing that clearly cannot be introduced into the entirely irrational basis upon which we are proceeding.

I am the only person sitting on this side, and I know why: nobody can actually go through this exercise without realising what nonsense it all is. What a ridiculous proposal we have before us. Why have we allowed ourselves to get into this position? I am sorry it is my noble friend who is faced with this, but I do not think this House is doing itself any good by conniving in what is manifestly a total nonsense.

I do not believe it is entirely in order to ask people to support the only deal on the tapis. We all have to accept that the deal the Prime Minister has got is the best deal you could get if you wanted a deal like that. It happens to be much worse than where we are, and I certainly would not vote for it if I had the opportunity. I do not think anybody should vote for their constituents to be poorer, because that is what you have to do if you vote for the Prime Minister's deal. But that is not the point. We have in front of us proposals which cannot be delivered.

I sympathise with my noble friend over the position in which she finds herself, but I hope she and other Ministers—because we will be continuing this discussion today—will go back to the Government and say, “I cannot stand up and defend this stuff any longer, because I am not in the business of defending Enid Blyton. I cannot be asked to do this, it is not fair”. My speech is entirely on the side of the Minister. It is not fair that she should have been put in the position of defending something which is intolerable, because it is not possible. It cannot be delivered. There is no no-deal scenario which does not mean chaos, so there is no point in having legislation which pretends that it will stop a no-deal scenario being chaos. That is inevitable, ineluctable and inextricable from the whole process. Of course, my noble friend will get her SI through—we have a ludicrous system whereby we cannot do things to it—but I ask her to go back to the Government, and she does not even have to tell us if she does, and say that this is not a proper position to put Ministers in, having to argue for what is unarguable, a fairy tale, and an insult to the intelligence of all of us.

Lord Winston (Lab): As my name has been mentioned, perhaps your Lordships will allow me to make one observation. Perhaps I should also apologise to the

Minister, because we have already crossed swords once earlier today on the issue of folic acid supplementation of flour—which I feel strongly about, because the evidence supports it. I slightly disagree with noble friend Lady Thornton, who makes many useful contributions to debates on health and I respect what she says. In the case of human tissue—I do not know whether the Minister is listening—the issue is not just the treatment of patients. A big problem, to which I vaguely alluded, is that we are still collaborating with scientists in Europe. We share tissues. We share cell cultures. We have been able to transport those, although we may not be able to do so in future. However, we are still processing them with different procedures, which require ethical consent. If one regulation—in Germany, for example—changes in respect of regulation for ethical consent in Britain during the experiment, how does that stand with the current arrangements for Brexit? This is a major problem. The Human Tissue Act is not primarily needed for the treatment of patients; it is much more for the development of medical research, which will improve the treatment and understanding of a whole range of diseases. That is not considered in the regulations. It is a major problem for us, which we need to sort out.

I completely sympathise with the position that the Minister is in. I am talking to her as the Government and not as someone who has to answer these complex questions. The point that I am trying to make is that we should have had more consultation on the regulations, which deal with a complex matter. Many of us have seen the regulations only briefly, so the Grand Committee has not had the chance to look at them in detail. That is also a problem, which is why I wonder whether there is some possibility of withdrawing them for the time being.

6.30 pm

Baroness Thornton (Lab): That is right. I intend to cover some of these issues when I speak tomorrow in the major debate.

Baroness Barker (LD): My Lords, I will confine myself to considering the regulations. I accept the challenge thrown at us by the noble Lord, Lord Deben, about what we are doing. For my part, I believe that my job is to go through these SIs precisely to establish what is real and what is fictitious in them. There is a grave danger, not least on an important subject such as this, that the general public are being given completely false reassurances. I take the point that the regulations are for a no-deal situation and will last for six months only, but the world does not stop and research does not stop in those six months. I echo the point made by the noble Lord, Lord Winston, that the impact on medical research is tremendously important.

I will make two points. On the inspection of premises, the noble Baroness mentioned in the discussion of the previous regulations reciprocal inspection powers between countries. She said that countries in the EU will continue to inspect their premises and we will inspect ours. In a no-deal situation, why would the EU 27 continue to uphold our inspection processes? They are under no obligation to do so. That has huge consequences, not

[BARONESS BARKER]

least for research. I make the observation that if we in the United Kingdom are sitting here content that the EU countries will continue to inspect their own facilities to their own standards, that is a very curious interpretation of taking back control.

Secondly, we are told that the regulations will be in force for six months in a no-deal situation. What if, down the line, it turns out that there has been an adverse incident either here or in the EU? What are the implications of that in a no-deal situation for the protection of patients? Yes, we are in fantasy land, but even in fantasy land we have to start asking real questions. Those are simply two of the many questions that noble Lords are entitled to ask and to which we are entitled to have strong answers.

Lord Warner: My Lords, I was not intending to speak on this set of regulations, but I was taken down memory lane when I saw what was involved because I was the Minister who took the human tissues legislation through this House in 2004. I want to remind the Minister why that legislation was put in place because it is relevant to a question that I want to ask at the end of what I am going to say. It was put in place because medical research was being jeopardised because of patients' concerns about the safety, storage and use of human tissue of various kinds. It arose against a background of huge concern about the treatment of human tissues of children at Alder Hey Hospital. I can still vividly remember the parents of those children fixing me with a gimlet stare as I took that legislation through the House.

My question to the Minister therefore backs up to some extent the point that the noble Baroness, Lady Barker, has just made: can the Government guarantee that in these regulations there will be an absolute set of safeguards around the use of human tissue during the period after a no-deal Brexit that will not jeopardise all the good will that has been built up since 2004, which has got patients willing to co-operate in the use of human tissue for medical research?

Lord Deben: As the noble Lord asks for a guarantee, could he explain how the Government could make such a guarantee? Surely that is our problem; it is not that the Government would not like to make such a guarantee—I am sure they would—but how could they? Is that not the fundamental problem with which we are faced?

