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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Monday 4 February 2019

2.30 pm

Prayers—read by the Lord Bishop of Lincoln.

Introduction: Baroness Blackwood of North Oxford

2.38 pm

Nicola Claire Blackwood, having been created Baroness Blackwood of North Oxford, of North Oxford in the County of Oxfordshire, was introduced and took the oath, supported by Lord Young of Cookham and Lord O'Shaughnessy, and signed an undertaking to abide by the Code of Conduct.

Oaths and Affirmations

Announcement

2.41 pm

Lord Reay took the oath, following the by-election under Standing Order 10, and signed an undertaking to abide by the Code of Conduct.

Health: Public Health Grant

Question

2.42 pm

Asked by ***Baroness Barker***

To ask Her Majesty's Government what assessment they have made of the impact of the decision announced on 20 December 2018 to reduce the Public Health Grant to local authorities for 2019/20 by £85 million.

Baroness Manzoor (Con): My Lords, despite funding pressures, councils are successfully improving people's health, and most indicators of public health are stable or improving. Since 2011, the number of smokers has dropped by a fifth. Last year, 98% of adults accessing drug treatment services did so within three weeks and 90% of people with HIV were treated successfully. Future budgets will be influenced by the next spending review, when we intend to make a robust case for the value of prevention.

Baroness Barker (LD): My Lords, local authority public health budgets have been reduced by £700 million since 2014. Due to rising rates of gonorrhea and syphilis and the problems young people have in accessing contraception, does the Minister not think there is an urgent need to rethink the Government's strategy?

Baroness Manzoor: My Lords, as I said, we will be making a robust case for the value of prevention in the spending review. The reduction to the grant to which the noble Baroness refers is not a new cut. It was agreed in the 2015 spending review in a difficult financial environment. Local authorities have been aware of these cuts for over a year and have been able to plan accordingly. But there is much more to public health than the grant itself—for example, our national childhood obesity strategy and NHS England's world-leading diabetes prevention programme. As the noble Baroness knows, the NHS long-term plan has an emphasis on prevention.

Lord Lansley (Con): My Lords, I was the Secretary of State who introduced the public health grant to local government. Is my noble friend the Minister aware that this was done because many of the wider social determinants of health can be better influenced through the action of local authorities than by the NHS alone? That was the reason why the public health grant was included within the ring fence in 2010 to 2014, which guaranteed a real-terms increase in the public health grant to local authorities; this was reversed in 2014. Will my noble friend the Minister consider restoring the value and growth of the public health grant in the context of an agreement with local authorities to act on those wider social determinants of health?

Baroness Manzoor: I agree with my noble friend, and that is why we are making a robust case to the Treasury in relation to the spending review. Health improvement is about far more than the services funded through the grant, as my noble friend says. The transfer of local health responsibility to local government provided the opportunity to join up public health with decisions on other local services such as housing and economic regeneration. We see local authorities commissioning different kinds of public health services which better fit local circumstances and priorities and deliver improved value. We therefore recognise the importance of the grant.

Lord Cashman (Lab): My Lords, I refer to my entry in the register of interests. I want to develop the question from the noble Lord, Lord Lansley. Demand for sexual and reproductive health services is rising. Public health data has indicated a 13% increase in attendance at sexual health services between 2013 and 2017, and over the same period the Health Foundation has found that health budgets have been cut by 25%. Will the Government's prevention Green Paper therefore include a call for fully funded local authority public health services?

Baroness Manzoor: My Lords, the noble Lord, Lord Cashman, is right: spending on sexual health in 2017-18 has reduced by 4.3% from 2016-17. However, a reduction in spend does not necessarily mean a deterioration in outcomes. For example, the number of hospital admissions for drug-related mental health and behavioural disorders has dropped 16% since 2015-16. The Green Paper on prevention will set out further plans in much more detail, considering the best available evidence.

Lord Laming (CB): My Lords—

Baroness Tonge (Non-Afl): My Lords—

Noble Lords: Cross Bench!

Lord Laming: My Lords, does the Minister agree that it is actually not in the interests of the NHS to cut local authority public health services? Local authorities should be celebrated for what they are doing in many different fields, not least in supporting charitable bodies that are doing so much, in addition to what we have all heard of, by supporting people who are socially isolated and depressed and would otherwise be admitted to hospital.

Baroness Manzoor: My Lords, local authorities and charities are doing an excellent job and I commend the work they are doing, but the Government are investing £16 billion during the current spending review period on the provision of local authority public health services. That is on top of funding for Public Health England and what the NHS itself spends, which includes over £1 billion on immunisation and screening programmes and £340 million in 2016-17 on vaccine stocks. I agree that local authorities do a great job in challenging times.

Baroness Thornton (Lab): My Lords, can we return the Minister to the original Question? Does she agree that increasing spending for the NHS, including a prevention vision, in the 10-year plan while cutting funding for services that impact on public health is a false economy? Could she please explain to the House the dichotomy of saying, "We want to spend more money on public health", but actually cutting public health spending? Frankly, I am stumped.

Baroness Manzoor: I think I have already answered the Question. The reduction in the grant to which the noble Baroness has referred is not a new cut, as I have already said. It was agreed in the 2015 spending review, in a difficult financial environment. Difficult decisions had to be made. Local authorities have been aware of these cuts for over a year and have been able to plan accordingly. I have already stressed the balance we have between prevention and ensuring we address that. We are going to be putting £4.5 billion into primary and community care services, in addition to the money we are already putting into current services.

Baroness Jolly (LD): My Lords, we seem to be relying more on local government: additional preventive health campaigns; local five-year plans as part of the integrated care system; and greater social care provisions. Can the Minister please articulate exactly how the December 2018 reduction of the public health grant can have any positive impact for local authorities?

Baroness Manzoor: I understand the point that the noble Baroness is making, but I have already said that this is part of a longer plan. The grant in itself is not the only part of the NHS plan. There is much wider spending by the local authorities and joined-up thinking. The Green Paper that I have already mentioned, *Prevention is Better than Cure*, was published on 5 November 2018. This will support healthy life expectancy, by at least five extra years by 2035, and close the gap between the richest and the poorest. The Government are taking concerted and proper action to address these issues.

NHS Staffing: Long-term Plan

Question

2.51 pm

Asked by ***Baroness Wheeler***

To ask Her Majesty's Government how they will ensure that there are sufficient nurses, doctors and community specialist care staff to deliver the National Health Service long-term plan, published on 7 January 2019.

Baroness Manzoor (Con): My Lords, the Secretary of State for Health and Social Care has commissioned the chair of NHS Improvement, working closely with the chair of Health Education England, to lead a number of programmes to engage with key NHS interests to develop a detailed workforce implementation plan. These programmes will consider proposals to grow the workforce, including consideration of additional staff and the skills required to build a supportive working culture and ensure first-rate leadership for NHS staff.

Baroness Wheeler (Lab): I thank the Minister for her Answer. Both the NAO and the Commons Public Accounts Committee have stressed that the NHS long-term plan is at risk and cannot be delivered if current staff shortages of over 100,000 are not addressed, and if we do not recruit more staff in key specialities to meet future need and demand. Last Thursday's major debate on the plan showed that this view is shared across the House.

Today is World Cancer Day. The ambition in the plan, for example, to diagnose 75% of cancers at stage one or two by 2028 is welcome, but there are chronic staff shortages in the cancer workforce across both primary and acute care, with more than one in 10 diagnostic posts currently unfilled. It is the same scenario for other key priority ambitions in the plan, but the long-term workforce implementation plan, as the noble Baroness said, has yet to be drawn up, developed and costed, and is not included in the extra funding promised for the NHS. Do the Government have any idea how they are going to take the NHS plan forward?

Baroness Manzoor: We absolutely do. The NHS employs record numbers of staff now compared to any other time in its 70-year history, with significant growth in newly qualified staff over the period from 2012. There are almost 13,400 more nurses on our wards since 2010. However, the noble Baroness is right—the current vacancy levels are not sustainable. Therefore the Government have put several actions in place to increase nursing workforce supply, covering improving staff retention, return to practice, overseas recruitment, expanding nursing associates, improving sickness absence and a review of language controls.

Lord Naseby (Con): Bearing in mind that one of the key problems facing doctors is those leaving the NHS as soon as they qualify—a significant number, both male and female, choose to go abroad—should the Government not have a look at the Singapore system,

where they have to sign up for five years once they qualify and after that it is entirely free, regarding their medical practice?

Baroness Manzoor: I thank my noble friend for that question. I am certainly aware of the Singapore model. I reassure him that we are expanding undergraduate medical education by funding an additional 1,500 medical school places in England. We have also recently announced the removal of doctors and nurses from the ambit of the cap on tier 2 visas, which means that all overseas doctors needed in the UK should be able to come and work here. We have more doctors than ever before, but there is no doubt that the pressures are huge. That is why we want to train more doctors. However, I understand the point that my noble friend makes, which is perhaps something we need to consider.

Baroness Finlay of Llandaff (CB): Do the Government recognise the GMC's statement that the medical profession is on the brink of breaking point, that up to a third of doctors report being burnt out and that around 10% at times have depression? There is evidence that errors are twice as likely to be made by people who feel burnt out. Do the Government recognise that this is urgent and whatever plans they have to train more people will take several years to come through the system?

Baroness Manzoor: I agree with the noble Baroness: we need to take care of our workforce and ensure that supportive mechanisms are in place so that there is greater flexible working. We are already looking at medical training and different modules. We want a first-class workforce and we will do everything in our power to support doctors so that they stay and remain healthy while they work in the NHS.

The Lord Bishop of Lincoln: Is the Minister aware that we have recently opened a new medical school in the University of Lincoln? We hope that this will assist the recruitment and retention of more doctors. However, what are the Government doing to mitigate the increased cost of specialist community nursing provision in remote and sparsely populated rural areas?

Baroness Manzoor: I am delighted that a new medical school is being opened in Lincoln, which is very welcome. On community nursing, we are trying to attract more nurses and medical practitioners to areas where there is greatest need, which are community nursing, psychiatry, mental health and learning disabilities. Last year, the Secretary of State announced golden hellos. We are also looking at further, more flexible training to enable a greater number of people to enter the profession.

Baroness Tyler of Enfield (LD): My Lords, with concern being voiced about current vacancy levels among mental health professionals, let alone the additional 21,000 mental health practitioners the Government have said will be needed to treat a million more people by 2021, will the Government agree to fund a collaborative mental health careers campaign aimed at secondary school, college and university students, particularly psychology graduates, to help plug this gaping hole?

Baroness Manzoor: My Lords, we are looking at allied professionals and more creative ways of bringing a wide range of people into the profession. I cannot comment precisely on the question that the noble Baroness has asked. However, as she is aware, HEE has published the mental health workforce plan, which has the stretching ambition of delivering 21,000 new posts and employing 19,000 additional staff. As well as increasing recruitment and retention in mental health training, the NHS is creating new roles such as physician associates, nursing associates and allied health professional associates as well as looking at advanced clinical practitioners. On the specific question asked by the noble Baroness, I shall write to her.

Lifeboats: Ceredigion

Question

2.58 pm

Asked by ***Baroness Bloomfield of Hinton Waldrist***

To ask Her Majesty's Government what the impact will be on the coastguard of the RNLI's decision to downgrade the all-weather lifeboats capacity in New Quay, Ceredigion.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, the RNLI is an independent organisation that declares its lifeboats available to Her Majesty's Coastguard. It determines how and where it deploys the resources that it has available. Based on historical incident data and the outputs of the RNLI's risk-assessed five-year review, we do not anticipate that its decision to replace the all-weather lifeboat with an Atlantic 85 vessel at New Quay will have an impact on HM Coastguard's capability to co-ordinate search and rescue in Cardigan Bay.

Baroness Bloomfield of Hinton Waldrist (Con): I, too, hesitate to criticise such a respected charity, but the replacement of the all-weather lifeboat with an Atlantic 85 inshore vessel, which cannot be launched in stormy conditions exceeding force 7, leaves a gap of 63 nautical miles in all-weather search and rescue provision. This and the alleged lack of a proper, open consultation with any local stakeholders concerned with sea safety in Cardigan Bay are a matter of grave concern to the local community. Will my noble friend the Minister intervene and ask the RNLI to publish its evidence and perhaps also to review its decision?

Baroness Sugg: My Lords, the RNLI's decision was underpinned by extensive research of incident reports as well as information gathered in face-to-face meetings and workshops at the lifeboat station both before and after the coast review visits, to ensure that local knowledge and concerns were considered. The decision is a significant investment by the RNLI in the area—which of course we are very grateful for—with new, faster boats at all three RNLI stations. The RNLI view is that that is the optimal combination for future life-saving in the area. It has shared a 30-page extract of the report with the lifeboat operations manager, and I understand that it is in dialogue with a campaign group to ensure it has the appropriate information.

Lord Morris of Aberavon (Lab): My Lords, I declare an interest as a former Lord Lieutenant of the county and my wife is from a long line of New Quay sailors. The Government have paid £3.5 million since 2014 to increase capacity and resilience in rescue, so they cannot wash their hands entirely to the RNLI. Since it is proposed that all-weather lifeboats will be as far away as Pwllheli and Barmouth, will the new inshore lifeboat at New Quay diminish capability? Will there be a gap in safety provision in Cardigan Bay in severe weather?

Baroness Sugg: My Lords, the noble and learned Lord is right to point out the change in provision. Three 17-knot Mersey class all-weather lifeboats are being replaced with two Shannon lifeboats at Pwllheli and Barmouth and there will be a smaller but faster lifeboat at New Quay. This was based on a risk-based review that looked at the entire area and the RNLI's decision to replace the all-weather lifeboat was, as I said, underpinned by extensive research. It is convinced that this is the optimal amount of resource for the area.

Lord Harries of Pentregarth (CB): I declare a personal interest as someone with long-standing family connections in the area and as a supporter of this campaign. The RNLI of course does wonderful work, but I am afraid that in this instance it has been totally lacking in transparency with the people of New Quay about the reasons for its decision. Despite what the Minister said, independent research shows that in severe weather conditions—force 7 in daylight and force 6 by night—it does increase the risk. There is a 70-mile gap, as I understand it, between the nearest all-weather lifeboats and it simply takes that much longer to get there. Should not an organisation such as the RNLI that depends on trust be more open about its decisions and in this instance look again at the increased risk of this decision?

Baroness Sugg: I thank the noble and right reverend Lord for his question. I know of his long-standing interest in the area. The RNLI, as I said, has shared a 30-page extract of the report and is working closely with a campaign group. I understand that the campaign group is made up of passionate people who want to ensure that they have the optimal provision in the area. As I said, along with the replacement new boat, the all-weather lifeboats in the surrounding area will be replaced with much faster ones. There is also a new helicopter base in St Athan, and the new boats, the helicopter and the increase in lifeguarding on the coast will not only maintain but improve life-saving provision in the area.

Baroness Humphreys (LD): The RNLI's decision to move the all-weather facility from New Quay has led to huge public disquiet in the area—an area where people understand the important role fisheries play in providing a livelihood for commercial fishing and angling vessels. They also understand the danger to the fishermen who brave all weathers. What assessment has the noble Baroness made of the importance of the all-weather lifeboat to the safety of fishermen in Cardigan Bay?

Baroness Sugg: My Lords, the RNLI carries out a coastal safety review every five years. It is a very extensive review based on extensive research; it considers all the rescue records and looks at all the reports of launches and incidents carried out by the lifeboat stations. It has concluded that services by the New Quay RNLI all-weather lifeboat could have been carried out safely and effectively by an Atlantic 85 inshore lifeboat, supported by the new, faster lifeboats at neighbouring stations if required. I understand that people who have long experience in this area locally are concerned about it. The RNLI continues to have conversations with them and will ensure that they are given the appropriate information.

Baroness Smith of Basildon (Lab): My Lords, the Minister was asked just now what assessment she had made of the need in the area. She told us what assessment the RNLI had made. She referred to the campaigners as being passionate. We can also say that the RNLI is passionate, because day in and day out volunteers are out there saving people's lives and collecting and raising the funds to do so. This is a difficult decision that has been made. What engagement do the Government have with the RNLI to ensure that the interests of the public are taken into account, so that the Government can assure themselves that the work it is doing takes public safety into account? That may allay some fears of those who are concerned about this decision, or who may be in a position to provide funding so that they do not have to make this decision.

Baroness Sugg: My Lords, lifeboat provision in the UK is delivered by independent charitable organisations that declare their lifeboats available to Her Majesty's Coastguard. As I said, we are very grateful for their work. It is the responsibility of the organisations to decide on the specific operational capacity they consider appropriate, but of course the MCA works closely with the RNLI on the coastal review. The noble Baroness was quite right to pay tribute to the scale of volunteers in this area—it is extremely impressive. The Coastguard Rescue Service is made up of approximately 3,500 volunteers; the RNLI has 5,000 volunteer lifeboat crew; and, as the noble Baroness said, there are more than 23,000 volunteer community fundraisers. They all contribute to providing the excellent service on our coasts.

Broadcasting: Public Sector Content

Question

3.06 pm

Asked by ***Baroness Benjamin***

To ask Her Majesty's Government whether they intend to introduce legislation to ensure that public sector content continues to be easily discoverable by viewers, regardless of how they are accessing broadcasting content.

Baroness Benjamin (LD): My Lords, I beg leave to ask the Question on the Order Paper, and declare an interest as per the register.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, Ofcom has consulted on proposed changes to the linear EPG code and on how the prominence regime may need to change to ensure that public service content remains accessible, regardless of how consumers access it. That consultation closed in October 2018 and we look forward to receiving its findings in due course. If Ofcom makes it clear that there is a problem which needs fixing by legislation, we will look to bring that forward.

Baroness Benjamin: My Lords, children are being increasingly exposed to inappropriate content on social media, and public service broadcasting plays an important role in providing parents with a safe, trusted space where children can access high-quality, entertaining educational content—especially now that the new BFI contestable funding will be available to programme makers. However, it is difficult to find these PSB channels because no two electronic programme guides are the same. They are confusing and very frustrating. Does the Minister agree that it is essential we update the EPG rules as a matter of urgency, to ensure that viewers can easily access this excellent PSB content?

Lord Ashton of Hyde: I agree that PSB content is important—in fact, 83% of people think that children's provision by public service broadcasters is important. Ofcom's consultation on the rules for prominence and proposed changes to the linear EPG includes a proposal for prominence for children's PSB channels. Ofcom already has the powers to review and revise the code, so any final decision on changes to the linear prominence regime is a matter for it.

Lord Griffiths of Burry Port (Lab): My Lords, it is unusual for both of my questions, carefully prepared, to have been answered before I put them, but that will not stop me asking the Minister to repeat the assurance he gave that, if the Ofcom report suggests that legislation is necessary, the Government will do it.

Lord Ashton of Hyde: I can do better than that. I will repeat what the Secretary of State said to the DCMS shadow Secretary of State:

"The Government has made clear that if the Ofcom report concludes that there is a problem with the current prominence regime that needs fixing with the legislation, then we will look to bring that forward".

Lord Hamilton of Epsom (Con): My Lords, does public sector content include "Songs of Praise", which the BBC insists on moving about to different times on Sunday, presumably with the ambition that it should eventually lose its audience altogether?

Lord Ashton of Hyde: As my noble friend knows well, editorial decisions are for the BBC, not the Government.

Viscount Colville of Culross (CB): My Lords, the Sky Q box prioritises access to its services over PSB catch-up services. Many television manufacturers have partnered with Netflix to prioritise its services on their channel controllers. Is the Minister not concerned that the PSB digital channels, paid for with public money, are losing out in the battle for channel prominence to the video-on-demand giants?