Lord Warner: I think it is, but I am trying to be kind to the Minister after what I suspect has been a rather exhausting and tiresome afternoon for her. This requires the Government to be absolutely sure that the safeguards in place now will not be diluted in any way as far as patients are concerned as a result of these regulations. She and the Government have to be sure, as the noble Baroness, Lady Barker, said, that if there is an incident it will not undo all the good will that has been built up in the last 15 years or so.

Lord Adonis: The noble Lord has been a Minister and has had to deal with these issues. Could he give his own reflections to the Grand Committee on the issues

to do with disruption at ports and airports that might impact on the extensive research and patient treatment that takes place under these provisions? If there was serious disruption, what impact does he think it would have on the communities affected?

Lord Warner: If the Government cannot guarantee the easy transfer of pieces of material of one kind or another that are vital for medical research, you end up with a loss of public confidence in medical research and the ethical considerations surrounding that. It starts to jeopardise the ability of world-class scientists to do the research that at the end of the day benefits patients across the country and indeed across Europe.

Lord Adonis: My Lords, I did not care greatly for the Deputy Chairman's intervention in reading the Standing Orders out to us. I think your Lordships are well aware of the requirements for us to be relevant in our remarks, and I do not believe that anything has been said in the Grand Committee today that is not relevant to the direct issue of no-deal planning, which is the precise issue involved in each of these regulations. It is not just relevant but it is our duty to point out—in the way that the noble Lord, Lord Deben did in his remarks—the big issues to do with the practicality of these arrangements as well as the legal and moral basis on which they are being taken forward, given that the House of Commons, the primary elected body that establishes law and policy, has directly voted against no-deal preparations as recently as yesterday, in a huge Division after a very controversial debate. When I read to him the remarks of Yvette Cooper, the former Labour Cabinet Minister who moved the amendment endorsed by the House of Commons, I think that it was extremely relevant.

We all have great respect and increasing sympathy for the Minister. She is having to assume responsibility for a Government of which she is a distinguished part but only one part. She is in an invidious position in having to reply, but she has not been able to do so because there is no reply to the fundamental issue of why are we considering these regulations at all when it is unclear whether they can be implemented and when the legal basis for them is so shaky and, in my view, unsustainable because, crucially, it depends on the will of the House of Commons, which only yesterday expressed its will emphatically in a huge Division: that it did not want to see no-deal preparations continue—*[Interruption.]* I am sorry. My noble friend is making an entrance. I thought it might be another intervention from the Chair.

As each of these orders come up for consideration by the House, we need to point out that the Grand Committee believe that the arrangements being put in place are not practical in the time period envisaged for them—now barely two months—and that we will not be satisfied unless the Government can give us some account. The Minister has not been able to say whether there is a satisfactory legal basis for these arrangements to be brought forward, given the view the House of Commons has now expressed. I would welcome that as the Minister did not respond to those remarks in respect of the previous statutory instrument; I hope that she will in her remarks on this one.

The remarks of my noble friends Lord Winston and Lord Warner are acutely concerning. They have huge expertise in this area and have raised very serious concerns about the impact on patients and research in the event that the Government attempt to go down the course envisaged by these regulations. The Grand Committee would welcome the Minister's views on these issues. I note that we are not talking about a peripheral issue in respect of the NHS and patients. There are about 5,000 imports of tissues and cells from the EU alone in a typical year. This is not my area of expertise, but that is clearly a huge area of our national life which acutely affects a very large number of individuals. That includes 600 imports of stem cells and 3,000 imports of bone products. The UK imports donated sperm primarily from commercial sperm banks in two places—the United States and Denmark—so one of the two principle areas from which we import is in the European Union and will be directly affected. The Minister may be able to confirm figures I have seen saying that Denmark is the principle location from which we import donated sperm and will be hugely affected.

I come back to the fundamental issue I raised in the last debate, to which the noble Baroness was not able to give a satisfactory answer: what happens in the case of serious disruption. I invite the Minister to say more about the word she used in our last debate: “prioritised”. The Government clearly think that there may be serious disruption or there would not have been the attempted simulation of a lorry jam; Chris Grayling could not even organise a lorry jam that worked but a simulation of a lorry jam was attempted on Monday none the less. The Government would not be attempting simulations of lorry jams if they did not think that a lorry jam would be one of the consequences of no deal. I have worked closely with civil servants for many years. They are very conscientious and they feel, correctly, under a duty to see that proper preparations are made for serious contingencies that might arise in respect of policies put forward.

The Grand Committee and the House should take careful note of the fact that this is not any Project Fear done by me or any fantasies from the noble Lord, Lord Deben. The Government are conducting contingency exercises of lorry jams, which means that the port of Dover is effectively impassable for long periods, and we were told yesterday by the junior Transport Minister, the noble Baroness, Lady Sugg, that the port of Ramsgate is being dredged—we are still trying to find out how this dredging is taking place and what the contracts are—so that further no-deal preparations can be made for after the end of March. We now know what the likely disruption can be at the airports, because many of us were trying to get out of Gatwick before Christmas and the drone completely disrupted all the traffic out of the airport.

6.45 pm

There is a fundamental question here. When the Minister says that the Government will seek to prioritise the movement of tissues, cells and donations in the way she described—I take her at her word; I know that she would do her absolute best to see that satisfactory contingency arrangements were put in place—what

does prioritisation mean that will give the Grand Committee or the House any confidence that there will not be severe disruption that will imperil research, and quite possibly the lives of people in this country, because it is not possible to import cells and embryos in the way that is envisaged? May I press the Minister more on this to say what those contingency measures are and what she means by prioritisation? In what order will things be prioritised? How will this be prioritised over essential food supplies, for example, or other essential matters that have to go through the ports? Can she tell us more about that?