Lord Ashton of Hyde: My Lords, I recognise that most of what we have talked about today is for linear services. Of course, a change is taking place: people now have subscriptions for watching on-demand programmes on their internet browsers. This creates a number of challenges and we have agreed that, if Ofcom makes suggestions that take that into account, we will bring legislation forward when the time arises.

Baroness Bonham-Carter of Yarnbury (LD): My Lords, I fear I will ask the Minister to repeat, yet again, what he has said. Does he not agree that prominence is not a perk for PSBs but a fair and essential exchange? I do not know how many of you listened this morning to Radio 4's "Start the Week"—a really quite frightening public service broadcast programme about the tech titans' struggle for our individual attention. Will the Government commit to supporting the urgently needed updating of prominence rules through legislation?

Lord Ashton of Hyde: My Lords, I think I have done that—twice. We are aware that the technology is changing, and noble Lords might be interested to hear an example. More UK households now own a voice-activated smart speaker than own Britain's third most popular pet: a rabbit.

UK Shared Prosperity Fund

Private Notice Question

3.12 pm

Asked by ***Baroness Hayter of Kentish Town***

To ask Her Majesty's Government what progress it has made on the design and implementation of the proposed UK Shared Prosperity Fund in the light of reports that the Prime Minister is considering providing additional funds to former steel and mining communities and industrial towns.

Baroness Hayter of Kentish Town (Lab): My Lords, I beg leave to ask a Question of which I have given private notice.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, we intend to launch the single prosperity fund consultation shortly, as confirmed by my right honourable friend the Prime Minister in the other place last month.

Baroness Hayter of Kentish Town: My Lords, first, is the money that the Prime Minister has been scattering around actually new money, or is it money that would otherwise come out of this shared prosperity fund? Secondly, we might need this fund in seven weeks' time. How come, therefore, we have yet to have a consultation on it? We do not know whether it will be allocated on the basis of need or prosperity. Can the

[Baroness Hayter of Kentish Town]
Minister assure us that, if it is needed in seven weeks' time, it will be up and ready for the communities it is to serve?

Lord Bourne of Aberystwyth: My Lords, first, the noble Baroness will be aware that current EU programmes will run their course—in some cases, beyond 2020—so I do not quite recognise the urgency of which she speaks. At the same time as the Prime Minister announced that the consultation would be short, she talked about the importance of tackling inequalities between communities—something I am sure the noble Baroness welcomes, and it may well be something that the right honourable Member the leader of the Opposition chose to discuss with the Prime Minister. I am sure that she would hope so because, clearly, this is very important. We have been doing a lot of work with engagement events around the country. The consultation will start shortly and the decisions will be made in the spending review.

Lord Fox (LD): My Lords, in a letter in today's *Times*, my noble friend Lord Thomas of Gresford makes it clear that the offer of cash subsidies to an MP for the benefit of constituents provided that the MP votes for the Government's withdrawal agreement is in breach of Section 1 of the Bribery Act. Does the Minister agree that having ad hoc, specific discussions of this nature is not just legally unwise but a disreputable act of a desperate Prime Minister?

Lord Bourne of Aberystwyth: My Lords, I bow to nobody in my discipleship of the noble Lord, Lord Thomas of Gresford, on legal issues, and I am sure that what he says is correct, but noble Lords should not believe everything that they see in the newspapers. What is important in regard to any fund—such as the shared prosperity fund, on which we will consult shortly—is that it tackles inequalities across communities. I am sure that the noble Lord would agree with that, and I would think that he would want to engage in the consultation on that basis.

Lord Tomlinson (Lab): My Lords, in his usual generous way, when the Minister answered the question from my noble friend Lady Hayter, he answered more than she had asked. However, he did not answer the crucial part of her question, which was whether it was new money.

Lord Bourne of Aberystwyth: My Lords, I answered that, to the extent that I said that any spending decisions would await the spending review. However, the noble Lord will be aware of the amount that is currently spent on EU programmes—more than £1 billion per year—which I am sure will inform that review. Any decisions will await the spending review, but I am sure that that is a good guideline figure.

Lord Watts (Lab): My Lords, do the Government agree that many of these steel and mining areas have been left to rot for many years, and it is about time that the Government provided funds to address some of the poverty in those communities?

Lord Bourne of Aberystwyth: My Lords, it was on that basis that I said that the Prime Minister was very keen to say that this was about tackling inequalities between communities, which I would think noble Lords would welcome very widely—I hope that the Labour Party does—and we will be keen to stress that in the consultation and the future spending review.

Lord Scriven (LD): My Lords, twice now the Minister has referred to inequalities being a key factor in the shared prosperity fund. How does that sit with the latest consultation on the fairer funding formula, where deprivation and need have been excluded? Will this not mean robbing Peter to pay Paul when it comes to inequality and need?

Lord Bourne of Aberystwyth: My Lords, I will make two points. First, I referred to inequalities in communities because that was in the Written Statement on the UK single prosperity fund made by my right honourable friend the Secretary of State for Housing, Communities and Local Government in July; it was restated by the Prime Minister, and in looking at that consultation we have talked about the importance of people, infrastructure, business, environment, ideas and place. The noble Lord referred to the fairer funding formula but did not do so totally fairly, if I may say so. He will be aware that deprivation is recognised as a key factor in many areas, such as health.

Lord Campbell-Savours (Lab): My Lords, to come back to the question asked by the noble Lord, Lord Thomas of Gresford, can we have the position made absolutely clear, that the money that was being talked about over the weekend is not in any way conditional upon support for the Government in the House of Commons? Can that be made absolutely clear at this Dispatch Box?

Lord Bourne of Aberystwyth: My Lords, I will make two points. The first is a relatively minor one, but lest the Order Paper appear strange, the noble Lord, Lord Thomas, did not table the Question but was cited in another question. In relation to the content of the letter that was read out, I am sure that the noble Lord is right legally. I say simply that the context of this consultation, when it happens shortly, is about ensuring that we address inequalities between communities. That is the essence of what we are looking at.

Lord Shipley (LD): My Lords, will the Minister confirm that if any meetings are held with individual MPs, the minutes of those discussions will be published immediately after they have taken place?

Lord Bourne of Aberystwyth: My Lords, that is well beyond my brief. I am not quite sure whose discussions the noble Lord is referring to. As he will be aware, many confidential discussions are held, and both MPs and Ministers respect their confidentiality. It is unthinkable that a Government Minister is breaching the law in the way that has been suggested—directly and, in some cases, indirectly—in the Chamber today. Once again—your

Lordships should not need encouragement in this—noble Lords should not believe everything they read in the newspapers.

Baroness Quin (Lab): My Lords, in view of the Minister's concern for former steel- and coal-mining areas, I ask that it be extended to areas devastated by the demise of the shipbuilding industry. On the allegations of bribery, does that not apply to the agreement between the Government and the DUP?

Lord Bourne of Aberystwyth: My Lords, the noble Baroness is fair. I shall address the first part of her question, which is certainly fair; the second, I think, was a throwaway comment. I am sure she is more concerned about the shipbuilding industry than scoring political points. On shipbuilding, I address her to the fact that much of the EU funding that will no longer be in place has been to assist such areas—the north-east, which I know she is familiar with and concerned about, is one of those areas. As I said, it is about addressing inequalities in communities, so I am sure those communities would be part of that; for example, there has been an engagement exercise in Gateshead, where I am sure this policy issue would be considered in framing a consultation. There have been engagement events around the whole country—the UK, not just England.

Lord Roberts of Llandudno (LD): My Lords, will this policy affect Airbus or Vauxhall in north-east Wales? It will cause tremendous devastation of the economy in those areas. Does he really think that coming out of Europe will be to our benefit and ease the austerity in Wales and other places?

Lord Bourne of Aberystwyth: My Lords, I bow to no one in my respect for Airbus, but I would not be as keen as the noble Lord is to write it off. He will be aware that it is in an area not currently in receipt of cohesion funding, and I shall not be making decisions here—I do not have the writ to do so anyway—about who gets money after the consultation and the subsequent spending review. Those are the parameters: the consultation will happen shortly, the spending review later, and that is when decisions will be made which will shape what happens post Brexit.

The Lord Bishop of Durham: My Lords, will the Minister confirm that in the consultation, local community organisations will be assured that they can access the new fund so that local issues really do rise to the surface in use of the funding?

Lord Bourne of Aberystwyth: My Lords, I thank the right reverend Prelate for raising the matter. I can confirm that this will be a wide consultation. I very much hope that the sorts of organisations he referred to will participate, and obviously we will react to what we find in the consultation.

Arrangement of Business

Announcement

3.22 pm

Lord Taylor of Holbeach (Con): My Lords, I should like to make a short business statement about our sittings in February. Noble Lords on all sides of the House will have noticed that, last Thursday, the Leader of the House of Commons informed that House that it was no longer the intention for it to have a February recess in the light of the significant decisions taken by that House last Tuesday.

In our House, we have discussed our sitting patterns on the Floor of the House on several occasions in recent months. Noble Lords will be aware that I have always said that I thought it would be necessary for us to sit throughout February. Had the House of Commons decided to proceed with its anticipated February half-term, I would have suggested that we have a long weekend to allow all Members and staff some additional time away.

However, given that the Commons will now sit throughout February, I believe it would be wrong for us to do otherwise. I assure the House that we will have plenty to do in the weeks ahead. Whatever noble Lords' views on Brexit, I think everyone agrees that we must allow the maximum time for scrutiny, and that is what I propose we do.

Baroness Smith of Basildon (Lab): My Lords, I am grateful to the noble Lord the Chief Whip for making the announcement. When he last spoke about this and we pressed him on dates, he said that he was speaking in code and that if we looked at *Hansard* we might get a better idea. Many of us did, and still had no idea. Perhaps now we understand why. We certainly understand the volume of work that has to be undertaken. If the Government were to rule out no deal as an option—or, as the Prime Minister seems to think, a sword of Damocles if her deal is not accepted—the workload may be slightly less. Of course, we stand ready to play our part.

The Chief Whip will be aware that the business this week in this House is rather light. The House of Commons has risen early on several occasions recently, and there are two Bills currently stalled in the Commons that this House has been waiting for: the Agriculture Bill completed Committee on 20 November, but there is still no date in the other place for either Report or Third Reading; the Fisheries Bill finished Committee on 17 December, and there is no date scheduled for the Commons Report or Third Reading. Both need to be through Parliament by 29 March. The Healthcare (International Arrangements) Bill has its Second Reading tomorrow, but there have been two months between Committee and Report in the Commons. It seems that while we will sit longer to undertake this business, the Commons and the Government have been rather tardy in bringing forward the needed legislation. I assure the Chief Whip that we stand ready to play our part, but we expect the Government to do so as well.

Lord Campbell-Savours (Lab): My Lords, I wonder if the Chief Whip might explain something to us. Under "Business of the House", today's Order Paper says:

> "The Lord Privy Seal … to move that Standing Order 40(4) (so far as it relates to Thursdays) and (5) be suspended until Monday 3 June so far as is necessary to enable notices and orders relating to Public Bills, Measures, Affirmative Instruments and reports from Select Committees".

What is the relevance of Monday 3 June?

Lord Taylor of Holbeach: It has none at all to the matter we are discussing. My noble friend the Lord Privy Seal will move a business Motion to follow what I have just said.

Baroness Jones of Moulsecoomb (GP): My Lords, could the Chief Whip explain just how much all these extra days we will sit will cost the taxpayer? It seems to be a concern.

Lord Taylor of Holbeach: Noble Lords are not obliged to claim their expenses but, should they wish to do so, they can. I think this House offers the taxpayer very good value for money, and I am not at all ashamed of its deliberations and their necessity. We should be proud of this House. I am very grateful to the Leader of the Opposition for registering her support for the programme we will have to consider over the next couple of months. We know that we will be busy and I am grateful for the support of noble Lords in going through that process together.

Business of the House

Motion on Standing Orders

3.27 pm

Moved by ***Baroness Evans of Bowes Park***

That Standing Order 46 (*No two stages of a Bill to be taken on one day*) be dispensed with on Thursday 7 February to allow the Finance (No. 3) Bill to be taken through its remaining stages that day.

Motion agreed.

Business of the House

Motion on Standing Orders

3.28 pm

Moved by ***Baroness Evans of Bowes Park***

That Standing Order 40(4) (so far as it relates to Thursdays) and (5) be suspended until Monday 3 June so far as is necessary to enable notices and orders relating to Public Bills, Measures, Affirmative Instruments and reports from Select Committees of the House to have precedence over other notices and orders on Thursdays.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, in agreeing the Procedure Committee's first report of this Session on 4 December 2017, the House decided that Thursdays after the end of January this year should be used for legislation rather than general debates. As with the equivalent Motion last year, this Motion simply allows legislation to take precedence over other types of business that would otherwise have priority on a Thursday. I beg to move.

Motion agreed.

Trade Bill

Committee (4th Day)

3.28 pm

Relevant documents: 33rd Report from the Delegated Powers Committee, 13th Report from the Constitution Committee

Amendment 45

Moved by ***Lord Stevenson of Balmacara***

45: After Clause 5, insert the following new Clause—

"Future partnership with the European Union: services

It shall be the objective of an appropriate authority to take all necessary steps to implement a future trade agreement with the European Union that—

(a) ensures no additional barriers to trade in services between the European Union and the United Kingdom are erected after exit day;

(b) protects—

(i) the right of UK nationals and businesses to provide or receive services in the European Union, and

(ii) reciprocal rights for EU nationals and businesses to provide or receive services in the United Kingdom;

(c) protects—

(i) the right of UK businesses to establish a company in an EU member state, and

(ii) reciprocal rights for EU businesses to establish a company in the United Kingdom."

Lord Stevenson of Balmacara (Lab): My Lords, Amendment 45 is in my name and that of the noble Lord, Lord Purvis, for whose support I am very grateful. We are reaching the last quarter of our time on this Bill in Committee, and we have never touched, in any serious way, the question of services, which make up 80% of our GDP; they are an important part of our economy now and will be in the future. That curious absence of services has prompted this amendment; it is a probing amendment in the sense that I do not think there is any issue between the Government and us on this. We both recognise the importance of it and want to make sure that it is successful, but it is an opportunity for the Government to set out clearly what they intend to do in this area and to bring forward any thoughts they have about how the importance of services might continue, as the negotiations, which are currently with the EU and will return to the other place shortly, progress.

We hear a lot, importantly, about manufacturing and the physical goods that this country makes and imports. We do not hear nearly as much about services, and that is curious. It is important to be clear why that is. Direct trading of services across borders by purchasing or selling architecture, legal opinion or forms of insurance is a well-known measure of activity. This area has grown considerably and the UK economy is strong and strengthened by that. Business services, financial services and other aspects such as travel, including the tuition fees of foreign students who study in the UK, transportation and telecommunication information services make up the huge proportion of our activity in this area. Most trading of this type is with the EU.

It is over 50% if Switzerland is included in the figures, but we also have considerable trade outside the EU and we should not forget that.

It is also important to recognise that, in some senses, exactly how this takes effect is hidden from plain sight. I should explain: we know a lot about the physical movement of things like car parts, because we are told, time and again, that the issue in modern-day trade is not so much the individual purpose of creating a particular object, machine or type of equipment; it is the assembly of the various parts. In the case of a car, bumpers, injectors and all sorts of things that go into the modern car cross the channel several times before being assembled, either here or elsewhere, in the final product, which is then sold. We are concerned about that and much of the Bill has this as part of its process, but the point is that this is not just about physical material. There is also a question about knowledge, intermediate input, services, financing and having the right people in the right place, which is necessary for this complicated pas de deux to work.

The single market, which underpins all this in the EU, plays a pivotal role in facilitating this process of increasing specialisation, because it includes as its basic point—this is derived from consideration within the GATS treaty under the WTO—the four freedoms for moving goods, services, capital and people. Hence, a focus on manufacturing the individual item sees only part of the story.

Why do services not feature more strongly in our discussion and debate? There are three reasons. First, services agreements are a relatively new form of trade negotiation. There are not that many around. They are difficult, because you have to negotiate and consider individual aspects, often regulatory and non-tariff barriers, to the way the trade happens. They cannot always be done by fiat from government; they have to involve large numbers of other companies and organisations. They are bureaucratic; they are not necessarily all organised from a particular aspect in government, such as BEIS or the Department for International Trade, because regulators and government departments will be involved in legal services and other areas. Finally, because different regulations belong to different bodies, it is more difficult to trade one sector, as it were, against another. There is not really an easy route through this, and that may explain why it is often left to the last.

I welcome the Government's response on that, but it is a cynical response. We have done so well in services trade in recent years and our performance is one of the strongest in the world. We have more to lose in trade negotiations that focus on individual hardware and machinery parts if they do not also make sure that those trading in legal and other services are considered as well. We are in a quandary. We can argue the easy option of a goods-only agreement, because the rules for that are relatively straightforward: the tariffs are already very low anyway and we are not talking about substantial changes to the way in which we would do it. But if you include services then we are talking about a whole range of new activities, new players and the offering of new types of discretion. I will wait to hear the Government's response, but it could be argued that we in Britain are not yet ready to engage with that successfully.

In that context, the opportunity is there for the Government to respond positively on how we are going to take forward this issue and how important it is to make sure that we get it right, and to make sure that we in this country do not suffer simply because the dog that did not bark—services—is still not barking. I beg to move.

Lord Purvis of Tweed (LD): My Lords, I am grateful to the noble Lord, Lord Stevenson, for moving the amendment, which I happily signed. It will be no surprise that we on these Benches favour, still, the United Kingdom continuing as part of the single market of the European Union. However, in many respects this is a mitigating amendment on the basis that, if we are to leave the European Union, the most significant non-financial services sector for the British economy is, as the noble Lord, Lord Stevenson, said, the services sector. It is right, therefore, that we give proper focus to it in this Bill.

Up until this point, we have discussed the emerging elements of the continuity agreements. We have seen so far only one published, that of Switzerland, and are awaiting others. In the continuity agreement, Switzerland has components on services, and guarantees free movement of people for those providing services. That is beyond the elements in the immigration White Paper and in the withdrawal agreement from the European Union, and it is beyond what the Government have said. There are, however, some indications that the Government recognise that services are critical to the British economy. But it goes beyond that, as do our discussions with Switzerland, which are on the gold market and property.

This affects all parts of the United Kingdom. The UK is more dependent on services, especially non-financial, than perhaps any other country in the world. We export more in absolute terms than any country other than the United States. We have been able to get to that position because we have been doing so within an integrated market of the European Union. In many respects, we in the United Kingdom have been the driving force of the emerging integrated markets in the European Union. It is an irony that, as the architects of this approach to developing the services markets across the European Union to benefit our country, we are going to leave it.

If we are to have a future relationship, it is critical that we focus not only on tariffs and non-tariff barriers but on what is necessary to ensure that we can continue to benefit, at least to some degree, from a services relationship with the European Union. This applies particularly in digital services, as well as in the wider elements of research and development.

Many months ago, your Lordships' committee reported on this, and in December 2017, in the name of the noble Lord, Lord Whitty, this House had an opportunity to debate the significance of the non-financial services sector to the British economy. Now, we have the Government's clear position: we will be leaving it.

[Lord Purvis of Tweed]
We are choosing to leave an integrated market, which we have led, so how do we focus on some of the component aspects?

In the withdrawal agreement, we have seen some elements of mutual recognition of qualifications and some elements of professional standards being aligned so that those working in the services sector can be part of a wider operation on the continent and with the European Union. However, this is only a very small aspect of the overall need to have a much closer alignment. It requires government honesty: we may well be leaving the single market, but it needs to be clear what very close alignment would look like.

This applies to the discussions taking place this week and next week on the alternative to a backstop. The arrangements for the Northern Ireland backstop were as much to do with the continuity of the services sector for those providing professional and trade services from north to south and south to north as they were with the checking of the origin of goods at a border for tariff purposes. The all-Ireland economy is, by and large, an all-Ireland economy because of services. We are treaty-bound to protect that, so it is very important to have more clarity from the Government on what they expect to see as alternative arrangements to the Northern Ireland protocol if we are to protect the core elements of an all-Ireland services economy.

We know that we cannot rely on a much wider alternative, which is the WTO. In its last set of discussions, it could not even agree on a communiqué about taking forward future services agreements on a WTO basis. We know that the USA and China are in dispute not only on trade in goods, but also on services, and we know, as the noble Lord, Lord Stevenson, said, the complexity of even the European Union introducing services components to third-party trade agreements. If we know that it has been difficult, with the UK as the driving force, to secure agreements with other third countries, why do the Government think that it will be easy for the European Union to do it with us?

This amendment, therefore, is very important. I hope that it will allow the Government to be much clearer, because the services sector of the United Kingdom has, in many respects, been the driving force of growth in the UK, one that we cannot afford to put at risk.

Lord Hamilton of Epsom (Con): My Lords, both the noble Lords, Lord Stevenson and Lord Purvis, have stressed how important the services sector is to the economy of this country and to the exports that we sell. However, anybody involved in the financial services industry would say that they have not been much helped by the single-market provisions of the EU, which have put up many non-tariff barriers, to which the noble Lord, Lord Stevenson, referred. It is probably quite ambitious, if we hope to have a free trade deal with the EU, to think that we are actually going to lower the non-tariff barriers that have been erected during our membership of EU, when the single market was supposed to provide a market for services as well as goods but effectively has not actually done so. I will be very interested to hear what the Minister has to say about this very important sector of the economy. We have not been much blessed by reciprocal agreements with the EU over financial services and very many other services in the past because of the non-tariff barriers that have been erected against them.

Lord Liddle (Lab): My Lords, I strongly support this amendment, which is of profound importance. I apologise for an intervention that I made in Committee last week, where I was ticked off by the noble Viscount, Lord Younger, for intervening on an amendment when I had not been present for the start of the debate. I apologise again; I should know the rules better.

I was privileged to serve on the EU Internal Market Sub-Committee of your Lordships' House. We conducted an inquiry into non-financial services, and I was very struck, not having known much about this before, by the importance of non-financial services. The sector makes up something like two-thirds of the total of the services trade. This is important, particularly for people who think that services just mean finance and the City. It is far broader than that and a lot of members of my own party might better understand that point.

3.45 pm

We took evidence from architects, broadcasters and lawyers—covering a full range of services—and what struck me most in their evidence was the importance attached to free movement as a positive business advantage that they enjoyed. That point came out in many different representations. Clearly, if we leave the EU—which I do not want to see happen—free movement will come to an end. But what scope will the Government make to try to replicate the benefits of free movement for our service sector in the immigration policy that they then pursue? Secondly, are they willing to be flexible in their immigration rules when they consider negotiations on services? Are we saying that we have the autonomous right to determine our own immigration policy and the rest can go away and live with it, or are we prepared to give concessions on free movement for the benefit of businesses based in Britain? What does the Minister have to say on those questions, which are of crucial importance and are very unclear in what the Government have so far said about their immigration policy?

In my view, this is a very important aspect of Brexit that has been greatly neglected in the discussions. All the talk has been about the customs union, integrated supply chains and all the rest, which are of course all important, and on this side of the House we are very anxious to see a customs union. But a customs union is not by any means the only way of mitigating the damage of Brexit. For the services sector, some replication of free movement will be essential. What is the Government's response to that?

Baroness McIntosh of Pickering (Con): My Lords, I follow the noble Lord, Lord Liddle, in pursuing the aspect of services, and I have a specific question for my noble friend Lord Bates, who I think will be summing up. This debate is not dissimilar to the one that we had on the free movement of professions, and I am mindful of the fact that my noble friend Lady Fairhead has said on a number of occasions that the

Bill before the Committee today is all about continuity. I also have regard to what my noble friend Lord Hamilton said—that there has been precious little reciprocity in terms of setting up and establishing services elsewhere in the European Union to date. So that does not fill me with confidence about what the legal position will be going forward.

There are some very helpful pages on the European Commission website about what the position will be as regards professions after 29 March and in the longer term, but there is precious little about establishing companies. This is becoming a matter of increasing urgency because we can see, in particular if we look at financial services, that the issue is not just free movement of people but free movement of services and capital. We have recently seen an increasing exodus of capital and people moving from the City of London to bases in Dublin, Frankfurt and Holland—and even Paris and Copenhagen are pressing for people to go and set up businesses there.

I would like to ask my noble friend the Minister how we are pursuing this on a reciprocal basis. We saw with professions, in the case of lawyers, that we have adopted the statutory instrument and the necessary regulation. What is the legal position of a UK company that wishes to establish itself and offer its services, first in the event of no deal after 29 March, secondly in the event of a deal during the transition phase, and thirdly at the conclusion of the transition period, whether it is as planned or extended? It strikes me that many of us are focusing on businesses already established in the UK and providing services. My concern is how much the ability of those looking to set up and establish themselves will depend on the right of residence, either now or at some future date in what will be a third country after 29 March.

Lord Davies of Stamford (Lab): My Lords, I think that this is a very good amendment and I will come to the substance of it in a second. I just want to make two points by way of introduction. First, here we are at the beginning of February—a new week and a new month—and we are still in an absolutely ludicrous position, presenting an almost unbelievable picture to the world of a country with a Government doing their best to damage their own economy. Every day we have new evidence of this. Today we had the worrying story from Nissan. Many of us who have focused on the mess the Government are in could speak on the subject for hours.

There is another example from the last few days. We say that when we leave the European Union we want to sign trade agreements with those countries which currently have trade agreements with the EU. One of those countries is Japan. Japan has just signed a trade agreement with the EU. At the very best, I suppose, if the Japanese were to give us exactly the same terms—which is unlikely because our bargaining power vis-à-vis Japan is nothing like the power that the EU has—it would take a minimum of five years, and probably nearer 10, to conclude this deal. So the Government are saying that we are walking away from a trade agreement in order to spend a vast amount of time and money and suffer a lot of uncertainty before perhaps, in many years' time, finally reaching another trade agreement that may not be as good as the one we now have. I put it to the Government: what kind of reason or logic is that? What a way to run a state. What a way to look after not only this generation but future generations of British people and make sure that they have a viable economy on which they can actually base a reasonable standard of living and a reasonable level of public services.

The Government are already under attack in this place, quite rightly, for their delivery of public services. We had a very interesting series of Questions earlier about the health service. The Government are undermining the future ability of the British economy to deliver the wealth we need to maintain our public services at acceptable international levels. This is quite apart from the impact of their policies on individual wealth and prospects for individuals who want to travel or study abroad or benefit from all the other freedoms we will be giving up. It is a very serious matter. The muddle the Government are in about the damage that is being done makes the whole picture even more disgraceful—that is the only word I can use.

I think my noble friend's amendment is excellent. I agree with everything he said when he introduced it—and that noble Lords on both sides of the House said—about the importance of services. We all know that they are 80% of the British economy. But I have one question. Why has he not put goods in there as well? It seems to me that exactly the same principles apply to goods. I just looked at the amendment, and if you were to add the words "goods" wherever "services" are mentioned, you would not produce any particular anomalies or logical or linguistic problems. I do not know why goods have been left out of this particular picture. As I said, exactly the same principles apply. We want there to be no new barriers—that sums up everything. "Barriers" includes tariffs, quotas and non-tariff barriers, so the ground would be covered quite well by doing that.

My noble friend rather implied that he was putting forward this amendment in order to have a debate on an important subject—which is a very worthy thing to do in this place. Perhaps I have that wrong, but it sounded as though that was what he had in mind, and we are of course having that debate at the moment. However, it seems to me that it would be even better if we got this proposed new clause on to the statute book. We would be doing a very good day's work for the country if we could manage to do that. Therefore, I ask my noble friend why he came to his decision. I am sure that there must be a very good reason, which perhaps I am being foolish in not anticipating, but I do not understand why we do not include goods.

These debates are becoming extremely unreal. One likes to think that one's service in Parliament, whether in the Commons or in the Lords, is based on being clear in one's mind and discussing and working out with colleagues what is the best policy for this country. But we have a Government who are not pursuing the objective of the best policy for this country. We have a Government who are destroying British industry and commerce where they can—so it is a very unreal situation. I do not know how much longer this country can go on in the hands of people who take that

[Lord Davies of Stamford]
attitude when they have in their charge the very considerable, and in my view very important, responsibility of governing the United Kingdom to the benefit of our citizens both of today and of tomorrow.

Lord Lansley (Con): My Lords, in following the noble Lord's remarks, perhaps I may say that the unreality of debates in Committee on this Bill will be exacerbated if we not only have amendments that, quite properly, raise relevant issues that are not presently included in the Bill but we then use them as the basis for a wide-ranging debate on every occasion. Let us not do that. On occasion, we in this House look broadly at what the resolution to our current impasse might be, but we also have a responsibility to use our time well on this Bill to try to ensure that it is effective legislation, because we might need it.

In that context, there is a very simple reason why trade in services is not in the Bill: the General Agreement on Trade in Services is multilateral, not plurilateral, so there is no need to legislate for this as it is something we are a party to only by virtue of our membership of the European Union. That is why the government procurement agreement has got into the legislation. If that were true for the General Agreement on Trade in Services, that would have to be included as well, but it is not; every member of the WTO is a member of the GATS.

However, the question is: do we want to legislate to mandate the Government in the negotiation on a future free trade agreement to seek to provide for a continuing and complete reproduction of our current relationship with the European Union, or at least to the extent that the amendment asks for that? As far as I can see, it asks for it up to mode 3—it does not include mode 4 arrangements, which allow for natural persons to be present in other member states—thus excluding the free movement of individuals for the purpose of the delivery of services in other member states. Therefore, it is not a continuity amendment, or at least it cannot be presented as such.

From the point of view of Ministers, broadly speaking at the moment it is important for us to understand to what extent free trade agreements that might be reproduced by way of continuity agreements in the event of a no-deal exit might lead to the perverse situation whereby we have greater service sector access to third countries than we do to the European Union, which would mean considerable dislocation for service industries in this country.

Finally, much as I wish that we were staying in the European Union and continue to argue that we should be in a customs union with a degree of regulatory alignment—we will come on to that briefly later—I certainly would not go as far as the amendment implies, which is that effectively we should be rule-takers on services with the European Union. That could be a very unhappy place for us to be, given that services make up 80% of our economy, as has been said. The fact that we are in a customs union for goods will therefore not preclude us from engaging extensively in discussions on trade in services with third countries, which is where much of the action may well be in future trade negotiations.

4 pm

Baroness Neville-Rolfe (Con): My Lords, 80% of the UK economy—in fact, I think the figure is 85%—comprises services. I support the noble Lords, Lord Stevenson and Lord Purvis, in bringing forward this probing amendment although, for the reasons given by my noble friend Lord Lansley, I am not convinced that we should change the Bill and make ourselves rule-takers on services. If noble Lords will allow, I would like to keep the issue of the free movement of people separate. The question is: do we lose as much from losing the single market on services? It is not very well developed at all. I know this because I tried to cut down barriers on services within the EU when I led the presidency work in BEIS in 2016.

Last week the Chancellor spoke at the UK Finance dinner, which I attended. I was sorry as a result of that—the timing was unhelpful—to miss the last group of amendments, of which mine formed part. The Chancellor talked about liberalising trade in services—a sort of WTO services round—going forward. Of course, this would also extend to the European Union if it were to happen.

I have two questions about services for my noble friend the Minister, the answers to which will help me when we consider the Bill on Report. First, can he elaborate on the Chancellor's idea, or emerging Treasury ideas, of doing something on services beyond the European Union, which would help us in the European Union as well? Secondly, can he confirm that the Government's proposed deal—the withdrawal agreement or the political declaration—would not get in the way of bilateral deals with third countries on services, given that the multilateralism that I love is very hard going? In other words, would we be able to conclude a deal with the US—again, very tough—or, perhaps more realistically, with the emerging and already emerged countries of Asia, where we are now selling a lot of services and where it seems that aligning some of the rules on services could be extremely valuable?

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, on behalf of all those who have spoken, I thank the noble Lords, Lord Stevenson and Lord Purvis, for bringing forward Amendment 45, the purpose of which is to provide an opportunity for the Government to put some remarks on the record about our approach to services which, as we all agree, is of crucial importance. So, before coming to some of the specific questions that have been raised during this short debate, I will take advantage of that opportunity to set out the Government's position as it now stands.

As my noble friends Lady McIntosh and Lady Neville-Rolfe, and indeed the noble Lord, Lord Stevenson, said, the UK's services economy is a global success story. Our internationally competitive industries play host to world-leading firms as well as thriving small and medium-sized enterprises, and we have undertaken significant engagement with the sector on issues related to EU exit.

I would like to reassure the House that the Government are seeking arrangements for services and investment that cover all modes of service supply—my noble

friend Lord Lansley correctly referred to the variations; that provide substantial sectoral coverage, including measures on professional business services, which my noble friend Lady McIntosh referred to; that go well beyond both sides' WTO commitments as set out in the General Agreement on Trade in Services, which my noble friend Lord Lansley also mentioned; and that build on the provisions in existing EU agreements.

Moreover, through the political declaration we have secured a commitment from the EU 27 that our future trading relationship will be ambitious, comprehensive and balanced, and will include market access commitments to ensure that service suppliers and investors do not face quantitative restrictions such as monopolies, economic needs tests or joint venture requirements, which my noble friend Lord Hamilton expressed concern about; national treatment commitments, to ensure that UK service suppliers and investors are not discriminated against by the EU 27 and vice versa, as my noble friend Lady McIntosh referred to; new arrangements on financial services, grounded in economic partnership, providing greater co-operation and consultation than is possible under existing third country frameworks; appropriate measures on the recognition of qualifications, as referred to by the noble Lord, Lord Purvis, to support UK professionals practising in the EU 27 and vice versa; arrangements that allow for temporary entry and stay in each other's territories for business purposes, including visa-free travel for short-term visits, as the noble Lord, Lord Liddle, rightly identified from his extensive work examining the internal market as a member of the Select Committee; and mechanisms to promote voluntary regulatory co-operation to guard against the introduction of unnecessary barriers to services, trade and investment, to which my noble friend Lady Neville-Rolfe referred. I pay tribute to the work that she did at BEIS in seeking to remove those barriers.

We have also been clear that after we leave the EU, the UK will have an independent trade policy covering all aspects of goods and services. To deliver that objective, it will be important to retain regulatory freedom where it matters most for the UK's services-based economy.

I turn to some of the points that have been raised.

Lord Davies of Stamford: Before the Minister moves on to detailed points, perhaps this might be a good moment for him to tell the Committee, out of all the countries with which we would like to have our own free trade agreements after we leave the EU—if we leave it—how many have indicated that they wish in principle to negotiate and sign such an agreement with this country; how many have said that they would do so on terms identical to their existing free trade agreement with the EU; and how many have indicated that they would not want to pursue such a negotiation at all?

Lord Bates: The noble Lord will remember from day three of Committee last week that one of the questions asked was whether we could provide the Committee with some running status on where we are with all those free trade agreements. That is a perfectly reasonable approach and it is something that my noble friend Lady Fairhead agreed to take back to look at and come back on ahead of Report. Rather than using this opportunity to rehearse that, I will say that it is something that we are looking at. Specifically on the EU and Japan, I was going to come to that topic and say that there is a working group with Japan to seek to replicate its effect as part of the continuity arrangements.

Lord Liddle: My Lords, on the point about freedom of movement, I have two specific questions for the Minister. I accept what he has said, but I would like to quote a personal example and declare an interest. For a period, my wife was chief executive of the English National Ballet. It was a requirement for the success of the English National Ballet that ballet dancers from all over the world were able to join, but the ENB had great difficulty with ballet dancers from outside the EU because they do not earn anything like the money that is put down in the Immigration Rules to justify easy entry. Are the Government prepared to be flexible on the earnings requirement to enable cultural organisations, which are very important to the British economy, to easily access talent from the EU, where people's salaries will not initially be that high?

Secondly, if you are a small business in services and trying to expand by getting jobs, projects and contracts on the continent, one of the obvious business strategies you would pursue is recruiting young people from the countries in which you hope to do business. You take them into your consultancy, or whatever, and that gives you language and personal links into the markets you are trying to target. Again, there is no guarantee that, under the immigration policy outlined by the Home Secretary, young people coming from European countries would be able to get jobs in that kind of situation. We asked for a clear statement of the Government's trade policy. The Government have to be clear on these issues before we can proceed on the Bill.

Lord Bates: I am happy to do that, and perhaps get some notes—I know we have a group coming up on the mobility framework, to which those points will perhaps be pertinent. I will, if I can, address them there. I also draw the noble Lord's attention to section 9 of the political declaration, paragraphs 50 to 59 inclusive, which sets out the Government's position on that.

The noble Lord, Lord Stevenson, and my noble friend Lord Hamilton pointed to or asked a very important question on bilateral services-only trade agreements. There is no precedent for a bilateral services-only trade agreement. Where service agreements exist, they are notified to the WTO alongside a wider agreement that also covers goods. We are leaving the customs union so that we can set our own tariffs and have an independent trade policy tailored to the strengths and requirements of our economy, which therefore includes—by implication and explicitly—the importance of services to our economy. The political declaration sets out a plan for a UK-EU free trade area for goods, including no tariffs, with ambitious customs agreements. This will be the first such agreement between an advanced economy and the EU.

[Lord Bates]

The noble Lord, Lord Purvis, referred to the situation in relation to Northern Ireland. Without wanting to revisit that whole area in this group, the situation is that in Northern Ireland, under the common travel area, the rights to work, study and access social security and public services will be preserved on a reciprocal basis for UK and Irish nationals in the other state.

I turn to the questions raised by my noble friend Lady McIntosh and, in particular, the two questions raised by my noble friend Lady Neville-Rolfe. My noble friend referred to the Chancellor's speech on liberalising services and looking for a more ambitious way forward. I am sure that is at the core of government policy, otherwise the Chancellor would not have said it. I do not have the text in front of me, so I cannot comment on its full meaning, but I will write to my noble friend on that point. My noble friend Lady McIntosh also asked a three-pronged question. For a company setting up in the UK, what would its situation be in the event of no deal on day one; in the event of the implementation period; and at the conclusion of a future economic framework? Some of those outcomes will depend on the extent of the negotiation, which we have set out in the heads of agreement in the political declaration. Between Committee and Report, I will write on my noble friend's specific point relating to that. Again, I thank the noble Lord for giving us an opportunity to raise this very important issue.

4.15 pm

Baroness Neville-Rolfe: Can my noble friend clarify the point about services and goods? I asked whether we would be able to continue to do deals on services if we had a tight agreement—a customs union or whatever—with the EU. He was saying that goods and services tend to be linked in trade agreements and are never separate. Would that mean that we could not have services agreements, assuming we got something quite tight on goods? That would obviously be a problem. I know that they are linked—often, the service for your car and the computer in it are as important as the car itself—but I had seen them as distinct in the WTO. If my noble friend could write to me on that, I would be very interested.

Lord Bates: I will be glad to do so. In a lot of such agreements, especially for the major manufacturers, the bulk of the value of the trade or the deal is the service package and the support provided thereafter. I will be very happy to write to my noble friend ahead of Report.

Lord Kerr of Kinlochard (CB): In the early part of his speech, the Minister read out an impressive list of points that had been achieved or secured before he moved on to his brilliant ex tempore dealing with the questions raised in debate. I confess that I did not recognise those points. I cannot remember seeing them in the withdrawal agreement. Was he perhaps referring to the relevant part of the political declaration, in which case surely those points have not been secured or achieved and what has been agreed is that all these things may be discussed over the next three, four or five years as the long-term relationship is considered?