I also want to press her on whether the military might be used, because of course military aircraft and air bases could be used, and can be used under arrangements that do not involve existing EU arrangements in the event of serious disruption at the airport. Can the Minister therefore say whether the services of the RAF or the Royal Navy could be made available? This is not an unreal issue. I was the Secretary of State for Transport who had to deal with the crisis in 2010 when the Icelandic volcano erupted and 150,000 British citizens were stranded abroad; it was a contingency very much like the sort we are discussing today. My noble friend Lord West and I were closeted in a Cabinet committee and then in COBRA, requisitioning aircraft carriers and RAF ships to ensure that people could be moved across the Channel.

Lord Deben: I hope that my noble friend will be able to answer this question, but I point out that it is rather difficult to answer. Yesterday or the day before, we were informed that we have had to withdraw two cutters from the work being done because of people coming across the Mediterranean. That was the only way that we could stop people coming across from Calais. In other words, we appear to have a very exiguous ability to do these things. I am told that we are only borrowing these cutters for a bit and then they will go back again. I also want to know whether our forces have the ability to provide the prioritisation of which the Minister speaks.

Lord Adonis: The noble Lord makes an important point, and we look forward to the Minister's response in more detail on what these contingency arrangements will be. If she is not in a position to tell us, the advice that was given to the Committee by my noble friend Lord Winston is apposite. If the Government cannot give adequate assurances that these arrangements can in fact be put in place or meet the objectives set by the Government to see that there is no disruption in the vital flow of embryos, tissue and so on, the right thing for them to do is to withdraw this regulation and come back to the House after they have done two things. They need to engage in further consultation—as the noble Baroness, Lady Barker, said, the consultation on these regulations has been exiguous—and the noble Lord, Lord Tyler, said that no impact assessment had taken place at all, because the Government judged that the impact was not serious. It does not appear to be the opinion of the Grand Committee this afternoon that the impact is slight; we think that it could be significant in the sectors we are discussing.

[LORD ADONIS]

So, our advice to the Minister would be that the best thing for her and the Government to do would be to withdraw these instruments and to do two things. First, to engage in further consultation, and secondly, to engage in more intensive contingency planning, particularly on the issue of how disruption will be coped with. That will give the Grand Committee and the House more confidence that we could agree regulations of this kind because they would be capable of meeting their objectives, which is not the case at the moment.

I will raise one final issue for the Minister to address in her reply. Martyn Day, Member of Parliament for Linlithgow and East Falkirk, in the debate in the House of Commons on these regulations, said:

“We do not know what the exact process will be for licensed establishments to apply for a new import-export relationship”,— [*Official Report*, Commons, Third Delegated Legislation Committee, 19/12/18; col. 5.]

in the case of a no-deal Brexit. That seems to be a significant issue. Since Jackie Doyle-Price was unable to respond to the point in the House of Commons, could the Minister tell us what the process for licensed establishments to apply for a new import-export relationship will be. On the point the noble Baroness, Lady Barker, raised, in the event that new arrangements are not put in place within six months—the period the Minister set out in her opening remarks—what will happen? This is a vital contingency issue, and these are difficult, complex issues. Will the six months be extended? What arrangements will the Government put in place for that? What will happen to the additional costs? I hope the Minister can respond to all these issues in her reply, which will be important for the further consideration by the House of these matters. The House will look to the debate we have had in Grand Committee to inform its own debate in due course.

Lord Tyler (LD): My Lords, I am provoked by the noble Lord, Lord Adonis, to pose a question to the Minister, which I hope will be helpful to him. I endorse what the noble Lord, Lord Deben, said about the invidious position in which she has been placed. I have been mulling over what the noble Lord said about the whole scene in which we are now placed. He described it as Enid Blyton; it is more like the unicorn option that some of the Brexiteers thought they were going to have—some wonderful new era of freedom. It is speculative. So often in both Houses, I have been attacked by Ministers for asking them a hypothetical question. The Grand Committee is being asked a hypothetical question this afternoon, which the Government themselves do not believe in. It is speculative: if this thing, which we do not want to happen, happens, we need this particular order.

I put a specific question to the Minister: if, by some curious chance, are faced with the deal the Prime Minister is seeking to obtain the support of Parliament for, presumably this is a complete waste of time? We have been told so often this afternoon that this is a contingency plan for a situation the Government do not want to happen, and therefore, by definition, if it does not happen, this is a waste of time. Do we then have to have quite separate adjustments to the relationship we have under the Prime Minister’s deal? If so, that is

a complete new set of secondary legislation which is going to come before your Lordships’ House. I do not know if that is a more likely prospect than the unicorn prospect—the ridiculous situation that the noble Lord, Lord Deben, described in his powerful speech. However, it has huge implications for the role of this House in looking at the detail of legislation. If we are going to be told that 600 of these SIs are now irrelevant, because the no-deal option, the unicorn option, has fallen off the table, but we now have something else in front of us, that has implications for the role and responsibility of this House. If, as the Minister says, the contingency plan is not required, what is the contingency plan for the Prime Minister’s deal? Is there going to be a completely different set of secondary legislation? It is a simple question, and I hope there will be a simple answer.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I want to make two brief points. First, I want to pick the point made by the noble Lord, Lord Deben. I agree that we have been unfair to the Minister. She has been put in a very difficult position. If I have said or done anything inappropriate, I apologise sincerely to her.

This reminds me of something. My memory is failing a wee bit but I think it was Sir Geoffrey Howe who said that he had put in by the Prime Minister to bat on an impossible wicket, which was bad enough, but before he went in, she broke his bat in two. Unfortunately, I think that the noble Baroness, Lady Manzoor, has been put on an impossible wicket and had her bat broken in two. However, to make up for that, I will ask her an easy question. What is it they say? I will bowl her—

Lord Warner: A googly.

Lord Foulkes of Cumnock: No, not a googly; the opposite.

A noble Lord: A full toss.