Lord Bates: Yes, except that the political declaration was of course part of the withdrawal agreement negotiated with the EU 27, so one hopes that it will form the basis of our future economic partnership.

Lord Purvis of Tweed: The noble Lord, Lord Lansley, and I have referred to the WTO. My understanding is that there have been objections to the UK's submission of services schedules to the WTO and therefore they are unlikely to be certified if we leave at the end of March. We can still trade on them, but they are likely to be uncertified. Can the Minister give a little context about what concessions we might make or what discussions we would have with those countries that have lodged their objections? Clearly, they feel that we will not provide the same kind of market access to UK services as under the existing agreements. We could be starting from a situation that is much worse than simply carrying on with where we are at the moment at the WTO. If the Minister cannot respond at the moment, perhaps he could write.

Lord Bates: I am very happy to give further detail on that in the general update between Committee and Report, but, as the noble Lord knows, the schedules were tabled in December followed by a 90-day consultation period. There can be a variety of perspectives on them before they are finally adopted. I will get an update as to where we are on that before Report.

Baroness McIntosh of Pickering: To clarify, my concern is about British companies establishing their services in what will be a third country, another EU country. I would be happy for my noble friend to write to me.

Lord Bates: I am grateful for that clarification. I shall make sure that that is what is addressed.

Lord Stevenson of Balmacara: My Lords, it sounds as if we are starting off a new train of activity or various letters. I suspect that it might also be helpful if we had a short meeting on some of the issues just to draw them together. Like the noble Lord, Lord Kerr, I was entranced by the detailed nature of the early part of the Minister's response and I got a bit lost—I think it was on the fourth point the second time round. We will need to read him and understand not only what he was saying but where these points are to be found in more detail. The chance to be able to do that in the context of the very rich debate we have had would be helpful.

That is not to say that I think there is that much between us: with friends like the noble Lord, Lord Hamilton, how can I complain? We are on the same side here, most unusually and extraordinarily, agreeing on points of some substance. There is some progress, it has not always been easy going and I think the noble Lord, Lord Lansley, was right to point out that this is partly because we are centring on an agreement which is brokered by the WTO through the GATS system. He is correct—his background in the chambers of commerce means that he reads these documents carefully and understands their provenance—that the wording of the amendment is indeed taken from the four pillars, but I was unable to get the fourth pillar in; the

clerks would not accept that. The noble Lord, Lord Fox, managed to get it into the next amendment but one, so we will have that debate shortly. That complication sets us off in slightly the wrong direction: we are not trying to change that structure in essence, because that is the overarching world system and we have to be careful we do not try to take on too many battles at the same time.

The political declaration is not the same as the agreement and of course all that gets wrapped up into some form of yet-to-be-understood free trade agreement which may or may not include both customs elements and services agreements. I think the noble Baroness is right to pick up the question of how all that melds together: will we be able to trade off some aspects of our services in order to achieve a better tariff arrangement, or is it better to keep them separate and deal with the different arrangements? I do not think we have a clear answer to that, but I do not think we are very far apart on it. We want this to be the best for Britain. We have done pretty well, against all the odds. Why change it if it is not certain that the changes are going to be beneficial to us?

Having said that, the question from my noble friend Lord Davies is right: what is the point of this amendment if it does not improve where we are? That is where the test has to be. We must look carefully at the responses and make sure we have the right view. There may be some argument for having something, either in this Bill or in the non-continuity Bill yet to come, if that is the Government's intention. However, at this stage we are unable to say that, so with that in mind, but with thanks to all who have contributed to a very rich debate, I beg leave to withdraw the amendment.

Amendment 45 withdrawn.

Amendments 46 to 49 not moved.

Amendment 50 had been withdrawn from the Marshalled List.

Amendments 51 to 60 not moved.

Amendment 61

Moved by ***Lord Lansley***

61: After Clause 5, insert the following new Clause—

"Free Zones

(1) Within three months of the passing of this Act the Treasury must launch a consultation on proposals for the establishment in the United Kingdom of Free Zones, as defined by the Customs and Excise Management Act 1979.

(2) The Treasury must lay a report of the consultation under subsection (1) before both Houses of Parliament within six months of its launch.

(3) The report under subsection (2) must include—

(a) proposals for the Free Zones to be established, and

(b) an account of the extent to which each proposed Free Zone would allow UK manufacturers to secure an integrated supply and value-added production.

(4) Within six months of the report under subsection (2) being laid, a Minister of the Crown must by regulations made by statutory instrument make provision for the establishment of Free Zones as set out in the report under subsection (2).

(5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons."

Lord Lansley: I am grateful for this opportunity to raise the issue of free zones. I thought I was likely to end up moving this amendment at about 10 pm last Wednesday, so it is a pleasure to have it on in prime time but, recognising the value of this time, I will be as brief as I can.

The point about this amendment is that free zones were legislated for way back in 1979. Indeed, they featured, not least during the 1980s, as part of a broader industrial strategy. I do not propose today to debate the merits or otherwise of free zones, because there are arguments that cut both ways. They are, by their nature, a distortion: they distort the customs and regulatory framework in favour of specific geographical locations. None the less, there can be significant benefits associated with that happening in circumstances where one needs to advantage certain geographical areas. That is why, for example, they have been used in the past, and are used widely around the world, in relation to some more disadvantaged economic areas, and specifically in relation to ports of entry—not just seaports but airports and the like. The reasoning there is that the ports of entry to an economy are often in competition not so much with other parts of the geography of that country as with other ports in neighbouring areas.

The European Union has a general disinclination towards free zones because the single market effectively creates one single customs territory. Arguing against myself, if we were to be in a single customs territory with the European Union, the question of free zones would probably not arise at all—but if we are not to be, it ought to arise. Under these circumstances, it would be good to legislate in the Bill to encourage Her Majesty's Treasury to bring forward both a consultation allowing the merits of free zone designation and its use in this country to be debated, and proposals to Parliament about how that designation might be deployed.

There are ports that are interested in this, and the Treasury's approach—that it is happy to consider free zone designation under the 1979 legislation—is understandable. But it is for the ports themselves to decide whether they wish to do this. I understand some ports may wish to; Teesport and Humberside are interested, and Associated British Ports is interested. If we leave the European Union and do not form part of a customs territory with it, they may well bring forward proposals. In the interests of the legislative approach to this, we should have something that encourages that to happen as quickly as possible in an ordered way. That is why the deadlines in the amendment are swift: to initiate a consultation within three months, and to report on that consultation within six months. In quite short order after exit day, we in this country could see to what extent our ports would need and benefit from free zone designation to enable them to compete more effectively with other ports—not least those on the other side of the North Sea or the English Channel.

[LORD LANSLEY]

That is the reason we should think about this. Those bringing their goods to Europe have never previously had to think about customs or other formalities, or the imposition of duty on those goods if they are brought to the United Kingdom and then re-exported elsewhere in Europe. Unfortunately, they may have to think about that.

Lord Davies of Stamford: I am grateful to the noble Lord for giving way. As he rightly says, free ports are distortionary by definition. If you create a free port close to another port, one will survive and the other will probably disappear altogether. Does he think his Government would be tempted by the thought that they could say, "If we have a local MP who votes for us and supports this Government, we will make the port free; but if we have an MP who dares to vote against us, we will make the port unfree and ruin it"?

Lord Lansley: The noble Lord will observe that the amendment seeks a consultation on the part of the Treasury, and that consultation would undoubtedly enable these issues to be explored on an even-handed basis. In the scenario I was describing, any port would be free to come forward and seek designation. It is not something that would be handed out on the basis of any partiality; rather, it would be done by examining the cases made by those ports. The point is that whereas in the past we may have concluded that there was no basis for introducing such a distortion into our economic activity, if and when UK ports are principally having to compete in international trade with other European ports, we may conclude that it is not a distortion to trade inside the United Kingdom. Actually, it is an aid to competitiveness for the United Kingdom in relation to ports elsewhere in Europe. I beg to move.

4.30 pm

Lord Bates: My Lords, I thank my noble friend Lord Lansley for moving this amendment. He has managed to get on to prime time in this territory. I once represented a seat on Teesside, which is very close to my heart. The idea has been advocated by the excellent mayor there, Ben Houchen, and by some of the local MPs, such as Simon Clarke and Rishi Sunak.

To reassure my noble friend, the Customs and Excise Management Act 1979—CEMA—allows for the designation of free zones, as he mentioned. The Taxation (Cross-border Trade) Act, which the Government passed through your Lordships' House last September, allows HMRC to make regulations regarding goods kept in a free zone. Under CEMA, operators are free to apply to become a free zone. The Government are open to any ideas that might deliver economic advantages for the UK and will continue to examine the role that free zones may play as part of this. Assuming that we will have an independent trade policy, we will be able to have these types of examinations and innovations.

Existing customs facilitations in the UK offer the same benefits as free zones, but are not geographically limited and can be accessed anywhere across the country, thereby potentially having more widespread benefits for the UK as a whole. For example, a manufacturer could import materials for its products and store them in a customs warehouse anywhere else in the country, without duties being paid on them. The manufacturer or its supply chain could then use those materials in its manufacturing process under inward processing relief and could export the finished goods without any UK customs duty ever having to be paid. Those existing facilitations, therefore, avoid the distortions to which the noble Lord, Lord Davies, referred, which can arise from free zones where a manufacturer or its supply chain would be required to locate on the same site to benefit.

The UK's ability to formulate a free zone that diverges from the Union customs code will depend on the future relationship with the European Union. The Government have also been clear that it is a commercial decision for operators to make on whether they want to apply for designation of an area as a free zone, and we will review any applications made. I am not able to be more helpful than that to my noble friend at this point, much as I may wish to be.

Lord Lansley: Since there is no recent substantial experience of free zones, does my noble friend not think it would be helpful—if we arrive at the point where we exit the Union customs code—for the Government at least to initiate a consultation to look at the criteria that would be applied in examining the designation of free-zone status?

Lord Bates: My noble friend will be aware that "consultation" has a specific meaning now in legal terms, which is quite an onerous responsibility of the process. We could seek ways to discuss—perhaps with BEIS as part of the industrial strategy—or to engage with others who are interested. He mentioned Humberside, Teesside and others, and I think we could look at ways in which that could be done. I am very happy to take that thought back to the Treasury and write to him further on that.

Lord Lansley: Once again, I am grateful to my noble friend and that is a very welcome comment. I look forward to further discussion about that but, on that basis, I beg leave to withdraw the amendment.

Amendment 61 withdrawn.

Amendments 62 to 65 not moved.

Amendment 66

Moved by ***Lord Fox***

66: After Clause 5, insert the following new Clause—

"Trade agreement with the EU: mobility framework

It shall be the objective of the Secretary of State to take all necessary steps to secure an international trade agreement with the European Union which includes a mobility framework that enables all UK and EU citizens to exercise the same reciprocal rights to work, live and study for the purpose of the provision of trade in goods or services."

Lord Fox (LD): My Lords, we have come to the fourth day of Committee on the Bill. Before the noble Lord, Lord Liddle, became herald to this issue, we really had not talked about people. Trade is about people—it is about people who make and sell things, people who sell their services abroad, and people who come to this country to sell their services and goods to us. There are strong arguments for the preservation of free movement in any future treaty. Amendment 66 requires the UK to negotiate with the EU an international trade agreement that allows UK and EU citizens to continue to work, live and study abroad.

Free movement is good for the economy: it boosts efficiency and innovation. Meanwhile, its impacts on public services, crime and unemployment are generally positive—I will come back to those points shortly. There is a cultural and societal benefit which comes with the opportunity to work, live and study in other cultures and develop mutual understanding and friendships. These are often set to one side and referred to as "soft power" in a way which suggests that they are somehow less useful than hard power. However, these are important things, to do with the influence of our country in the rest of Europe. I will focus on the first two elements of the benefits from free movement.

In no small measure, we have a Prime Minister who is obsessive about the need to end free movement; this is reflected fully in the political declaration and the way we are moving forward. As the Minister set out, there is some outline in the political declaration, but of course, as the noble Lord, Lord Kerr, pointed out, it is merely a wish and not a reality. The political declaration says that free movement of people will end—we know that that is what the Prime Minister set out to achieve. The UK and the EU will provide visa-free travel, but only for short-term visits; both parties will consider visa conditions for research, study, training and youth exchanges; both parties will consider addressing social security co-ordination; both parties will consider measures to minimise border checks; both parties will seek to co-operate on parental responsibility measures; and there will be a framework to enable people to travel temporarily to the other territory for business purposes. The exception to this is the common travel area within Ireland, which will be unaffected. However, the rest of the immigration process, just like the rest of Brexit, is left hanging.

I am interested in what the Minister can say; clearly, he may not be able to say it directly. Those bullet points are interesting, and are clearly a result of a joint discussion between the European Union and the United Kingdom. Which of those points arose from the United Kingdom's point of view and wish list, and which of them came from the European Union? In other words, what was the thinking of the two parties going forward?

Before we look at the trade influences specifically, I want to make the point clearly that ending the free movement of people in and to this country is a stupid idea. I shall take as my text to prove this the Migration Advisory Committee's report of 18 September. When it comes to the impact of economic migrants from the EEA, the committee finds that, overall, there is,

"no evidence that EEA migration has reduced employment opportunities for UK-born people on average",

and that overall there is,

"no evidence that EEA migration has reduced wages for UK-born workers on average".

The committee notes that there is:

"Evidence that immigration has, on average, a positive impact on productivity",

and:

"High-skilled immigrants increase innovation".

I remind your Lordships that those two issues of innovation and productivity are key objectives of the Government's *Industrial Strategy*. The committee also notes that EEA migrants,

"make a larger contribution both in terms of money and work to the NHS than they receive in health services",

and that there is:

"No evidence that migration has reduced the quality of healthcare".

Quite the contrary, I would say. Indeed, it is clear that the social care sector struggles to recruit sufficient people. With the current freedom of movement calling that into question, what will happen in the future?

The House of Commons Library estimates that in 2017 there were 10,705 doctors, 20,276 nurses, and 14,247 clinical support staff in the NHS who were EU nationals. It estimates that in the last two years the net number of nurses and midwives who were EU nationals, for example, has fallen by over 5,000. We heard in today's Question Time about the struggle that the NHS is having to recruit future doctors. There were 41,000 nursing vacancies in England, and the Royal College of Nursing estimates that this will rise to 48,000 by 2023 as fewer start nursing degrees each year. In social care, things are much worse, with about 110,000 vacancies.

The Migration Advisory Committee found no evidence that migration has reduced parental choice at schools. Nor has it reduced attainment, and there is no evidence that it has an effect on the overall level of crime. The committee noted that EEA migrants pay more in taxes than they receive in benefits for public services. However, and tellingly, the committee is also not convinced that sufficient attention is paid to ensuring that the extra resources that have come in from those migrants is being spent in the areas where they live. That is a very important point.

Housing raises another important nuance. In pointing out that only a very small fraction of migrants occupy social housing, the committee also pointed out that, given that virtually no new social housing was being built, any migrant in social housing is excluding a UK-born tenant. The committee also found that migration has increased housing prices. It then went on to note that the housing issue cannot be taken in isolation from other government policy. "Hear, hear", I say to that. For my part, it is clear that the woeful performance in housebuilding by successive Governments is a much larger irritant on the housing issue in this country than migrants. The evidence points to the need not to stop the beneficial flow of economic migrants but for targeted government investment in the communities that have generally been termed to have been left behind.

As the noble Lord, Lord Heseltine, so eloquently put it in his speech during our debate before Christmas, these communities will not be benefited by making Britain poorer, and one way to make the UK poorer is to end free movement.

[Lord Fox]

It is fair to say that there is a huge cognitive dissonance between the published evidence of the Migration Advisory Committee and the political declaration and immigration White Paper. Her Majesty's Government are seeking to exclude a group of people who contribute positively to our national life. Worse than that, in justifying their policies, they vilify that group for issues that are caused by government mistakes and mismanagement.

The immigration White Paper makes clear distinctions between what are termed skilled and unskilled workers—here we come to the point raised just now by the noble Lord, Lord Liddle. It uses the existing salary threshold of £30,000 to differentiate between those two groups of future employees. Yes, it makes the process of applying for tier 2 visas easier by proposing to abolish the 270,000 annual cap and the resident labour market test, which was a heavy administrative burden on businesses trying to hire from overseas. However, the salary cap is a fundamentally wrong proposal, because it conflates salary with skill. There are many jobs, not least in research and development, where experts are paid below that cap. They still have fabulous skills to offer this country, but they earn less than a £30,000 salary. The White Paper itself estimates that, overall, those restrictions would reduce the net inflow of EEA long-term workers by about 80% in the first five years. This would result in GDP being up to 0.9% lower in 2025.

So-called unskilled workers will not be offered a route into the UK in the long term, according to current proposals. In the interim, the Government will allow unskilled workers to apply for temporary, 12-month visas. This fails the logic test. High-skilled workers may be contributing more in tax, but lower skilled migrants are offering a huge contribution in the services they offer to this country. The Migration Advisory Committee report makes that clear.

There is also a tacit admission in the Government's own words when they allude to work-related schemes. Once we start looking for sectors that might need such schemes, frankly, we can include the vast majority of the UK economy, but given that agriculture and the hospitality industry are two important parts of our international trade, perhaps the Minister can explain what volume of work-related immigrants the Government anticipate being admitted and how that equates to the stated needs of those two industries.

I am also anxious to learn the Government's view on how self-employed people or freelancers will trade across the EU-UK border. Here I declare an interest, as I have at least one family member who is a freelancer. Self-employed people are vital to our service industry and dominate in particular sectors. I know that my noble friend Lord Clement-Jones will speak on their role in the tech and creative sectors, for example. How will self-employed people be able to contribute, going forward?

4.45 pm

If Brexit happens, any trade deal negotiation with the EU will include gives and takes to reach agreement. That is what negotiation is all about, even if the current Secretary of State for International Trade has not quite worked that out yet. Telling people what you want and expecting them to give it all to you without making concessions is not the way it goes. Moving slightly in the opposite direction to the noble Lord, Lord Liddle, I am concerned that we are seeking to use free movement as a bargaining chip in our negotiations with the European Union—it is too important for that—because this ignores one central fact: by rejecting access by EEA citizens to the UK, the Government are guaranteeing that UK citizens will similarly be barred from the European Union. This is not sensible and is damaging to our economy and to the future prospects of those who seek to have a life, work and study abroad. It is for this reason that the amendment seeks to get the Government to confront the evidence that stands in the face of this policy.

I have at least modest hopes for this amendment. First, I hope that Her Majesty's loyal Opposition show more resolution to support the principles of free movement than was demonstrated by the Labour Front Bench during the debate on the immigration Bill in the other place. Some of us on these Benches were amazed and, frankly, saddened by that shambolic performance in the other place. I am sure that in this House the Labour voices will be unequivocal.

Lord Framlingham (Con): I am listening very carefully to the noble Lord. Does he accept or acknowledge that there are any problems at all with the freedom of movement?

Lord Fox: If the noble Lord reviews what I said in *Hansard*, he will see that I talked about two particular issues highlighted by the Migration Advisory Committee.

In addition to listening for the reaction of the Labour Front Bench in this House, from the Government I am listening for the Minister to publicly acknowledge the benefits that EEA migrants have brought to the lives of all of us in the UK. More than that, I hope to hear the Minister confirm that Her Majesty's Government understand that trade is intrinsically about people, whether working alone or in companies and organisations, and—as previous speakers have brought out—that this is even more important in an economy centred on services, such as ours. Therefore, the more they can move and trade, the better it is for the United Kingdom's economy. I wish to hear that the Government understand that to restrain the trade of EEA nationals in the UK will not only forfeit the benefits they bring but materially restrain hundreds of thousands—if not more—UK people trading in the EU 27. I would like the Minister to rule out the use of this as a bargaining chip in negotiations. That is why I would like to write this into the Bill. I beg to move.

Lord Clement-Jones (LD): My Lords, my noble friend Lord Fox has introduced his amendment extremely eloquently and convincingly. In supporting it, I highlight the fact that without the right deal on movement of talent and skills, our creative industries will face major challenges. Some 5.7% of the UK workforce is made up of EU 27 nationals. However, 6.1% of the creative industries workforce is made up of EU 27 nationals.

More than that, 10% of the design, publishing and advertising workforce are EU 27 nationals. Some 25% of our visual effects in film—VFX—workforce is from the EU, and that rises to 30% in gaming. We are highly dependent, in those areas of the creative industries, on EU 27 nationals.

Take the music industry, for example. Some £2.5 billion was generated by music in export revenue. Germany, France and Sweden are among our top export markets, and are major destinations for our musicians. In the recent ISM survey of musicians, 39% said that they travel to the EU more than five times a year; 12% travel to the EU more than 20 times a year. More than one in eight performers had fewer than seven days' notice between being offered work and having to take it, and more than a third of musicians said they received at least half their income from working in the EU 27. There are warnings from these musicians from their experience with the rest of the world. More than a third of musicians had experienced difficulties with visas when travelling outside the EU. In fact, of those experiencing difficulties, 79% identified visas as the source of those difficulties. Musicians in particular rely on being able to work and tour in Europe freely, easily and often with little notice.

It is equally important that the other people vital to touring, such as roadies and technical staff, are able to travel on the same basis. It is also vital that instruments and equipment can be moved around easily, and this must be a reciprocal arrangement. On touring, the Government have said that the UK will look to reach an agreement allowing musicians and museums to tour major events with their equipment and goods. What is considered a major event is not clarified and there are few details on what an agreement would look like.

The Government propose that the new immigration system will preserve the current rules for employing non-visa nationals for short-term work to join a UK production. This allows them to work for up to three months without a visa, requiring only a certificate of sponsorship from their employer, which is cheaper and easier to obtain. For periods longer than three months, the Government are reaffirming that the current tier 5 creative and sporting route, which caters for creative workers such as musicians, actors or artists who are working and touring in the UK, will continue. This is welcome but, again, without the right reciprocal provisions, Brexit is likely to make touring much more difficult for musicians and crews to move across Europe. Increased red tape will make it harder to promote music overseas.

Then, if the withdrawal agreement is agreed, from January 2021 non-visa nationals looking to take up permanent employment in the UK, such as VFX workers, will need to obtain a tier 2 visa. This requires sponsorship from an employer, which must pay a skills charge to make the recruitment. Workers must meet a minimum salary requirement to be eligible for a tier 2 visa. Like my noble friend, I welcome that the Government now plan to consult on the appropriate level for this requirement in the coming year, but the Migration Advisory Committee—MAC—has recommended that it stays at £30,000. There will need to be considerable changes to these proposals if the Government are to ensure that sectors such as the creative industries continue to thrive post Brexit. As the Creative Industries Federation has said,

"high skills do not always command a high salary".

There is still a huge lack of clarity. The UK Screen Alliance has criticised the plans for a post-Brexit visa system. It says the Bill's proposed visa system will "severely limit" the VFX and animation industries' access to international talent. It also says that expensive new EU visas will add significantly to operating costs and impact on the sector's competitiveness in the global market. Alan Bishop, the chief executive of the Creative Industries Federation, said about the White Paper:

"Unfortunately there is very little in this white paper which will give creative businesses and freelancers in the UK any confidence for the future … government has failed to recognise the challenges freelancers face within the current immigration system—a significant challenge for the Creative Industries Federation where 35% of creative workers are self-employed. Freedom of movement has given British businesses access to the best and brightest freelancers from the EU, presenting those businesses with opportunities to grow and contribute to the continuing health of the UK economy. For international non-EEA freelancers however, the current immigration system provides no long-term route. This is why the Federation has called for the introduction of a freelance visa".

Those are the words of two significant organisations in this field.

The Government have had plenty of time to consider all these issues and have had plenty of sound advice, not least from quarters such as the July report of the House of Lords European Union Committee, *Brexit: Movement of People in the Cultural Sector.* That is why this amendment is so important, and I very much hope that the Minister will reflect in his response that the Government fully understand the needs of the creative sector.

Lord Stevenson of Balmacara: My Lords, a powerful case has been made by the party to my left. My sadness is that the framing of the amendment before us deals largely with how any future trade agreement with the EU should have a relaxed approach to the mobility framework and, picking up the point of our earlier debate, tries to insert in some measure the fourth pillar of the GATS process, which allows for individuals to travel in support of goods and services.

The case we heard, and the emotion it raises, are about the much broader ideas of freedom of movement and the ability to transfer skills, particularly in the creative industries. Although it was not specifically mentioned, presumably it seeks to try to loosen the way in which the Government currently treat overseas students. There is a wider, richer, deeper and more important argument about the need for mobility, its importance for any modern nation state and the contribution it can make to our economy and our culture. That needs to be answered, but it is not picked up particularly by this amendment.

We too discovered this problem when tabling amendments. The title of the Bill means that we can not have as broad a discussion as we would wish. However, there is an immigration Bill coming, and others in your Lordships' House will want to pick up many of the points made here and raise them in the

[Lord Stevenson of Balmacara]
context of a much wider and more appropriate set of immigration conditions and arrangements, which will satisfy much of the discussions we have heard this afternoon.

On the narrow question of where we move, it would be wrong to try to seek a broader solution to the problems identified through a generic approach. There is no doubt that what appeared to be—and it was appearance rather than reality—unbridled immigration was a factor in the referendum that led to the formation of the Brexit arrangements. We would be stupid to ignore that. There are probably answers and solutions that would be satisfactory to all concerned, but not in this amendment. Nevertheless, I will listen carefully to what the Minister says in response to this point. This issue will not go away and we look forward to returning to it at a future stage.

Lord Bates: I am grateful to the noble Lord, Lord Fox, for introducing this amendment, which deals with an important area already touched on this afternoon. It will of course be pored over in some detail as the immigration Bill makes its way to your Lordships' House.

There is no dodging the key line in the political declaration. At paragraph 56, I think, it makes it clear that free movement will end as the UK leaves the EU. The noble Lord is passionate in his advocacy of free movement, and he has expressed his view that it is a stupid idea—I think I quote him correctly—to get rid of it. But, as the noble Lord, Lord Stevenson, identified, this issue is more complex. To use his term, unbridled immigration was an issue, and we would be stupid to ignore that. Therefore, there is a difference of views here but, as the noble Lord invites me to set out the Government's position, I will put it on the record if I can.

I appreciate the desire to ensure that businesses and individuals who trade in services and goods between the UK and the EU will have the ability to move across borders to do so. The Government are committed to securing the best deal for UK businesses. We have set out a clear proposal for an ambitious future relationship with the European Union, including a reciprocal framework for mobility. This was reflected in the political declaration on our future relationship. The detail will be discussed in the next phase of our negotiations.

5 pm

One area where I am absolutely at one with the noble Lord—and, I am sure, with all Members of your Lordships' House—is in seeking to separate out, in the sometimes rather toxic atmosphere of the current debate, the immense contribution to our national life made by the many people who have come here to work or study in the arts. We have to separate out what is happening in the wider political debate from our deep appreciation for all that they do for our public services, our academic institutions and the economy in general. That is beyond doubt. However, our gratitude is not limited only to those who have come here from the EU. It applies to people who have come from around the world to this country; we appreciate the contribution that they make and it is right that we put that on the record.

The Government recognise the need to ensure that we have sufficient mobility provisions with the EU to support our trade agreement, and that we implement an immigration system that works in the national interest. The political declaration makes it clear that arrangements for market access with the EU as part of the future relationship should allow for a temporary entry and stay in each other's territories for business purposes in defined areas. It also makes it clear that we want visa-free travel for short-term visits. We have said in our White Paper on our future relationship that we recognise that mobility is a key element of economic, cultural and scientific co-operation. On the cultural element, of course, I identify strongly with what the noble Lord, Lord Clement-Jones, said about the contribution of the arts and the creative industries.

We want to support professional service providers to reach clients and advance manufacturers to deploy key personnel to the right place, and to encourage scientists to collaborate on world-leading projects. We have also said that we want to agree provisions on intra-corporate transfers that allow UK and EU-based companies to train staff, move them between offices and plants and deploy expertise where it is needed. The noble Lord, Lord Fox, said that we were using future context for a lot of the aspirations in the future framework, but in effect his amendment would provide a carte blanche. We need to see that the agreement we reach regarding people accessing the UK post-Brexit is reciprocated for the many people in this country who make a significant contribution to other EU countries in a variety of fields. The correct place for that discussion is during discussions on the future economic framework, which will occur once we leave the European Union. I am sorry to disappoint the noble Lord but, for that reason, I feel unable to go further at this point and ask him to withdraw his amendment.

The Earl of Clancarty (CB): My Lords, earlier the Minister mentioned crossing borders. Would that include onward movement, which is a particular concern of not only individuals and self-employed people in this country but British people living in Europe? Time and again, I have heard that that is a particular concern.

Lord Bates: I may not be able to get a categorical answer on that, but I am happy to undertake to write to the noble Earl ahead of Report to clarify that point.

Lord Purvis of Tweed: The Minister said that perhaps this amendment would be better placed elsewhere, but I wondered why, in the sequence of events, the UK did not agree a temporary arrangement with Switzerland on continuity, for example, in the case that I raised earlier in Committee. Instead, the Government have agreed a permanent relationship arrangement with the Swiss for free movement of people for three months a year if they are providing services. Clearly, the Government thought it was not sufficient to wait until we debated the Immigration Bill, when we could have considered that aspect of our relationship with Switzerland and others. But the Government have made a decision. So as my noble friend Lord Fox indicated, it is right that

we press the Government much more. Why did the Government make a case for giving Swiss nationals a permanent right of visa-free travel and work for three months a year, but are taking a distinct approach to other countries, including our EU partners?

Lord Bates: Obviously, those are discussions that will have to be concluded in the future framework. On the specific point about Switzerland, however, the noble Lord suggested that the services elements were additional to the Government's policy on immigration as set out in the Immigration Bill. That is not correct; it is not inconsistent with the provisions in that Bill.

On the point made by the noble Earl, Lord Clancarty, on onward movement for EU nationals, the UK pushed strongly for the inclusion of onward movement rights during the first phase of negotiations on citizens' rights in the withdrawal agreement but the EU was not ready to include them at that time. I made that point about reciprocity earlier. We recognise that onward movement opportunities are an important issue for UK nationals in the EU and we remain committed to raising this during detailed discussions on our future relationship. That is the latest position we have at the present.

Lord Stoddart of Swindon (Ind Lab): There has been a lot of concern in the past that the position of the Commonwealth, relative to that of the EU, has been bad—that EU citizens and EU goods can come to this country without let or hindrance, whereas people and goods from the Commonwealth are unable to do so and have to take their place with the rest of the world. As I understand it, following our departure from the EU, our Commonwealth will be in the same position as people from the EU, and indeed the rest of the world. Can we be assured that the Government's future policy in relation to the Commonwealth will ensure that it will have equal access?

Lord Bates: I listened very carefully to the final words that the noble Lord used when he talked about "equal access", and I draw back from that a little. But on the broad principle, when we talk about the scheme of preferences and economic partnership agreements that we have with Commonwealth countries, if we have an independent trade policy, of course we will be able to take that into account. We would be free to do that. Similarly, if we are not part of free movement within the EU and have our independent immigration policy, we are in a position to set out the terms on which we want to admit people to work in this country. I hope that is helpful to the noble Lord.

Lord Fox: My Lords, I thank noble Lords for the minimal debate that we have had around this. I will look closely at *Hansard*, but I did not hear the Minister refer to the £30,000 threshold issue and the false dichotomy between skilled and unskilled. Between now and Report, I would like the Minister to come back to that, and I apologise if he did indeed raise it.

Lord Bates: Before the noble Lord sits down—I have always wanted to say that—I did have some notes on that. Perhaps I could intrude on the noble Lord's wind-up to say that the Government are committed to ensuring that the future immigration system works in the international interests of all the UK. The Migration Advisory Committee advised that the £30,000 salary threshold should still apply. The Home Office is undertaking an extensive programme of engagement on its White Paper proposals and will discuss with business and a variety of other sectors, including the creative industries, what a suitable threshold should be. If a skilled job is considered to be in shortage in the UK, a lower threshold is likely apply. I hope that helps the Committee and the noble Lord.

Lord Fox: It helps somewhat, and I urge the Government to consult extensively with the care and food service sectors. Hygiene skills, for example, benefit the food sector a lot. I am sure most employees there earn less than the scheduled threshold. There is also the issue of freelancers and self-employed people. I will not get the Minister up again but I will be looking for a response on that. I also did not hear from Her Majesty's loyal Opposition anything other than what I would call a very weak response. It was, frankly, disappointing. With that proviso, I beg leave to withdraw.

Amendment 66 withdrawn.

Amendment 66A

Moved by ***Lord Lea of Crondall***

66A: After Clause 5, insert the following new Clause—

"UK membership of EFTA and the European Economic Area

It shall be the objective of an appropriate authority to achieve before exit day the implementation of an international agreement to enable the United Kingdom to become a member of the European Free Trade Association and continue as a signatory to the EEA Agreement."

Lord Lea of Crondall (Lab): My Lords, I will begin by reading the amendment to set out what I am trying to do here:

"It shall be the objective of an appropriate authority to achieve before exit day the implementation of an international agreement to enable the United Kingdom to become a member of the European Free Trade Association and continue as a signatory to the EEA Agreement".

It will be recalled from last summer that this policy had—has, I guess—the support of this House. I now wish to scrutinise some of the practical issues of attaining it. Given that all the other ideas seem to have fallen by the wayside, one after the other, like dominoes, I think this is the only one standing. It now has even more steam behind it.

Before I come to the main issue, I should like to make a point about Nissan and Sunderland. This is central to why we need to stay in the single market and customs union. Reading between the lines, Nissan is saying almost as much in those terms. There is a slow-burn catastrophe of collapsing foreign direct investment in Britain. I made a speech a year ago saying that the plans—not forecasts but plans—were down 80%. I was talking to the FDI people around a table. This is now exemplified by the huge Nissan setback. By the way, many Members here, in their

[Lord Lea of Crondall]
previous incarnations, have worked very hard to secure that work. On this occasion, no one is blaming the workers or their trade unions. That is a change, is it not? They blame those who play to the gallery. Boris Johnson and his press acolytes spring to mind, with their self-serving and grossly misleading propaganda two years ago and since. They ought to be ashamed of themselves.

Even now, on the options before us, Her Majesty's Government are still in denial about the vital requirement to enhance and protect our world market share of investment and trade by staying part of the customs union and the single market/common market. That, in turn, is the secret of Europe's world market share vis-à-vis the USA and China, as well as Japan and other parts of Asia, as a preferred production location. The same applies to many services.

5.15 pm

One precondition of staying in the EEA is that we address and find answers to some of the technical issues surrounding the route out of the current impasse by moving—albeit as a second best, although in this Bill we are talking against the background of leaving the EU, not about whether that is a good idea—from the current Pillar 1 of the twin-pillar European Economic Area—that is, the European Union—to Pillar 2, which is EFTA. In that way—I think it is the only way—we can still be part of a family of agreed rules and justiciable arrangements, with the emphasis shifting on the latter point from the European Court of Justice to the EFTA Court.

First, I wish to get out of the way a rather unnecessary obstacle. I refer to the publication by this Government on 20 December—when we were all going off on our Christmas holidays—of the EEA EFTA separation agreement with the UK. This is a treaty provision whereby we will leave the EEA on 29 March, which is next month. I have two questions on this, and I have given the Minister some notice of them. First, would the departure requirement in Article 71 of the draft agreement be automatically frozen in the hypothetical situation of reaching agreement with the EU to extend the Article 50 period so that it did not happen on 29 March? Secondly, if we crash out, we must surely wish to preserve the right to apply to rejoin EFTA. Can the Minister please indicate how that could be done? In addition, would not Parliament have the right to vote on such a treaty question if it were no longer logically derivative of the wider constitutional Act, under which we do not have a separate vote?

I now turn to some of the issues of substance, as distinct from process, associated with these two major areas of policy. A year ago, the conclusion of the House of Lords European Union Sub-Committee chaired by my noble friend Lord Whitty—as I understand it, this conclusion has not changed—was that for trade issues membership of the EEA would cause much less damage to Britain than any other option. As far as the single market is concerned, this embraces the four freedoms of goods, services, capital and labour, including all the regulations derived through the Maastricht treaty, including the baker's dozen of workers' rights, and their upgrading, which we negotiated under the Social Chapter. I would like the Minister to confirm that I have this right. There are some reports that the upgrading has been now affirmed by the Prime Minister as being part of a sort of voluntary commitment. The process by which this miracle would happen under her approach—that is, without the EEA—is much less clear, whereas the social part of the negotiations would be automatically covered by staying in the EEA, as in Norway and Iceland, et cetera.

Does the Minister not agree, therefore, that the only way we can leave the EU and remain in the single market—which is just as essential for BMW, Airbus and Unilever as the customs union—is by rejoining EFTA? We left EFTA at midnight on the last day of December 1973 and one second later we were part of the EEC. We could do the same thing in reverse, with—this is my point, of course—no time gap in our ongoing membership of the European Economic Area. I invite the Minister and any other noble Lord who wishes to contradict what I have just said to stand up and give a reason.

Jeremy Corbyn paid tribute in the Commons last Tuesday to the cross-party Norway Plus Group, echoing its view that we need not only full access to the single market but a customs union. This policy is supported by the TUC, under the distinguished leadership of Frances O'Grady. I prefer to say "the" customs union because I am agnostic about whether there is a cigarette paper of difference in this context between the definite and the indefinite article. The EU customs union and the single market cover a wide range of electronic data, driving licences and product standards as well as labour standards, et cetera; together, they could determine that we have no problem on the Irish border and no problem on Dover-Calais, and we have eight weeks to fix the situation. Does the Minister agree? If not, will he say why not and give an alternative view?

On the wider issue of negotiations in this complex area, from red lines to financial contributions, we must take head-on the Boris Johnson fallacy that you can have your cake and eat it. I thank Mr Johnson for drawing that nonsense to our attention; it is about time that we—and he—started to realise the converse truth that nothing comes for free when creating the conditions, nationally or internationally, for wider economic and social progress.

I recognise that the scenario I am spelling out is not problem-free. EFTA has free trade agreements with third countries which are not the same as the EU's; the UK, as a member of EFTA and in a customs union with the EU, could not join those. Indeed, the UK must fully respect the fact that EFTA states need to protect the integrity of their agreements. But on the basic premise of staying in both the customs union and the single market, this is a policy on which, as I understand it—and there have been many quotes saying at least as much—the leaders of Norway and Iceland have in different ways stated that they would be open to negotiation. I will return in a few moments to that somewhat complex choreography.

I now turn to the objection raised by some political pundits to the EEA option, which has been rhetorically posed in the phrase that we would be a "rule-taker rather than a rule-maker". Membership of the EEA is

not unique in being open to that characterisation, is it? It depends on which category of membership you want to pay for: you cannot have it both ways, even if the penny has not yet dropped for Mr Boris Johnson and such circles. We cannot leave the EU table and then complain that we do not have a vote there. How is that idea still running? Moreover, as Jacques Delors foresaw in 1990, EFTA with the UK again a member would probably evolve into a more influential and substantial body than is currently the case; there would be scope for further strengthening the pre-legislative consultation protocols within the EEA and with the EU. It shows, apart from anything else, a woeful lack of imagination to call such a development "leaving Britain as a vassal state".