Lord Foulkes of Cumnock: I will bowl her an easy ball. On page 9 of the statutory instrument, paragraph (6) mentions “appropriate authority” and refers to Wales, Scotland and Northern Ireland. What consultation has taken place with the Welsh Assembly and the Scottish Government? What was their reaction to this proposal? Have they specifically approved this statutory instrument or made any comment on it? It would be useful to know that. In the case of Northern Ireland, where as we know there is no Assembly, who was consulted—senior officials, presumably—and what did they say? I genuinely hope that my question falls within the Minister’s pay grade. I look forward to her answer.

Baroness Thornton: I am grateful to noble Lords for being here because working on statutory instruments has felt quite lonely at times; this is my third or fourth set. I have become increasingly concerned, as I have shared with some of my colleagues. These three statutory instruments in particular give me enormous cause for concern, borne out by the Committee’s comments during the debate—particularly those of my noble

friend Lord Winston. Along with her colleagues, the Minister has some serious problems. As I have said to anyone who would listen in the past few weeks, this is written across different subject areas; patents, which we will discuss later, is one example, as well as food security, which my noble friend Lady Jones has been waxing lyrical about. It is written across every single aspect of our life. In that way, our discussion today is important indeed. I do not envy the Minister.

Baroness Manzoor: I thank noble Lords. The discussion has been constructive. Many issues were raised although, as I said in the previous discussion, many of them are outwith the comments I can make. As I said in the debate on the previous SI, my comments relate to all three of them—noble Lords will forgive me if I do not repeat myself—because this is about contingency planning and the specifications are not that different.

A number of noble Lords, including the noble Lords, Lord Foulkes and Lord Tyler, and my noble friend Lord Deben—forgive me if I have forgotten anyone—asked about what will happen in the case of a deal. Again, I want to make it clear that the SIs will be revoked or amended as necessary, depending on the deal. This is just about contingency planning, nothing more. We want only to maintain safety standards and ensure that these services can be provided where they are needed.

Lord Tyler: My Lords—

Baroness Manzoor: I am sorry but I am not going to give way.

Lord Tyler: This is a specific point.

Baroness Manzoor: I hope that the noble Lord, Lord Tyler, will forgive me, but I have given way many times.

Lord Tyler: It is a very simple question.

7 pm

Baroness Manzoor: I am sorry but I will be firm on this. All noble Lords have had ample opportunity to speak. I wish to move on. If I have not addressed the noble Lord's point, perhaps we can come back to it.

I want to thank the noble Baroness, Lady Thornton, for her words. We know that this is a sensitive, delicate and important issue, and indeed the noble Lord, Lord Winston, has highlighted its importance as well. It is vital that we have consistency in maintaining our contingency plan so that we can ensure that the service which is currently being provided continues and that we have effective agreements in place. I should say to the noble Baroness, Lady Thornton, that in either a deal or a no-deal situation, the changes to UK legislation will not affect the availability, safety or quality of organs, tissue and cells as the current standards will be maintained. The current arrangements support the free movement of organs, tissue and cells across the EU. The UK and the countries of the EU would consider each other as third countries after exit day, as the noble Baroness rightly said. The relevant EU directives and UK legislation allow for agreements to be made to receive organs, tissue and cells from countries outside the EU provided that they meet equivalent

standards of quality and safety. This means that the agreements for sharing organs, tissue and cells with EU countries can continue to be made.

My noble friend Lord Deben and other noble Lords raised the issue of the cost for establishments of tissue and cells. The estimates are that 12 out of 135 tissue establishments will need to put new agreements in place. Many already have templates that they can use quickly and effectively because we look at organs, tissue and cells across the world, not only in the EU. That is precisely why we expect the costs to be small.

My noble friend and others also raised wider issues as regards exiting the EU. As he rightly pointed out, I am afraid that those are not within the remit of these SIs. Quite rightly, my noble friend asked me whether the changes are deliverable. The changes are minimal and they are deliverable. The operational changes have been discussed with the regulators who consider that the changes we are advocating can be made. There is no large-scale transportation risk that we are aware of.

Lord Deben: My Lords—

Baroness Manzoor: No, I am sorry, I must move on.

Lord Deben: My noble friend has not answered my point and this is a debate. The question I want to ask her is this. I accept that there are no large-scale transportation issues, but there are transportation issues. My question is how we will prioritise those things that need to be prioritised in circumstances in which no aeroplane would be flying because the insurance system does not enable it to do so. What are we going to do with that? Who is in charge of making sure that we have naval or air cover to deal with it? That is a proper question for my noble friend in these circumstances.

Baroness Manzoor: I thank my noble friend for that clarification. My noble friend is right to say that at the moment the regulators have agreements in place and those agreements will continue to run; they will not change. This does not change any of the agreements that are in place.

On the issue of reasons such as strikes or volcanic activity preventing flights, I cannot possibly comment. But what I am saying is that the issue behind this is continuing with the agreements. We have organs that are flown from the EU. That will continue. In the NHS we make life and death decisions about priorities every day. If there is a priority and a patient needs an organ, that patient will receive that organ, and the Government will do everything in their power to ensure that patient safety is not compromised.

The Government have already given that undertaking: we will endeavour to do our very best. I passionately care about patient safety. I passionately care about ensuring that no one is put in any undue danger, as do the Government. I do not agree with much of what my noble friend Lord Deben has said about there perhaps being issues with patients not getting the priority that they need if it is necessary. We will endeavour to do everything in our power to ensure that patients who need life-saving organs or any other tissues that may be necessary get them.

[BARONESS MANZOOR]

The noble Lord, Lord Winston, spoke about the sharing of tissues and cell cultures. I am sorry to repeat myself. I am trying to choose the things that are pertinent for me to repeat because of their importance. I want to make it clear that these SIs are not related to ethical consent for research. The Human Tissue Act covers domestic consent and EU material is outside the scope of that. As I have already indicated, if the EU makes changes to this in the future, the UK will need to decide whether it wants to make any changes at that time. That will be a matter for Parliament.