One broader point on which to conclude concerns attitudes in this country, among people at work, in the different regions and so forth. It is not much of an exaggeration to say that almost no one is aware of the provenance of all the workers' rights that we have strengthened through European negotiations, including for migrant workers. Most people probably think that we negotiated them at national level. I am happy to take some of the credit for that—as, I am sure, are my noble friend Lord Monks and all the rest of us—but the point is that we did it at European level because otherwise we would have been told by the employers here, or in any other individual country, that we would be undercut. The noble Lord, Lord Stoddart, is looking puzzled by that; perhaps he would like to tell me why he does not accept that.

Incidentally, there are one or two of us, including my noble friend Lord Monks and me from the TUC and other colleagues on these Benches—my noble friends Lord Morris, Lord Jordan, Lady Donaghy and Lady Drake, among others—who have direct experience of the Social Chapter negotiations, either through central bodies or through industry federations irrespective of which European trading bloc the national affiliate belonged to. There is a long list of a dozen or so new rights, ranging from part-time workers to workers posted across frontiers, with the principle that none of those can now be undercut, and that is a process that needs to develop and continue. It has a high degree of resonance with trade union representatives around the country.

Active negotiators know that what we have been doing through the TUC for years now, at EU and national level in social partnership, brings in innovative new ideas such as European works councils, just as over those same years in the OECD we have won the right to challenge in a national court a lack of consultation in a multinational corporation. I have been part of that in an exercise in the United States of America. These ideas in a world of globalisation—a word that has lost its gloss in Davos, we are told—needs strengthening, not weakening, with a lot more involvement of a well-informed public square and of active participatory organisations, notably the trade unions.

The cross-border arrangements within the European Economic Area are one of a whole range of issues that on the ground and in the air are evolving at speed. As I pointed out in the pamphlet that I wrote with Michael-James Clifton, which was circulated widely in Parliament, it is indeed common sense to consider from time to time reviewing the modalities of the different options for employment, residence and citizenship, while having full regard to cross-border employment arrangements in fields ranging from science and engineering to culture and the arts, encompassing the theatre and classical music with opera and ballet, to which the noble Baroness, Lady Bull, among others drew attention in an earlier debate.

Lastly, I will say a word about the financial position. As I understand it, Norway pays per head half of what is paid as a full member of the EU, although it is difficult to make comparisons because Norway is a richer country in GDP per head through its energy resources. However, in all of that, surely the bottom line is the pub test: "You gets what you pays for". That may better meet the curmudgeonly mood of Britain today.

My proposal to help us out of this impasse is a dose of lateral thinking. I submit that it can be best taken forward following the terms of this amendment, which are worth being a bit pedantic about. It is a different way from that envisaged so far in the whole gamut covered by the Common Market, the Maastricht treaty and the EEA treaty. How do you look at all that lot together? All 30 countries—that is 27 plus three—have skin in the game, to use the modern vernacular, and now is therefore the time to innovate and to include them all together.

My proposal is that the UK triggers a meeting of the EEA Council, the umbrella body which comprises the members of both the EU and EFTA. Its agenda would at first be procedural: to reconcile the process of parallel sets of negotiations versus sequential ones, between the UK and the EU on the one hand and EFTA on the other, with a view to us staying part of an evolving EEA family of nations. This seems to be the only way to avoid everybody tripping over everybody else in attempting separately sequenced negotiations. It is an outcome that nearly everyone can just about live with, if not happily ever after. I beg to move.

5.30 pm

Lord Stoddart of Swindon (Ind Lab): My Lords, I really had to get to my feet since I was referred to by the noble Lord, Lord Lea of Crondall, to tell him that it was not puzzlement on my part. It was thinking about what he was saying about the Social Chapter, because the Labour Government at the time opted out of it. What I am concerned about—

Lord Monks (Lab): Just to correct that statement, it was John Major's Government who negotiated an opt-out from the Social Chapter in the context of the Maastricht treaty.

Lord Stoddart of Swindon: As soon as I said that, I knew it was wrong, but in fact Mr Blair continued that way and did not introduce the Social Chapter. What I find strange about the noble Lord, Lord Lea, and others, is that they do not seem to understand that once we are an independent nation we can make the rules that we want, which may be better than the rules

[Lord Stoddart of Swindon]
that 27 other member states—or 28 with ourselves—make in relation to the rights, privileges and wages of workers in this country.

Lord Lea of Crondall: That is the central point. The reason we could not do it at national level, whether in Europe or the wider world, is that our employer would say we will be uncompetitive. However, in a big bloc like the EU where we negotiated at Brussels level under the Social Chapter, they cannot say that—at least for the most part within the family of the European Union. That is the point that the noble Lord, Lord Stoddart, has not answered.

Lord Stoddart of Swindon: That, of course, is a matter of opinion. There are others who say that because we are members of the EU we cannot make the laws that we want in this country, which would benefit the whole country including the workforce. People should have more confidence in this country, the way it is governed and those who can govern it.

The noble Lord, Lord Lea, blamed—or seemed to blame—Brexit for Nissan reneging on its agreement to make its new model in this country. However, Nissan itself has said that the world decline in demand for vehicles, particularly diesel vehicles, was the main reason it wished to save money by developing the vehicle in Japan. We ought to be careful that we do not blame Brexit for everything that goes on in the world and this country. I hope that the noble Lord understands that I was not puzzled about what he was saying—I was merely thinking about what he was saying. Of course he will realise that I was actually listening to him, as I always do.

Lord Finkelstein (Con): I thank the noble Lord for his compelling and persuasive speech. For those of us who are determined that we should not leave the European Union without any deal whatever, it is important to think about the points that he has raised. We are at the stage now where someone like me needs some guidance. There is no point haring off after something that it is not going to happen. We had a discussion in this House on these very questions, and when we had plenty of time to implement this solution, Labour Benches decided to vote against it and therefore implied that they were not in favour of it at that point, and probably that they would not be in favour of it at any point. I suspect that is still the case.

Before we get ourselves embroiled in Norway-plus as an alternative, I would certainly find it useful to know whether it is the noble Lord's view that the Labour Party Front Bench is ever likely to support this proposal—

Lord Lea of Crondall: I can help the noble Lord on that. In the six months since the summer, Jeremy Corbyn—whether you think his policy is that of a snail or a crab—has moved to say that we in the Labour Party are in favour of staying in the customs union and a/the single market. That is Front-Bench Labour Party policy.

Lord Finkelstein: I think it is access to the single market, and we are both aware of the difference between those two things. Also, it is "a" customs union; I noticed that the noble Lord referred to "the" customs union. That is also something different, so his view is not quite that.

There is a second question: whether if the Labour Party decides it is going to move to this position—either as a snail or a crab; those were the noble Lord's chosen animals—that it would then support the withdrawal agreement, which would be needed in order to pave the way for this. If it is not going to, that is significantly less attractive to someone like me looking to ensure that we do not leave without a deal. These questions are not put as a challenge—they are a genuine dilemma for those of us who are now looking at what the solutions are, who are not persuaded after the Brady amendment that we are going to get very big changes from the European Union, and who want to be sure that we can all agree on something.

Lord Lea of Crondall: If the protocol of the House allows me, I will answer questions as they come in this way. The proposal I made at the end of a negotiation involving the EU as well as EFTA is one way of getting out from under the dilemma that some future for Britain within the common market and the customs union could be found. It would not simply be "the" withdrawal agreement; it would be the withdrawal agreement/going along with EFTA under the EEA umbrella agreement, with an understanding between the 27 and us. That is my proposal.

Lord Finkelstein: It is a credible proposal, but only if it has some sort of political support. The questions I put are merely a matter of guidance to me—and I am sure to lots of other people like me—and I am hoping that we will get a little bit of illumination from both Front Benches that will help us along the way.

Viscount Trenchard (Con): My Lords, against the framework of what the future relationship will be, I do not think that the proposal of the noble Lord, Lord Lea, that we do not follow the procedure set by Article 50 for withdrawal but instead combine a withdrawal agreement-plus with seeking to accede or re-accede to EFTA would find much support among our European friends and partners. They would say that that is not what Article 50 says.

The noble Lord has made clear on many occasions his view that the UK should seek the softest possible Brexit, and his amendment would achieve that. If we were to become a member of EFTA—I think that Norway, for one, has not expressed any enthusiasm for our accession or re-accession—it is true that we would escape the jurisdiction of the ECJ and instead be subject to the EFTA Court, but that court follows closely ECJ judgments.

The leader of Norway's European Movement has stated clearly that it is in neither Norway's nor the UK's interest for the UK to become again a member of EFTA. Continued membership of the EEA would require us to accept future EU rules and regulations, but without a seat at the table and with a greatly

reduced voice in the formulation of those rules and regulations. It would also prevent the UK having its own trade policy and remove the raison d'être of my noble friend the Minister and the Department for International Trade. We would not be able to enter new free trade agreements with other countries or accede to broader free trade partnerships such as the CPTPP, which includes Japan, an enormously important trade and investment partner, and leading Commonwealth countries such as Australia, Canada and New Zealand, whose trading regulations, policy and law share origins with our own.

The EEA/EFTA proposal would make this Bill redundant, because we would have no need to novate existing EU FTAs and it would negate the whole upside of Brexit, leaving us as effectively a vassal state of the EU. That is not what the people voted for and your Lordships' House would not be serving the nation's interest by supporting the amendment.

Lord Stevenson of Balmacara: I hesitate to become too involved in this debate, which seems rather above the level at which I am accustomed to operating, but one or two things came to mind. As the noble Lord, Lord Lea, explained to me and as came through in his address, the purpose of the amendment is to make sure that we explore all possible options before coming to a conclusion on the many difficult issues before us today. He has done that clearly and it will be interesting to hear what the Minister has to say in response.

It would probably defeat any prospect for active negotiation to play the card that has been played in this amendment at this point, but it is worth bearing in mind the issues that it raises and the much broader point that the noble Lord, Lord Finkelstein, was keen to explore: so many strands to our positioning are being coalesced into a single deal/no deal debate, squeezing out our opportunities for further, richer and more flexible solutions to the long-term problems that we have all recognised and debated today. At this point, it would be best to hear from the Minister what the official line is and then see whether there are issues that we need to come back to on Report.

Lord Bates: I thank the noble Lord, Lord Lea, for setting out the rationale for his amendment. He was sincere in his attempt to persuade us and very thorough, as I would expect of a distinguished economist, in setting out in some detail his thoughts on where this option might go. Whether it is plan B, C, D or E, the reality is that it is a proposal that the Government take seriously and I want to respond to it in that manner.

As my noble friends Lord Finkelstein and Lord Trenchard have mentioned, the very topic of EEA membership was debated in another place in relation to the EU withdrawal Act on 13 June last year and again in relation to this Bill on 17 July. The outcome was clear: the EEA is not the right model for the UK.

Membership of EFTA and the EEA would mean accepting the continued free movement of people, which both Conservative and Labour manifestos pledged to end at the last election—which I suspect is why the noble Lord, Lord Stevenson, suggested that this might be a debate that the Labour Front Bench wished to sidestep; of course, on the Government Bench we do not have that luxury.

5.45 pm

EFTA promotes free trade and economic relations to the benefit of its four member states: Iceland, Liechtenstein, Norway and Switzerland. In this context, it also allows its members to negotiate trade agreements with third countries, either as a bloc or as individual states. There are consequences to joining EFTA and the benefits are not automatic. Most significantly, joining EFTA also means accepting free movement of persons with its four existing members—which the Government had expressly set out their position against in the previous debate.

To gain the benefits of the 29 existing free trade agreements negotiated by EFTA, the UK would have to negotiate its way into each trade agreement with the relevant third countries. There is no guarantee that this will be successful and it could take a long time to achieve. EFTA is not an off-the-shelf model that would deliver ready-made trade deals.

EFTA's trade agreements were not negotiated with the size and type of Britain's economy in mind. Were the UK to join EFTA, it would constitute 71% of an enlarged EFTA's economy. While we want to maintain our deep and historic relationships with EFTA states, the UK is in many ways different from them. EFTA is not the right model for the UK.

I now turn to the noble Lord's proposal to rejoin the EEA agreement after the implementation period has ended. The EEA agreement effectively extends the EU's single market to three EFTA members, Iceland, Liechtenstein and Norway. Once the UK has left the EU, and the EU's existing trade-related agreements with third countries cease to apply to the UK, the EEA agreement will therefore no longer apply to the UK. The EEA agreement covers the four freedoms: of movement of goods, services, persons and capital. Seeking to remain in the EEA beyond the implementation period would not pass the test that the Prime Minister set out for our future economic partnership with the EU. It would not deliver control of our borders or our laws.

On borders, remaining in the EEA would mean having to continue to accept all four freedoms of the single market, including free movement of people from across the 30 EEA states. On laws, it would mean the UK having to implement new EU legislation covering the majority of sectors of our economy, including services and digital, and would make us a rule-taker and not a rule-maker. In contrast, we are making an up-front sovereign choice to commit to ongoing harmonisation with EU rules on goods, covering only those necessary to provide for frictionless trade at the border. Our proposal provides regulatory flexibility where it matters most for the UK's services-based economy. Moreover, continued participation in the EEA beyond the implementation period would not be sufficient to enable our commitment to avoiding a hard border between Northern Ireland and Ireland. This is a key priority for the UK Government and we remain firmly committed to that objective.

[Lord Bates]

The noble Lord asked whether the UK could remain in the single market through being a member of EFTA, a point also touched on by my noble friend Lord Finkelstein. Participation in the single market is possible through either EU membership, Pillar 1, or through EFTA membership by signing up to the EEA agreement, so-called Pillar 2. We have no plans to join EFTA and its free trade agreements. Those agreements were not negotiated with the size and type of Britain's economy in mind. Similarly, we have no plans to join the EEA by moving from the current Pillar 1, EU, to Pillar 2, EFTA. Leaving the EU offers us an opportunity to forge a new role for ourselves in the world, as the noble Lord, Lord Stoddart, drew attention to, to negotiate our own trade agreements, as my noble friend Lord Trenchard mentioned, and to be a positive and powerful force for free trade.

The noble Lord, Lord Lea, and my noble friend Lord Trenchard spoke about Article 50. Any Article 50 extension would see the UK remain in the EU as currently, meaning that we would also remain as an EEA member by virtue of our EU membership and the separation agreement would not enter into force during the extension period. It is not the Government's intention to extend Article 50.

To deal with the other points, the noble Lord talked about convening a meeting of the EEA Council and asked whether it would be possible. The UK will be leaving the EU. We will have control of our borders. That is not what he was asking about, but the terms and conditions for rejoining the EEA agreement as an EFTA member would need to be agreed with the contracting parties—the EU, the remaining EU 27 and the three EEA EFTA states, Norway, Iceland and Liechtenstein—through the EEA Council. It is not the Government's policy to join the EEA because it is not the right arrangement for the UK's economy and size. I hope the noble Lord will feel that we have responded to his serious proposal with some serious reasons why the Government are not able to accept his amendment, and I hope he will withdraw it.

Lord Lea of Crondall: I thank the Minister for that very courteous reply. I do indeed believe that he has taken the points very seriously, as I would have expected of him. Neither of us is Wittgenstein. I say that because I fear that Wittgenstein would not have been very happy with some of the logic that has been heard in the last 20 minutes, which tends to be along the lines of, "We can't do X because that is governed by Y", as though that were the end of the argument, when in fact I dealt with that proviso in what I was putting forward. It is very difficult across the Chamber, if not impossible, to untangle the tortuous web we weave, but that is what I have been endeavouring to do. I would add that the EEA Council would undoubtedly be able to open a discussion with us: who is going to tell it that it cannot do that? Whether, technically, at that moment, Britain is a third party is a separate question, I would have thought. The agenda is, first, what can we do to avoid tripping over each other in sequential negotiations with the EEA and EFTA? That is a serious problem, given the asymmetry between the technical questions affecting the single market and the customs union.

British pragmatism and common sense—not that there is much of that around these days—is the territory that I am trying to get into. I very much hope that, in the spirit of what a number of people have said, there is food for thought in what I have been saying and, in the two or three weeks before we come back on Report, who knows? A day is a long time in politics at the moment. I beg leave to withdraw the amendment.

Amendment 66A withdrawn.

Clause 6: UK participation in the European medicines regulatory network

Amendment 67

Moved by ***Lord Purvis of Tweed***

67: Clause 6, page 5, line 4, after "in" insert—

"(a)"

Lord Purvis of Tweed: My Lords, I shall speak also to Amendment 68. These are probing amendments the purpose of which is to seek clarity not only about the Government's intentions towards negotiations on the future relationship with the EU, but about the Bill and Clause 6 in particular.

Since Committee started we have seen one tangible example of what leaving the European Union means, because it also means that many European Union institutions are leaving the United Kingdom. When the flags were lowered and folded at the EMA headquarters last week, the director of the Wellcome Trust said that it was:

"A very sad day for the UK, a great day for the Netherlands",

where the EMA will now have its temporary headquarters. I am fully aware that, in advance of our discussing this amendment today, many decisions have already been made at the EMA. I am also aware that, if we are leaving the European Union, our membership of EU institutions gives rise to significant complexities. However, that does not alter the fact that membership of the EMA is imperative to the United Kingdom's medicines industry, our patients and consumers of pharmaceuticals.

The EMA is essential to the functioning of the single market for medicines in the EU, and the UK played a pivotal role in that process, not just in hosting the EMA for 23 years but also through the contribution of our scientists and researchers and our regulatory expertise. The agency's work is vital and will continue to be so, providing EU citizens with effective, safe and high-quality medicines and maintaining a regulatory environment that fosters innovation and development of new medicines. It is vital that the UK continues to have a relationship, and my amendments seek clarity on how the Government see that relationship. We know that we are no longer able to engage as co-rapporteurs for new marketing authorisations applications—this will end regardless of what happens on 29 March 2019, agreement or no agreement. The only way we can stop this is if we continue our

membership of the European Union, which is by far the most preferable of all the options, but on the basis that that will not happen, we also know that from March onwards the UK's position will be considerably weaker.

Last April, the EU 27 completed the redistribution of the UK's portfolio of more than 370 centrally authorised products to rapporteurs from the EU 27 plus Iceland and Norway. We know that significant damage has already been done. To put this in context, more than 40 million pharmaceutical packages are exported from the UK to the European Union every month, and more than 30 million are imported into the UK from the European Union. The UK pharmaceutical industry is integrated into the regulatory regime of the European Union, and separating this out has been a very painful process. The question remains: what will the relationship be going forward?

Paragraph 24 of the political declaration states—assuming this is still the Government's position—the following:

"The Parties will also explore the possibility of cooperation of United Kingdom authorities with Union agencies such as the European Medicines Agency (EMA), the European Chemicals Agency (ECA), and the European Aviation Safety Agency (EASA)".

What do the Government mean by co-operation? The Bill says—at the moment—that the Government should,

"take all necessary steps … to fully participate … in the European medicines regulatory network".

It is for the Government to explain the disparity between the two. Why does the political declaration say simply,

"explore the possibility of cooperation",

when the Bill says that the Government's objective is full participation in the regulatory network? Why the disparity in language? Was this on the insistence of the European Union, or because the Government did not do what the House of Commons instructed it to do, taking a much stronger position in the Bill, with full participation as their intention?

6 pm

On the previous day in Committee, it is fair to say that there was a degree of inconsistency from the Front Bench about the status of Clause 6, so I am happy to give the Government an opportunity to make the position crystal clear. The noble Baroness, Lady Fairhead, said that the Government could not accept this language going forward and that they were,

"reflecting on what should be done".—[*Official Report*, 30/1/19; col. 1068.]

She said that there were "legal and technical difficulties" with the language. I am not sure whether she is shaking her head at me—I am quoting from *Hansard*, so I hope that I am quoting her correctly. If I am not, I will happily correct the record. The Minister also said:

"The Government do not endorse the wording of the amendment",

which is now in the Bill,

"and consider that the wording has legal and technical difficulties, so we are reflecting on what should be done."

Later in Committee, the noble Lord, Lord Bates, said:

"My noble friend Lady Fairhead made very clear our hesitation in the other place when this amendment was proposed, but it is now in the Bill. We see the commitment to all necessary steps in relation to the European Medicines Agency. We have been very clear that we do not wish to see that extended to other agencies, but it is there in the Bill at present".—[*Official Report*, 30/1/19; col. 1155.]

Is that still the Government's position? This is important. The House of Commons clearly instructed the Government, by changing the legislation, that it should have participation in the European medicines regulatory network as its negotiating position. The House of Commons also voted with clarity on the Government's position on taking out the Northern Ireland protocol from the withdrawal agreement. Both have equal standing; in fact, the change of the Bill has higher standing, but the Government consider both to be mandates.

I am seeking clarity on two points. First, how do the Government see the language of co-operation being made real in practical examples? Does co-operation mean not only that would we be fully aligned, but that we would take all of the regulatory decisions of the European Medicines Agency if we are not a member of it? Would we submit to their licensing and marketing authorisations procedures? Will there be reciprocity in that? How will our separate regulatory bodies interact with the EMA as a third party?

Secondly, what do the Government intend with this Bill? Before we proceed to Report, we need clarity. On that basis, I beg to move my amendment.

Lord Lansley: My Lords, I just want to say a word on this. I will not add much, because the noble Lord, Lord Purvis of Tweed, has illustrated the nature of the issues here very well. I would just emphasise that, if the Government are looking to vary Clause 6 as it came from the other place, it is important for them to do so while recognising the importance of seeking to maintain and maximise our co-operation and partnership on medicines and clinical matters across Europe. There are issues such as European reference networks for rare diseases, which are valuable mechanisms for co-operation; there is work together on clinical trials and the implementation of the clinical trials directive.

As far as the European Medicines Agency is concerned, none of us realistically expects that, if we leave the European Union, we will have mutual recognition of authorisations between the Medicines and Healthcare products Regulatory Agency in this country on the one hand and the EU on the other. Even if we were to offer to recognise European Medicines Agency authorisations in this country, I do not think that will be offered, because the European Union will not contemplate a third country providing what it regards as the equivalent of its own authorisations with its own control of data and jurisdiction under the European Court of Justice. That is not going to happen.

However, from early on in the negotiations it was clear that we should aim, if possible, for the scientific evaluations presently carried out by the Medicines and Healthcare products Regulatory Agency, prior to the authorisation process, to continue to be done by the MHRA. That is not presently anticipated by the European Medicines Agency, and that is one of the reasons why the Dutch, Germans, French and others are gearing up their medicines regulatory authorities to do much more of this work. They recognise that—to

[Lord Lansley]
give perhaps the maximum illustration—over 40% of the work on the authorisation of medical devices across Europe is done by the MHRA, and an even higher percentage for the more complex and significant medical devices. It is far from the case that this can be readily adopted and delivered in other EU member states. It is in their interests and ours to continue to work together—something like 80% of the total work is in the scientific evaluation rather than in the subsequent authorisation process.

I know Ministers are continuing to think about how we can achieve this level of co-operation, and I hope that, in that spirit, even if Clause 6 does not end up providing this mandatory structure for the negotiations, Ministers will be forthcoming none the less about how we might make progress in the direction that the noble Lord in his amendment is aiming for.

Viscount Younger of Leckie (Con): My Lords, I start by thanking my noble friend Lord Lansley, who has paved the way quite well for some of the remarks I will make on this issue. This amendment, spoken to by the noble Lord, Lord Purvis, raises an important issue which the Government are committed to addressing, and that is our future relationship with the European Medicines Agency.

Medicines regulation is inextricably linked to the UK's fantastic life sciences sector. The UK has one of the most productive health and life sciences sectors in the world. The sector is critical to the UK's health and economy, contributing over £70 billion a year and 240,000 jobs across the country.

We have been clear since the referendum result that our overarching aim for medicines and medical device regulation is underpinned by three clear principles: first, that patients should not be disadvantaged; secondly, that innovators should be able to get products to the UK market as quickly and simply as possible; and, thirdly, that the UK should continue to play a leading role in promoting public health. This is why the Government, in their White Paper *The Future Relationship between the United Kingdom and the European Union*, set out their aim to secure active participation in the EMA. The noble Lord, Lord Purvis, used the word "imperative", and that is very much noted on this side.

However, the clause binds our hands ahead of negotiations with the EU on our future relationship. We have always been clear that continuing to share our skills and expertise is the best outcome for UK and EU patients. The noble Lord, Lord Purvis, cited part of the political declaration; that declaration underlines the UK and EU's mutual commitment to working together in the future on medicines regulation, and to negotiating the UK's ongoing co-operation with the EMA. That particular area was raised by my noble friend Lord Lansley, but I will go slightly further, because the noble Lord, Lord Purvis, picked up on the word "co-operation". I say again that we want to retain a close working partnership with the EU to ensure that patients continue to have timely access to safe medicines and medical devices. The political declaration explicitly makes allowance for a spectrum of outcomes and commits both the UK and the EU to exploring the UK's relationship with the EMA.

The Government, as I said earlier, set out their ambitions for the future relationship in the July White Paper, making it clear, again, that we are seeking participation in the EMA. I can provide the Committee with some additional detail, however, some of which has been alluded to by my noble friend Lord Lansley. The UK is seeking an agreement that will allow the UK regulator to be able to conduct technical work, including acting as a "leading authority" for the assessment of medicines, and participating in other activities, such as ongoing safety monitoring and the incoming clinical trials framework.

I hope these brief comments provide enough reassurance to the Committee. Given that continued EMA participation is already a negotiating objective of ours, we do not believe that this amendment is necessary. The Government are already committed to ensuring that, after we leave the EU, UK patients can access new medicines at the same rate as they do now.

The Duke of Montrose (Con): I am most grateful to the Minister for giving way. A case in point that my noble friend Lord Lansley was talking about is not just medicines but vaccines. Apparently, in this country we no longer make any vaccines for human use, but all the European vaccines from all around the world are vetted by the Moredun Research Institute in Edinburgh. It will no longer be able to vet vaccines, and it has been told to destroy all its cultures if a no-deal Brexit goes through.

Viscount Younger of Leckie: I very much take note of what my noble friend has said. I have no doubt that that point, and so many others, will be taken into account when these negotiations commence.

I wanted just to clarify one point that the noble Lord, Lord Purvis, raised on the issue of "all necessary steps", which is engrained in the clause to which his amendment refers. It is a point that the Government are reflecting on, but I absolutely reaffirm our objective of as close a relationship as possible with the EU in this particular subject. I hope the noble Lord will withdraw his amendment on the basis of those remarks.

Lord Purvis of Tweed: I am grateful to the Minister for his characteristically thorough response, except that we still have Clause 6 in limbo to some extent. I am not sure how long the Government can reflect on the language of their Bill, which the Government brought to the House without stating whether they intend to bring forward amendments on Report to change it. I think the noble Lord, Lord Lansley, made a very good point: this is a very significant issue that requires a degree of forewarning on what the Government's intentions will be. I suspect we may just have to wait; we have pressed the Government enough at this stage with regards to getting some clarity on that point. It is frustrating that we still have some question marks that are being raised over the language of the Government's legislation.

On the second point, I understand what the Minister says. There will not necessarily be any easy answers to this, but my point was that there can well be a marked difference between co-operation with, and participation

in, European institutions—I think this is the point the noble Lord, Lord Lansley, was making, and I share his view. The European Union has been clear on that in the past. Indeed, on the previous day of Committee, my noble friend Lord Foster took part in the debate on communications and the regulatory bodies in the European Union for that. More recently, the European Union has changed its position to make it even harder for third countries to participate in the European agencies. Our bodies co-operate with the Food and Drug Administration in the United States. We have co-operation which is very deep, but when it comes to the key elements of whether medicines or vaccines are licensed, whether the research will be accepted on a reciprocal basis, and whether data is shared and can be legally shared between the two regulatory bodies, there are still issues that need to be identified.

It is reassuring to know that it is the Government's intent, from the White Paper onwards, that we would have active participation, but at the moment it seems as if the political statement trumps that because it is more recent. However, the Government have reissued their position on active participation and, in advance of waiting to see what they bring forward on Report—if, indeed, they do so—I beg leave to withdraw my amendment.

Amendment 67 withdrawn.

Amendment 68 not moved.

Clause 6 agreed.

6.15 pm

Amendments 69 to 74 not moved.

Amendment 75

Moved by ***Baroness Jones of Moulsecoomb***

75: After Clause 6, insert the following new Clause—

"Objective to reform WTO procedures

(1) It shall be an objective of an appropriate authority representing the United Kingdom in meetings of the World Trade Organisation to ensure that the World Trade Organisation modifies its procedures in a way which secures the supremacy of international treaties arrived at under the auspices of the United Nations over trade agreements not arrived at under the auspices of the United Nations.

(2) The Secretary of State must lay before each House of Parliament at least once in each calendar year following the commencement of this section a report on any progress made in achieving the objective under subsection (1)."

Baroness Jones of Moulsecoomb (GP): My Lords, I shall try to keep this brief, so I will not read out my amendment. We have heard a lot about the WTO over recent months; it is becoming the lazy answer to a lot of complex questions about how we withdraw from the EU. Some people are using the phrase "WTO terms" as if they are magic words that will solve all our problems. I was relieved to see the International Trade Secretary pouring cold water on those fantasies this weekend and I hope the Minister will take this opportunity to reinforce these statements in her response to my amendment.

For people such as me, who have spent most of their lives extremely sceptical of unaccountable, international governance structures, WTO terms are not the answer to our problems—they never have been. In fact, they are part of a global giant which undermines democracy and restricts the sovereignty of nations to implement their own policies. I find it hard to comprehend how anyone can complain about the EU being undemocratic and then champion the WTO as our saviour, using WTO terms to justify the most destructive and damaging route out of our current political stalemate. Many Greens, environmentalists and social justice campaigners have rallied against the WTO for decades and my amendment asks our Government to work towards adding some accountability to the WTO for reasons I will outline.

After the Second World War, there were two parallel, somewhat competing, initiatives which sought to establish an international system of rules and norms. One of these strands of thought gave rise to the United Nations, which has pursued peace, social development, environmental action and anti-colonialism as some of its fundamental aims. The opposing project established the Bretton Woods agreement, birthing the World Bank, the International Monetary Fund, and the General Agreement on Tariffs and Trade, which later became the WTO. This second strand of international co-operation placed the economic interests of the West, particularly the United States, far above the demands of developing countries, which were represented in the United Nations. Empires were dismantled but international institutions continue the exploitation of former colonies and the extraction of their precious resources. It is in this context that the WTO and the UN can be seen as somewhat at odds with one another.

More recently, the WTO has protected international economic management and trade from the environmental and social initiatives of the UN. I do not want to overstate the point because there are some WTO rules that allow environmental and other pressing needs to be addressed, but the WTO's overarching purpose remains promoting international trade and eliminating barriers to trade. There are a number of examples of WTO rulings that interfere with environmental initiatives. The WTO intervened in an initiative of the Indian Government to rapidly increase the country's production of solar panels and create a strong climate policy. Other WTO decisions have prevented companies adopting conservation rules that would protect endangered and declining species, such as dolphins, sea turtles and tuna.

There are many more examples of the WTO interfering with national sovereignty and international co-operation. The WTO has recognised that there are conflicts between itself and multilateral environmental treaties. It has identified 20 international environmental treaties that it considers could affect trade, such as banning trade in certain species or products—perhaps ivory, for example. The WTO notes on its website that no formal trade disputes have been brought with regard to these multilateral treaties, but I suggest that it is only a matter of time and must be playing on policymakers' minds when making decisions.

[Baroness Jones of Moulsecoomb]

The unique and complex problems posed by climate change, environmental damage and species loss, are not restricted to national borders. These issues are more important than trade. We know that there are now only—I was going to say 12 years—11 years and eight months to make fundamental changes to our economies if we are to have any hope of avoiding catastrophic climate change and ecological collapse. The fact that the WTO itself recognises that there is conflict between its rules and the multilateral treaties designed to avoid environmental disaster is proof that urgent reform is needed.

Our Government talk a good talk on the environment, but at some point they must deliver. That is why, with my amendment, I am asking the Government to negotiate to ensure that UN treaties are given priority and not undermined by the WTO. I hope that this amendment will be supported by everyone who recognises the urgency of the issues facing our planet and the need to reform global governance in response. I beg to move.

The Minister of State, Department for International Trade (Baroness Fairhead) (Con): My Lords, I thank the noble Baroness, Lady Jones, for providing this opportunity to discuss these issues by tabling her amendment.

With regard to the World Trade Organization, we operate under WTO terms if we are not in a free trade agreement—that is, if we are not a part of the EU or currently part of an FTA. For example, WTO terms operate for most of our current trade with the US. On the noble Baroness's point about how we do not wish to leave without a deal and move exclusively on to WTO terms, that is the subject of a future amendment, to be discussed later this evening. I stress once more that that is not the Government's priority, which is to secure a deal.

I will touch on the reform of the WTO. This is a key global priority, which was highlighted in recent meetings of the G20 and mini-ministerial summits held in Canada last year, and at the annual meeting of the World Economic Forum in Davos. I agree with the noble Baroness that WTO reform is essential to address the functioning of the organisation, including the strengthening of its negotiating arm. Indeed, when I attended the OECD Ministerial Council Meeting in Paris last year as the UK Government's representative, I emphasised the importance of, and the UK's commitment to, advancing WTO reform discussions.

This is important, given that trade discussions relevant to some of the most critical global issues, such as climate change—which the noble Baroness so passionately commented on—are currently stalled. This House discussed the current state of the WTO's environmental goods agreement in Committee the week before last. I restate that we are strongly in favour of seeing these negotiations restart and of playing a key role in them, given the important contribution this agreement would make to tackling climate change, which is a key priority for the Government and this country.

However, the UK cannot require the WTO to modify its procedures in a way that secures the supremacy of international treaties that were arrived at under the auspices of the UN over trade agreements that were not. The WTO and the UN, I am informed by our lawyers, are two distinct independent organisations, with two distinct bodies of international law. The WTO is not part of the UN system and exists independently in international law. That position is combined with the fact that there is an established principle of international law that there is no hierarchy of sources of international law. Reform of the WTO therefore requires reform of the WTO's own treaties, which has nothing to do with UN law, nor can it. Trade agreements, too, whether they seek to reform the WTO, or are secured bilaterally, must comply with the relevant law, which is WTO law. They exist outside UN law. I hope I have provided clarity on the legal situation in this area.

Baroness Jones of Moulsecoomb: Does the Minister accept that climate risk has to be part of any sort of trade negotiations, in that it could disrupt all sorts of mechanisms worldwide—not only weather patterns but movement of peoples and so on?

Baroness Fairhead: My Lords, I think I have reiterated just how important climate change is to the Government's priorities. The question is: what is the appropriate and most effective way to discuss climate change and to get rules put in place? There are differences of view over the most effective mechanisms, and many would say that trade agreements are not the right place. Others are more effective on that point. However, as we have tried to do and as the noble Baroness will have seen with our most recent trade agreements, such as CETA, we also include references to environmental standards.

Lord Stevenson of Balmacara: I am trying to help both sides come to an arrangement. I do not think that the noble Baroness whose amendment we are talking about is trying to set out a route map for the Government—if she is, she is doing it in a very gentle and responsive way. I think she is struggling, as we all are, with the question: if you want to make changes—which she so evidently does, and which a lot of us would support—what is the best way of doing that? Obviously, the noble Baroness has made it clear that you can do it on three levels. You can do it on a case-by-case basis as trade agreements come up, inserting the points you want to make. Alternatively, you can go through the United Nations, which is separate but still obviously influential as regards the wider tone and context in which these matters operate. But the central point, as the noble Baroness said, is that the WTO itself is in some difficulty. It may be all we have and the only way we can do it, but is the Minister seized of the arguments being made that the status quo is not satisfactory in so many ways that there needs to be some sort of movement around the whole issue, but presumably focusing on the WTO, and does she support that?

Baroness Fairhead: I thank the noble Lord for his intervention. Absolutely; I hope I restated that the WTO needs reform in areas such as digital, speed of processing and a number of others. We will continue

to be an active participant in those discussions. Therefore, I can say yes to reform. On the particular area of climate change, we also have a clear objective: the Government want to improve the culture of climate change and the approach to it. It is about what is the best way to achieve that, and that is what we are focusing on. With those clarifications, I ask the noble Baroness to consider withdrawing her amendment.

Baroness Jones of Moulsecoomb: I thank the Minister for her answer and I thank the noble Lord, Lord Stevenson, for suggesting that I am in any way gentle; that is not a word normally applied to me, so I feel flattered.

I disagree so strongly with the government line that trade agreements are not the place to discuss, promote or encourage any sort of climate change mitigation measures. We cannot ignore any option for ameliorating what will be a climate crisis in a very short time. Therefore I very strongly disagree on that but, having made that disagreement clear, I beg leave to withdraw the amendment.

Amendment 75 withdrawn.

Clause 7 agreed.

Amendment 76 not moved.

Clause 8 agreed.

6.30 pm

Amendment 77

Moved by ***Lord Stevenson of Balmacara***

77: After Clause 8, insert the following new Clause—

"Territories forming part of a customs union with UK: amendment to the Taxation (Cross-border Trade) Act 2018

(1) The Taxation (Cross-border Trade) Act 2018 is amended as follows.

(2) Omit section 31(5) (customs union with UK: import duty)."

Lord Stevenson of Balmacara: Although this group of amendments points in different directions, the amendments have a common starting point, and it is therefore not inappropriate that they should be debated together. Amendment 77 is in my name, joined by other noble Lords, and others have put their names to Amendments 78, 79 and 80, to which I shall also speak.

The history is important, because it raises a wider point than we have recently discussed, although we have from time to time touched on it: the fact that the Taxation (Cross-border Trade) Act and this Bill are really two sides of the same coin. They deal with aspects of trade which need to be in place in the unfortunate event that we crash out of the EU, but they are also pointers towards how we would carry out our trade policy and activity in the event of either crashing out or, as the Government would wish, having an extended period during which various other agreements would be added to the withdrawal agreement and political declaration.

The question that underlies the amendments is: are we in a good place to take forward those future discussions, given the two pieces of legislation that we are looking at? Because of how the Taxation (Cross-border Trade) Bill was defined as it went through the other place, it came in a form expertly handled by the Minister but which allowed us only a limited degree of comment and an occasional question, which he was of course well able to answer but which did not allow us to either amend or question in any serious way how the Bill was framed or where it pointed.

In addition, at a very late stage in the process in the Commons, the Government accepted a group of amendments tabled by the rather quaintly named European Research Group which, to many people, were tabled very late, rather surprising and subject to little debate—they certainly did not go through Committee. So the Taxation (Cross-border Trade) Bill, unscrutinised by your Lordships' House, was not even scrutinised to any great extent in the Commons after the later amendments arrived which changed its nature.

At the time, we felt that there were issues that could have been raised in debate, but we were unable to do so. Of course, the presence of the Trade Bill before your Lordships' House and its ability to amend previous legislation opens up the opportunity to make some changes, if the House feels that to be an appropriate way forward.