The noble Baroness, Lady Barker, asked about the arrangements for the inspection of tissues and cells. I assure her that establishments are required to be contained within the agreements with all third countries, as they currently are. That will continue after we exit the EU. That will not change.

I have already said that these SIs do not relate to medical research but only treatment. I say to the noble Lord, Lord Warner, my noble friend Lord Deben and the noble Baroness, Lady Thornton—who I know cares passionately, as we all do, about the safety and quality of the service and organs—of course we want to make sure that there are safeguards after Brexit. Nothing will change. We want to have higher standards, if possible. The standards and quality will not be diluted.

Baroness Barker: You cannot guarantee that.

Baroness Manzoor: I am saying that we passionately do not want that to happen. We will endeavour to do everything we can. These SIs are continuing the standards. We are not changing standards. If the EU decides to move away to other areas, it will be for the UK Parliament to look at and discuss that issue and agree how we as a country want to move forward. That will be a decision for Parliament, not for these SIs and certainly not for me.

The noble Baroness, Lady Barker, asked what agreements we will put in place to import tissues in the future.

The six-month period is a transition period. The agreements that will be put in place will not just finish after the six months. If there is divergence then that will be a different issue for the regulators and it will have to come back to Parliament, but we will use the agreements that are in place as templates for the sake of consistency, and they will continue to exist after the six-month period concludes.

Baroness Barker: I have a point that is germane to all three of these SIs. If there is no deal then there is no agreement and no six-month period because, whatever aspirations the British Government may have, the EU is not bound by this. The Minister is talking about the continuation of arrangements, but they are EU arrangements. If there is no deal, we are no longer a member of the EU. That is the flaw which underlies her arguments on all these instruments.

Baroness Manzoor: To be very clear, the six-month period relates to imports. It is important to point that out. After the six months, there will be advice from the

regulators as to what the new import agreements will be and what more needs to be put in place during the six-month transition period. There has to be consultation and there have to be agreements, and that is the whole point: we want to put these SIs in place so that we have contingency planning regarding the agreements.

A number of noble Lords raised the issue of ports and airports. I have already given the answer and there is not very much that I can add to it. The Government are making plans to mitigate any delays at borders. As I have said, where there is a priority need, we will endeavour to do our very best to ensure that there are no delays. On the other interesting ideas that were put forward, any of those various forms of transportation are at the disposal of the Government in any scenario should they wish to use them.

Lord Adonis: Do I take it that the Minister is saying that the RAF and the Royal Navy may be put at the disposal of the NHS to deal with this no-deal contingency planning? I took that to be the meaning of the words that she has just said.

Baroness Manzoor: No, just to be clear, I could not possibly agree to that or let the noble Lord draw that conclusion from my comments. What I am saying is that the Government will use whatever means they have at their disposal to ensure that priority needs are met where they can be and where it is necessary to do so.

Lord Adonis: My Lords, the Government have the RAF and the Royal Navy at their disposal, and the Minister just said that they would use whatever means were at their disposal. They clearly have those services at their disposal, so why would they not use them in these extreme circumstances?

Baroness Manzoor: My Lords, I know the noble Lord is pushing me to answer that question but there is nothing that I can add to the answer that I have already given.

On the impact assessments, I want to make clear once again—this relates to all three SIs, as does everything that I have said—that these instruments are limited in what they do by the powers under which they are made under the European Union (Withdrawal) Act. Those powers were debated and approved by Parliament, and an impact assessment was carried out in relation to that. There is nothing that I can add to that.

I have probably not added to the satisfaction of the noble Lord, Lord Adonis—

Lord Tyler: Before the noble Baroness concludes, perhaps I may ask her a very specific question.

Baroness Manzoor: I should like to conclude by making my last point, please.

Lord Tyler: The noble Baroness has given way to a number of other Members. Why will she not give way to me?

Baroness Manzoor: Perhaps I may conclude my final point about Scotland. Ministers in Wales and Scotland have given their consent to these SIs, as I said in my opening remarks. Senior officials in Northern Ireland have also given their consent. I recognise that it is not where we want to be, but that consent has been given and the details of the SIs are being discussed with the devolved Administrations, which have agreed them.

I am now happy to take the noble Lord's question.

7.15 pm

Lord Tyler: I am grateful to the noble Baroness. She said earlier in response to points made by the noble Lord, Lord Deben, and myself, that should we find ourselves in a deal situation as opposed to a no-deal situation—these are the words the Minister used—the SI could either be revoked or amended. There is a world of difference between the two: revoking is one process, but we cannot amend an SI. A completely new SI would have to be introduced, which reinforces the point I tried to make earlier that we are indulging in an entirely speculative, hypothetical exercise on the basis of the unicorn option being where we end up, as the noble Lord, Lord Deben, made clear earlier. While I understand her and her Government to be saying that the Prime Minister's deal is what they intend and hope will happen, if it does happen, we have to have a completely different SI. Would she like to make that absolutely clear to the Grand Committee?

Baroness Manzoor: My Lords, of course, if we have a deal, these SIs will not be necessary. Perhaps I may rephrase that. If there is a deal, we do not need these SIs as they relate only to a no-deal scenario. Therefore, it is contingency planning, as I have repeatedly said throughout. Of course, if a deal is reached, new SIs will need to be laid.

Lord Warner: I am trying to understand this. If these deals are revoked at the end of six months, does that not assume that a new set of arrangements, in light of a deal, have been made? Is that what it means, or do they hang around in Whitehall departments for the end of the transition period if there has been no agreement, and they then get brought forward as having passed through Parliament? Excuse my suspicious mind, but I have been a senior civil servant and I have seen things taken out of the cupboard from one Government to another. Is my interpretation correct?

Baroness Manzoor: My Lords, the noble Lord does have a suspicious mind, and perhaps I was not clear. This is contingency planning and the agreements that will be put in place within the six months can continue after the six months. They are not just for six months. If there is a deal, then that is an entirely different matter.

Lord Winston: I hate to draw out proceedings longer than any of us wish to be here, but the Minister regrettably neglected to take on the points about research, which relate to all three SIs. I should not dictate how the Minister should think, but we have an excellent

NHS because of its research base and the evidence it uses, unlike nearly any other country. We have promoted that and are desperate to maintain it in these difficult circumstances and the coming years, irrespective of Brexit. The problem is one which she may not have taken on board, intellectually. During the course of an experiment, things change. You realise that you need to do a slightly different procedure from what was originally planned. That requires a new ethical procedure, consideration by an ethics committee and, sometimes, patient consent as well.

Much of this research is done on a collaborative basis between two different nations. Noble Lords will see the problem I am trying to allude to. You may have researchers in, for example, Italy with whom you have been in close collaboration and they do something to the cells that we might receive but for which we have not received ethical consent in this country. It seems that that has not been fleshed out at all in our discussions. However, it is vitally important.

I have to tell the noble Baroness that listening to the debate in this Room is a senior medical researcher who has done excellent work with cell cultures. I do not think that she will be reassured by the discussions she has heard today. This is a serious problem for scientists. I am putting this on the record not because I expect a response—it is not fair to expect that—but so that when this instrument is put before the Chamber of the House of Lords, the issue is looked at seriously. It is fundamental to some of the things we are trying to say in the debate.

Baroness Manzoor: Perhaps I may respond briefly to the noble Lord, Lord Winston. I thought that I had made myself clear, but perhaps not clear enough. Research and clinical trials are outside the remit of these SIs.

Lord Winston: The issue is not about clinical trials; it is about collaborative research.

Baroness Manzoor: Research is also outside the scope of these SIs. The noble Lord has tremendous experience in this area, which we appreciate and value. We have a fantastic NHS based on world-leading research, working with our partners across the EU. That is right, but these SIs are not about that. These are matters for greater minds than mine to think about if we exit the EU. However, as far as these SIs are concerned, we want to maintain what we have at the moment. They cover a contingency plan to ensure that we have agreements in place. However, I understand the ethical issues and the points being made by the noble Lord, Lord Winston, regarding scientific research and close working collaborations, but I am not in a position to talk about them because they are not pertinent to the SIs we are discussing today.

Lord Adonis: The Minister has not answered my question about the processes that will be put in place for licensed establishments to apply for new import-export relationships. Can she tell the Grand Committee more about those because these establishments are keen to know what will happen? When will the processes be published in the no-deal scenario? When will the

[LORD ADONIS]

Government know what arrangements will apply, given the huge importance of import-export relationships both for the treatment of patients and, as my noble friend Lord Winston rightly said, for the conduct of research?

Baroness Manzoor: My Lords, I responded to that question on two occasions. I will repeat for the noble Lord that all the processes currently in place will remain; there will not be anything new. These regulations do not bring in anything new and they do not change anything. They seek simply to put continuation plans in place should there be a no-deal Brexit. All the regulators support them.

Lord Adonis: My Lords, I do not find that answer satisfactory. Is the Minister saying that they will not need any new import-export arrangements? My understanding is that they will. That does not affect the point that the Minister hopes that there will be no change. We are talking about a legal issue to do with the licensing arrangements. My understanding is that the existing licensing arrangements will not continue in the case of no deal, so when will establishments be informed about how they can apply and what the process will be for new and updated licences? I understand that the Minister is not in a position to tell the Grand Committee now, but I hope that she may be able to respond when we come to the third statutory instrument in this group because the same issues arise there. Perhaps she will be better briefed between the second and the third instrument so that she can reply next time.

Baroness Manzoor: I am happy to respond. I hope that I am not repeating the same points, but they are important. Clearly, the noble Lord is finally beginning to understand that there will not be any new licences. Importers already have the licences they need; we will need to look only at new agreements. There is lots of information on the regulator's website to enable organisations that deal with these different categories of issues to contact the regulator. However, at the moment we do not see that as an issue, because many of those already have templates of the agreements they use for non-EU countries. I beg to move.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, in view of the progress of today's discussions, it is probably not necessary for me to remind the Grand Committee of the Question I am about to put. However, if any noble Lord feels that they would like to be reminded of exactly what we are doing here, I will happily do so. Without indication of that, I will proceed to put the Question, which is that the Grand Committee do consider the Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2019. As many as are of that opinion will say "Content"; to the contrary, "Not content".

Noble Lords: Content.

Noble Lords: Not content.

Motion negatived.

Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019

Considered in Grand Committee

7.26 pm

Moved by Baroness Manzoor

That the Grand Committee do consider the Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019.

Baroness Manzoor (Con): My Lords, I refer the Grand Committee to the comments that I made at the start of the first SI, which also extend to this SI. I beg to move.

Baroness Thornton (Lab): My Lords, the Minister has probably now realised that the Grand Committee is not satisfied with the regulations, and it is highly unlikely that the Grand Committee will be satisfied with these regulations on organs, because they concern the cross-border trafficking of human organs. When I read these regulations, I wondered—and I have already asked the Minister to walk us through this on one occasion—how an organ which is in Spain will find its way to Manchester when a match is found. What new barriers will exist with regard to the regulatory framework, inspection, cost and travel if we crash out of the European Union? When we are talking about organ transplants, lives are at stake. I am therefore extremely concerned that we will find ourselves with people not getting organs that match from other parts of Europe, or indeed with organs in the UK which should be in Ireland. I know that there is a great deal of trafficking of organs from hospitals across the Irish border. There are therefore some serious problems here, but they have been mentioned by many noble Lords in Grand Committee over the last three hours or so. I do not necessarily agree with the noble Lord, Lord Tyler, about unicorns, but on the other hand, these orders made me extremely worried that they are not deliverable. I hope that the Minister might on this occasion be able to convince us that they are.

7.30 pm

Lord Foulkes of Cumnock (Lab Co-op): My noble friend knows an awful lot more about House of Lords procedure than I do, so I seek her advice. If I were in the other place, as I was for 26 years, I would know exactly what to do. I would ask the Chair, Speaker or whoever was responsible whether it is really in order for us to consider going ahead with something that will involve more expenditure by the Department of Health and its excellent officials, who are sitting behind the Minister, given that the House of Commons decided against a no-deal Brexit yesterday. In other words, we are doing something that seems ultra vires: working on the basis of no deal, which is now not just unlikely but, pray, certain not to take place because of yesterday's decision. How can we challenge this? How can we stop going ahead with the farce of considering these statutory instruments when we are aware of a decision taken in the other place? Should it be raised with the Clerk of the Parliaments?

I would love our present Deputy Chairman of Committees to rule on that because she is a wise woman and would rule wisely but, sadly, she does not have the power to do so. She knows, as do others, that I have raised many times on the Floor of the House the matter of giving more powers to the Speaker and, following on from that, to the Chairman of Committees, but I have got nowhere. I want to ask my long-standing friend and experienced parliamentarian, the noble Baroness, Lady Thornton, whether there is any way for us to put the Minister out of her misery and abandon both these statutory instruments and those that the noble Lord, Lord Bates—poor him—will have to struggle to deal with. How can we do that?

Baroness Thornton: My noble friend tempts me to step outside my pay grade. That is not my job.

A noble Lord: They do not pay you for that.

Baroness Thornton: That is true. I forgot that bit.

Lord Foulkes of Cumnock: You should be.

Baroness Thornton: It is not my job to say whether our discussions are ultra vires. The Constitution Committee might usefully address that issue at some point, but this Committee has already made its views quite clear to the Government during the debate on the previous two statutory instruments. I am happy to say that this matter is the Committee's responsibility.

Lord Adonis (Lab): My Lords, does my noble friend share our concern that although we have made our views known to the Government, we have had no response? The Minister, whom we respect for the great predicament she is in this afternoon, has not been able to respond at all to the fundamental question underlying this afternoon's proceedings of whether there is an adequate legal or moral basis for us to debate these statutory instruments when yesterday, the House of Commons—the supreme, elected body—voted specifically against no-deal preparations precisely because it did not want to see these arrangements, which it described as a Brexit “game of chicken”, put in place. Does my noble friend not think that as the Opposition, it is our job to hold the Government to account? Perhaps this debate must happen in the Chamber—as the Minister said, this is above her pay grade—but we need to be robust in asking why these statutory instruments and no-deal preparations are proceeding, as well as why £4 billion is being spent, in a situation that looks legally dubious and morally bankrupt after the Commons vote last night.

Baroness Thornton: Along with the noble Lords, Lord Deben and Lord Tyler, and other noble Lords, my noble friend has done rather a good job of ensuring that these issues will be taken to where they belong: the Floor of the House.

Baroness Barker (LD): My Lords, we have had a lengthy debate, but it has been extremely helpful and important, and that was best illustrated during the debate on the previous instrument, in the answer the

noble Baroness, Lady Manzoor, gave to my question about the inspection of premises. I made the point that the noble Baroness has repeatedly said that this is about ensuring existing arrangements continue. When I challenged her, she was given instant advice that we were talking only about the question of importing organs and tissue, not exporting. That is brilliant; in effect we are not, in a no-deal scenario, going to continue with an existing arrangement for the EU 28, but will, from that point on, be a third country. Whatever we may wish or hope for, the EU will be under no obligation to treat us under continuing and existing laws. Therefore we will inevitably be at a disadvantage. That was extremely helpful.

Lord Deben (Con): But does that not also underline what my noble friends says: that this is not a change in any way? What we mean is that were there to be a no deal, it is not this that changes but that the world changes, and this does not address that change. Therefore the problem is that because that change is not addressed, it will affect us. It will not be as safe or as possible to ensure we can import necessary organs, not just because there will not be any aeroplanes or because there will be problems with boats, but because there will not be a mechanism on that side; we will have a mechanism here. That is a fact of change. Nothing we say will cover the fact that there is a change to which the Government have no contingency plan at all, because they cannot have it.

Baroness Barker: Yes, and specifically, I want to ask the noble Baroness about traceability. In these regulations it says that the UK is planning to introduce its own coding system once it is no longer taking part in the EU Coding Platform. Is it right to assume that we will revert to a traceability system that was in place before the EU Coding Platform was introduced, and will it be of the same standard that we have now? I suspect it will not, and therefore the Government should be clear and say that in the matter of the importing and exporting of organs—which are, let us bear in mind, in short supply across the world—we are going to place ourselves at a disadvantage.

I will ask one other question. It is clearly stated that a number of powers currently belonging to the Commission are being transferred to the Secretary of State. Does the Secretary of State have the capacity to make changes in relation to traceability, notification of adverse events and testing to establish whether tissue sent to the UK is free of infection? How can it can be demonstrated that new techniques used to process cells and tissues are safe and effective? And what is going to be the cost of that to the NHS? I am not holding my breath, but I would say that the evidence of the last three hours suggests that this Government is prepared to take a massive gamble with the health of our population.

Lord Foulkes of Cumnock: I put a question to the noble Baroness, similar to the one I put to my noble friend. Tomorrow, on the Floor of the House, her compatriot, her fellow Liberal Democrat, the noble Lord, Lord Beith, has a question:

[LORD FOULKES OF CUMNOCK]

“To ask Her Majesty’s Government what assessment they have made of the Parliamentary time required for the consideration and approval of statutory instruments arising from the United Kingdom’s withdrawal from the European Union”.

Would that be a good opportunity to raise the question about ultra vires?

Baroness Barker: My Lords, procedure and process in this House is not one of my specialities, but I understand that my noble friend Lord Beith has put that Question down, precisely because the whole House knows that there is absolutely no way we can sit from now until the planned Brexit day and get through the amount of work. Therefore, a great many matters will be left unexamined, and that is quite dangerous.

Lord Warner (CB): My Lords, I want to comment on this set of regulations but will relate my remarks to all 10. I address my remarks to the three Ministers here, bearing in mind the three hours that we have spent on these regulations so far, as the noble Baroness, Lady Barker, has said. It can be taken as given that most of what I, the noble Lord, Lord Winston, and others said on the previous set of regulations is what we would say on this set of regulations, but I am not going to repeat it. The same considerations apply.

We are not going to get to number nine on the list, and I want to question what the Minister has been saying, and what the Government have been asserting, all the way along, which is that these regulations do not change policy. The Minister has said this a number of times. I know from the speech I am going to make on number nine that it has changed policy, and I shall deploy the arguments to demonstrate that. Unfortunately, the noble Lord, Lord Henley, is not here to hear them, but if I ever get the chance, he will hear them.

I have a terrible feeling that my concerns about item nine apply all the way through this set of regulations. They do change policy and, although this is not the Minister’s fault, the Government have been asserting for month after month that they do not. They do, and they change policy that is set out in primary legislation in some cases. We do not have any alternative, if I may say to the Grand Committee, to continuing to negative—or whatever the verb is—all these sets of regulations. We can go through this process all the way down to item 10 if the Government want us to do that. I am quite prepared to do that to make the point to the Government. I am doing that not as a member of any party—I am the only Cross-Bench Peer in the Room—but because we are discrediting this House by giving an authenticity to these regulations, which I fear would then get tucked away in the cupboards of Whitehall to be produced again when the need arises. I do not want to be associated with giving authenticity to this set of regulations, and would hope that other Members, of different political parties, feel the same way. I want these three Ministers, who have heard this and sat through this very patiently, to go to the Chief Whip and the powers that be in the government party with feedback about the farce being created.

Baroness Manzoor: My Lords, for two years, the Government have been implementing a significant programme of work to ensure that the UK will be

ready, from day one, in all Brexit scenarios, and I have tried to make that clear throughout the three SIs. For organs, tissues and cells, our priority is to ensure the continuity of supply and to maintain the existing high standards of safety and quality. Organs for transplant and stem cells need to be transported urgently, as has been made clear today, and we are working across government with the health sector to prepare for, and mitigate, any possible disruption which may affect the organs or stem cells imported from the EU. For other less time-sensitive tissues and cells, we are also preparing for possible disruption, and information for tissue establishments will be available through the regulator.

This has been an interesting debate. I for one take very seriously the comments that have been made by noble Lords. I will endeavour to ensure that the Chief Whip is made entirely aware of the comments regarding SI processes and the future. I have already undertaken to do that but it is important to restate the point.

7.45 pm

I move to some of the specific issues that were raised by noble Lords. I again thank the noble Baroness, Lady Thornton, for trying to keep the balance; I appreciate the fact that she tried to bring the debate back to the actual SIs. The EU directives allow EU countries to share organs with third countries, which is of course what we will become if and when we exit the EU, so it will be possible for organs to be shared as they are now in a no-deal scenario. NHS Blood and Transplant is the UK’s organ and donation organisation, and it is talking to EU organisations about making new agreements.

At the moment, licensed establishments do not need a licence to import tissues and cells from the EU. After exit they will, and they will need to put appropriate agreements in place. The six months will allow that to happen while the sharing of cells and tissues continues. All current importers from the EU already hold an import licence so no additional licences will be needed, only agreements.

Baroness Barker: Sorry, can I clarify what the Minister has just said? The EU is allowed to export to a third country but it is under no obligation to do so. At the moment we are members of the EU so bodies do not have to have an import licence, but they will. So she is saying that there could be six months in which the EU could choose not to export to us as a third country and in which the organisations in this country will have no power to import. We are potentially talking about at least a six-month gap about which we can do nothing because we will no longer be in the EU.

Baroness Manzoor: No, my Lords, we are not talking about a gap. We are actually talking about the continuation of what we have in place at the moment. That is why we are making these contingency plans.

Lord Adonis: My Lords—

Baroness Manzoor: No, I am sorry, we have discussed these issues. Many of the same issues are coming up on all three SIs.

Lord Adonis: The Minister has not answered the points. That is why we keep raising them. If she provides inadequate answers, I am afraid they remain inadequate.

Baroness Manzoor: I am afraid that is the only answer I can give, even if it is not one that the noble Lord, Lord Adonis, feels is adequate. If there are issues that I feel I need to write to noble Lords about, I will do so, but I think I have given the best answer that is available to me.

The noble Baroness, Lady Barker, raised an important point regarding traceability. The requirement to ensure the traceability of tissues and cells, including reproductive cells, will remain. UK-licensed establishments were already using systems to ensure traceability from donor to receiver of tissues and cells before the introduction of the single European code, and in most cases the code was added to the existing system. After exit, UK-licensed establishments will be able to use the same IT systems that they are using now if they want to. The code will be removed and establishments will use the traceability system that was in place before the introduction of the single European code.

The noble Baroness asked about the powers and the instruments in relation to the Secretary of State. The Secretary of State can make changes to deal with new safety issues, and that is what the SIs will enable to happen. If the Government decided to do that, though,

they would need to make new regulations which would have to have parliamentary scrutiny at that point, so he cannot do it just like that.

I restate that all the points that I have made relating to all three SIs go across the board for all of them. I hope noble Lords will appreciate that I have done my best to answer as many of the points as I could, if not all of them. I cannot go any further in terms of processes of statutory instruments and what the Committee can or cannot do, nor can I comment on the wider EU Brexit deal.

I thank all noble Lords who have taken part in this excellent debate. I believe in the scrutiny of legislation, and noble Lords have certainly carried that out with gusto today. I beg to move.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): The Question is that the Grand Committee do consider the draft Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019.

Lord Adonis: Not content.

Lord Foulkes of Cumnock: Not content.

Motion negatived.

Committee adjourned at 7.50 pm.