In crude terms, Amendments 77 to 80 would reverse the late amendments made by the European Research Group to the Taxation (Cross-border Trade) Bill in the other place. In so doing, obviously one looks at the impact that those amendments had and tries to frame our amendments in relation to both the Bill and wider policy arrangements. Briefly, it is fair to say that the conclusion that we on this side have come to is that those amendments do not strengthen our position in general terms and that it should be the duty of this House carefully to consider whether they should be removed, because that would return the Bill to a much better place in terms of where we may require powers set out in the Taxation (Cross-border Trade) Act to be utilised.

For example, Amendment 77 removes the restriction in Section 31 on creating a customs union with the European Union by requiring a separate Act of Parliament to be passed before the designated powers could be used. We think that that should be amended because the restriction under the previous amendment will make it difficult for the Government to negotiate a customs union—or even the customs union—should that be the way that they wish to move in forthcoming discussions.

As it stands, the collection of taxes and duties on behalf of the European Union would be banned unless there are reciprocal arrangements, but Amendment 78 would change that. I think the debate has moved on here, and it could be argued that Amendment 78 is probably the least important of the group. Nevertheless, it was a change perhaps made in haste and, at leisure, the Government may come to the view that it is not

[Lord Stevenson of Balmacara]
the best way to try to open a negotiation if the possibilities one is offering are already restricted by the Act.

Amendment 79 would make it legal for the Government to enter into arrangements that would see Northern Ireland forming a separate customs territory from the rest of the UK. Although I gather that this has support from the DUP, it still makes it a very different situation and context for any discussion about the backstop arrangements. Other noble Lords may expand on that issue. As it stands, the Bill seems again to cut off an opportunity for future discussion and debate—which is even more important than when the amendments were tabled.

Amendment 80 concerns a rather significant change to the way in which VAT is charged in a customs union. It is perhaps of some interest to your Lordships' House that we have not, within the duopoly of legislation with which we are currently dealing—the Taxation (Cross-border Trade) Act and the Trade Bill—dealt with the question of why the VAT rules that operate within the EU have not also been subject to attention. It will be interesting to hear the Minister's response.

Of course, VAT is dealt with under separate rules under a separate agreement among the countries in the EU; it is not part of the EU as such, nor part of any other arrangements which normally interpose with trade. To that extent, the Schedule 8 arrangements in the Taxation (Cross-border Trade) Act are distinct and different. It is therefore important that we should have some response from the Government about how this should be taken forward.

The amendment proposed by the European Research Group and inserted into the Act is not the only story that needs to be told on this, but we may not wish to go all the way down that route, although expertise is available should we wish to do so. The Government should be very clear about how they intend to take this forward. I beg to move.

Lord Hannay of Chiswick (CB): My Lords, I support the amendment in the names of the noble Lords, Lord Stevenson and Lord Purvis, and the noble Lord, Lord Bowness, who asked me to mention that he is unable to be here but that he continues to support the amendments. The noble Lord, Lord Stevenson, introduced the amendments admirably and explained very clearly why those parts of the Taxation (Cross-border Trade) Act which we seek to change are either unnecessary or damaging. He is absolutely right to say that the least important is probably the European Research Group amendment passed at a very late stage in the Commons, which we had no chance to intervene on effectively when it came through this House because it was a money Bill.

However, one part of it makes collection of customs duties possible only if the European Union collects customs duties and gives them to us. The original idea was that we would collect duties on behalf of the European Union; this was an essential part of the—now lost in the mists of time and buried deep under the soil—Chequers plan. The European Research Group amendment, frankly, neutered the Chequers plan, but as the European Union was never going to accept it anyway and made it clear at Salzburg and later that it would not accept it, there seems no point leaving it on the statute book.

The last point made by the noble Lord, Lord Stevenson, relating to Amendment 80 about VAT is actually extremely important. Anyone who seriously believes that preventing the British Government maintaining a VAT union, if you would like to call it that—a system that enables trade across borders between us and the European Union without the need for extremely elaborate VAT calculations, inspections, payments and so on—and doing away with that which exists now and going back to where we were before that existed will not put a huge amount of friction on our trade simply does not understand the realities. The VAT aspect is just as important as the tariff aspect and is separate from it. Unfortunately, the European Research Group—in its usual extraordinarily constructive way—has managed to insert something here that would be really damaging to our interests if it is sustained when we go into negotiations with the European Union about future trade arrangements. The only sensible thing to do—I hope the Government will give careful thought to this—is to get rid of this now and take it out of the Taxation (Cross-border Trade) Act.

We cannot be certain now what the Government and the European Union will do when negotiating our future trade arrangements. The Government are quite right to say they cannot guarantee how that will go. But they can remove this great ball and chain around their ankle, put there by the European Research Group, which would be really damaging to us if it ever came to be a central part of our future trade relationship. To say that relationship will be frictionless if the VAT aspect is not dealt with is just a bad joke, frankly, if you have to have VAT inspections, payments and all that sort of thing on goods that are passing. After all, the VAT levels are different in every member state, and the current system enables us to live with that without slowing down or impeding trade; that would go. So I really hope the Government—if not tonight, at least before Report—could say that they will take out that amendment, which should never have been allowed in. This is the single most important amendment in this group of four.

Lord Purvis of Tweed: My Lords, I am very happy to have my name attached to these amendments. It shows the Government there is a degree of cross-party consensus that it is important that these aspects—which, as the noble Lord, Lord Stevenson said, did not get the level of scrutiny they deserved in the Commons—get scrutiny in Parliament. This is after the event, because in effect we are scrutinising legislation, but there is no harm in a bit of post-legislative scrutiny of the taxation Act. In an exchange the Minister and I had during the very brief proceedings in this House on the Taxation (Cross-border Trade) Bill, the Minister said there would be ample opportunities for scrutiny, such as during the upcoming Trade Bill, so we are taking him at his word and offering the Government a chance to give a full-throated defence of the ERG amendments passed in the Commons.

As the noble Lord, Lord Hannay, said, there are perhaps some unintended consequences of these amendments that we now need to properly scrutinise. It is an extraordinary position we find ourselves in where Members of the Government's party moved amendments to the Government's Bill that would in effect render the Government's then policy on the facilitated customs arrangement largely inoperable. Now those same Members are meeting the same Government today to breathe new life into the very systems of a facilitated customs arrangement that they themselves rendered largely inoperable by their amendments. I was struggling for an analogy on the way to the Chamber this afternoon. I could not find one as ridiculous as the position we now find ourselves in. If it is the purpose of the so-called alternative arrangements working group that is now meeting to try to find solutions to the problems that they themselves created, I do not think that any alternative arrangements will come out of this working group.

The ERG amendments now sit most uncomfortably with the process under way, so it is right that we give them proper scrutiny. The Government say one of the amendments they accepted—that there would need to be a stand-alone statute for any customs arrangement agreed with the European Union—is not necessary for any other trade agreements. If I understand it correctly, the positon of the Government is that the free trade agreement with the European Union would undergo a CRaG process, which is an affirmative process to be approved because there is a treaty, but a secondary customs arrangement that would come with that would have to have a stand-alone statute. Why? What is the Government's rationale for that? In the Commons, the Government simply said they thought it would be appropriate that there would be a stand-alone statute. I do not understand why, so I hope the Government might be able to tell us why that would be the case.

6.45 pm

Clause 54 of the Act, which was an amendment, makes it impossible to operate under the Union Customs Code. The facilitated customs arrangement being aligned with the Union Customs Code and seeking to be operationally integral to it has been rejected by that amendment. Given that the withdrawal agreement is based on a customs territory which would be operating alongside Ireland, which would be operating the Union Customs Code, I do not understand how the Government see this working. Even more than that, in the withdrawal agreement the Government say that a customs territory would be operating with the Union Customs Code at the end of the implementation period in 2021. Even in theory that is questionable, given the position in the Conservative Party at the moment. But the European Union has put back the full implementation of the Union Customs Code until 2025, so even if the Government got their way it would not be operable for an extra four years after the end of the implementation period. So unless one of the alternative arrangements is to ask the European Union to accelerate its customs code process by four years, I am not sure how that will be able to be operational either.

I hear what colleagues have said about reciprocity, but on the flight down from Scotland this morning I read the HMRC guidance for businesses in the event of no deal. The Government's advice to businesses, both here and in the EU, includes registering with EU member states' regulatory bodies, for British businesses that are exporters, so that they pay their VAT to them. Here is the advice on parcels—not a theoretical or esoteric example, but an example now—for anybody in this country making an online purchase now for delivery in April, which is probably many thousands of people. I quote from the guidance for parcels to be delivered to us if there is no deal:

"For parcels valued up to and including £135"—

VAT will be levied on that, because it will no longer have the low-value consignment relief—

"a technology-based solution will allow VAT to be collected from the overseas business selling the goods into the UK … Overseas businesses will charge VAT at the point of purchase and will be expected to register with an HMRC digital service and account for VAT due".

That seems to be in contravention of the law. Where is the reciprocity on that? Also, how many overseas businesses have so far registered with HMRC? How are they being informed, in their member states, that they need to? Unless that happens and there is an agreement, anybody making an online purchase with a parcel coming from the European Union will be paying more and may not even receive it in the way they are expecting.

It is important that the Government are clear about reciprocity. Not only is there a need for scrutiny, as well as confusion on the VAT aspect that clearly exists for businesses, but, as the noble Lord, Lord Hannay, indicated—and I agree with him—VAT is just one element of the trading relationship. It is only one element of the multilayered and complex transactions that exist across borders. Checks to ensure that the proper VAT levy is going to be applied are part of a process on rules of origin, on whether the tariff barriers are being circumvented or whether the product comes from a country with which we do not have a trading relationship, et cetera. All have to be underpinned by clear legal frameworks, not by assertions.

I conclude with one statistic that makes the case for a clear risk register for businesses as well as Governments to operate the necessary checks. This is an example from the Republic of Ireland, which trades with Northern Ireland. There are 1.5 million declarations annually through the customs system. From the Irish Government's position, if there is no customs union with Brexit, that will increase to 33 million. The risk register provides that 2% of all those consignments need to be physically inspected and 6% need to be looked at for a documentary check. Now, 2% of 1.5 million is a burden in itself, but we all know what the calculation for 33 million is. That raises issues around VAT, customs compliance and the other checks that will be necessary. The Committee and the country deserve clarity from the Government. The clock is ticking and advice is already being provided, so businesses need that information now and that is why the Government should either defend these amendments or, as they may do with Clause 6, bring forward their own amendments to clarify and correct the situation.

Lord Hain (Lab): My Lords, following the excellent speeches we have just listened to, beginning with my noble friend Lord Stevenson, I support this group of amendments and appeal to the Minister seriously to consider reversing the ERG amendments, not just for the detail and well-founded points and reasons that have already been made, but because the Government did not choose to accept them. They were foisted upon them, because of the arithmetic and politics of the situation, and wanting bigger fish to fry. As a result, we have a defective Bill, even by the Government's own objectives. I ask the Minister seriously to consider on Report, rather than facing a possible vote and even defeat given the cross-party support that exists, getting the Bill back to where it was before the ERG plundered it.

Lord Lansley: My Lords, what connects this group of amendments is that they are European Research Group's amendments in the Commons that were accepted by the Government. I do not think they should be treated by my noble friends on the Front Bench as if they all had the same merit or otherwise.

The single UK customs territory, which is now Section 55 in the Taxation (Cross-border Trade) Act, specifies that there should not be a separate customs territory between Northern Ireland and Great Britain. Frankly, I cannot see the circumstances in which this House or the other place would find this acceptable. That being the case, I cannot see any merit in this House seeking to ask the other place to think again about that issue. I do not think anybody in the other place is proposing to revisit it, so my suggestion is that we do not go down the path of thinking that Amendment 79 has merit.

I do not disagree about Amendment 80. I listened with care, but I would not like to try to explain it to somebody else and I am sure the noble Lord, Lord Hannay, is right about that.

I support Amendment 77 because I cannot see any good grounds for why legislation should require the Government to seek new primary legislation to have a customs union of any character with the European Union in the future. If, for example, we want to have a customs union with the United States of America, it could be done by an Order in Council. There is no basis for a distinction of that kind, other than the politics of the moment, and legislation should not be governed by the politics of the moment. If there is a proper process for the scrutiny and approval of a customs union, it should be set out in legislation and apply to any other country with which we establish a customs union and not discriminate and impose additional requirements specifically in relation to the European Union.

That just leaves Amendment 78. I confess I saw this being slightly of the moment, in that it was intended to entrench into statute the provisions in the Chequers White Paper relating to reciprocity in the collection of import duties on behalf of the European Union by the United Kingdom. But as I understood the White Paper, it did not necessarily mean that the European Union would collect import duties on our behalf. There was some suspicion on the part of our colleagues in another place that the negotiations might lead to such an eventuality, and that we would collect duties for the European Union but they would not collect duties for us, so they put this into the legislation. Frankly, that is not where the negotiations are now. We are either in a customs union or we are not; I do not think we are going to be in some sort of asymmetric customs arrangement of that kind. Nobody is debating that presently.

Amendments 77 and 80 have merit. I hope they are not going to be pressed at this point, but my noble friends should certainly think carefully about amending them when we come to Report to enable the other place to think again.

We discussed the customs union last Wednesday. That was the day before an interesting report was produced, principally by German economists at the Ifo Institute. I was encouraged by it, not least because I agree with it. It basically said that, to break the deadlock, both sides have to move from their red lines. In the United Kingdom's case, that means no longer excluding the possibility of being in a customs union with the EU. In the European Union's case, it means not treating such an arrangement necessarily to mean that the United Kingdom has to remain a member of the existing customs union or the Customs Union Code. They therefore propose the establishment of a European customs association, in which both the United Kingdom and the member states of the European Union would have voting rights. As a consequence, in the event that the European Commission operated as the representative of the European customs association, it would do so based on a mandate in which the United Kingdom continued to exercise the same kind of authority it presently exercises on the European Union's customs arrangements.

This customs union would extend only as far as the present custom union applies inside the European Union. The document *Hard Brexit Ahead: Breaking the Deadlock* contains precisely the kind of discussion we have been having. It is not about whether we are in the customs union; it is what a customs union between the United Kingdom and the European Union might look like in the future.

It is doubly encouraging to see that not only put forward but put forward by prominent German economists. I hope that Ministers will continue to look at that in the time available before they have to come back and talk once more to the other place about what the next meaningful vote should be on.

7 pm

Lord Kerr of Kinlochard: My Lords, I support Amendment 77 for the reason that the noble Lord, Lord Lansley, has just given, and I strongly support Amendment 80, for the reason that my noble friend Lord Hannay gave.

Amendment 78, however, is very strange. I support it, but we are in Alice in Wonderland territory here. It is an entirely academic interest, because it seems to me implausible that Mr Barclay and Mr Paterson, and their high-powered alternative arrangements group, would come back to this alternative arrangement—the Chequers proposal—given that they ambushed the Government to take it out by their amendment to the taxation Bill.

It was always rather a fanciful idea anyway. In its brief life, it had several forms. First, it was proposed as a reciprocal arrangement. The foreigners would have to clog up Rotterdam, Antwerp, Hamburg and Bremen collecting our tariffs and operating our quotas, segregating our goods from goods going to the EU, which would be charged EU tariffs and subject to EU quotas. Once segregated, in some magic way, our goods would then proceed to the United Kingdom, having paid UK tariffs at their first European port of entry. That was never going to happen.

The second form, once noises from Brussels had been heard, was that we would do it for EU goods but the EU would not be required to do it for our imports at its ports. It was that, I think, which provoked the ire of the ERG: why should we collect foreign tax? But there was no possibility of the EU at any stage agreeing that we should collect its tariffs at our ports.

There are several degrees of lunacy here, and we have this very strange prohibition on the statute book. I think that the statute book should not contain nonsenses, and so I support the amendment. However, it does not matter. The EU would never agree this proposal in any of its incarnations. Mr Paterson, Mr Barclay and these other trade experts are not going to come up with it as an idea in the alternative arrangements committee, because they were dead against it. Therefore, although I support the amendment, I do not think one need spend a lot of time on it.

Lord Bates: My Lords, I rise more in hope than expectation of being able to persuade your Lordships. I pick up the sense from the Committee that this is probably something that your Lordships will want to return to in more depth on Report. Perhaps the best service I can offer at this stage is to put on record the Government's position, respond to some of the precise points and then await further developments as they may unfold between now and Report.

Amendments 77, 78, 79 and 80 relate to changes passed in the other place during the passage of the Taxation (Cross-border Trade) Act 2018. This Act is important legislation as the UK leaves the EU. It enables the Government to create a stand-alone customs regime by ensuring that the UK can charge customs duty on goods, set and vary the rates of custom duty, and suspend or relieve duty in certain circumstances.

I turn now to the substance of the original amendments to the Act, which these amendments seek to remove. Amendment 77 relates to Section 31(5), which requires further parliamentary scrutiny in the event that the power under Section 31(4) is used to implement a customs union with the EU. The Government support the principle of further parliamentary scrutiny in this case. My noble friend Lord Lansley suggested that this was perhaps reflective of the politics of the movement. As a distinguished former Leader of the House in another place, he will be very familiar with how that side of things works. However, as this House is aware, the Government have made it clear that they are not seeking to be in a customs union with the EU as part of our future economic partnership—I say that without wishing to reopen the many debates we have had on "a" and "the".

It is important to reflect why the Government have taken this view and to consider what leaving the EU means. It means the ability to strike out on our own to forge new trade deals. In order to do this, one important element is to have the ability to set our own tariffs. Being in a customs union would deny the UK this ability and fundamentally undermine our capacity to negotiate new trade deals with old friends and new partners.

The noble Lord kindly outlined, as he saw it, the way in which Amendment 78 arrived, referencing first the Bill and then the amendment. The Government have been clear in their White Paper that the arrangement they are seeking will ensure that both the UK and the EU get their fair share of the revenues from the rest of world trade. Section 54 of the Taxation (Cross-border Trade) Act is in line with the proposals that the Government set out with a view to achieving just that.

Turning to Amendment 79, Section 55 of the Taxation (Cross-border Trade) Act 2018 requires a single UK customs territory. This is a statement of government policy and ensures that the Government will not act incompatibly with the commitments made in the joint report of December 2017, where they committed to protect the constitutional integrity of the UK.

Lord Purvis of Tweed: I apologise for interrupting the Minister. I want to add perhaps another degree of lunacy to the several mentioned by the noble Lord, Lord Kerr. New Section 31 of the taxation Act, which Amendment 77 seeks to rectify, contains the following phrase:

"In the case of a customs union between the United Kingdom and the European Union".

The Government said that that would not apply because the customs territory they are seeking to have will not be a customs union. So even if just to make the legislation neater, it should be taken out.

On defining the scope of the single customs territory, which we are seeking to do, the Government's *Legal Position on the Withdrawal Agreement*, command paper 9747, says it is that,

"under which the UK aligns itself with the Union's external tariff and there can be no tariffs or quantitative restrictions on imports and exports between the UK and the EU. The single customs territory therefore constitutes a customs union for the purposes of GATT19, but it is not the EU's customs union as defined in Article 28 TFEU".

It can either be one thing or the other, but the Government's own document on the legal position says that the customs territory will be a customs union.

Lord Bates: I will make some progress, but I will come back to that point—when inspiration arrives.

No UK Government, regardless of their political leanings, could ever accept such a carving up of the United Kingdom—I am referring here of course to the division between Northern Ireland and the Republic of Ireland. Indeed, on 15 October, in another place, the Prime Minister said:

"We have been clear that we cannot agree to anything that threatens the integrity of our United Kingdom, and I am sure that the whole House shares the Government's view on this.

[LORD BATES]
Indeed, the House of Commons set out its view when agreeing unanimously to section 55 in … the Taxation (Cross-border Trade) Act 2018 on a single United Kingdom customs territory, which states: 'It shall be unlawful for Her Majesty's Government to enter into arrangements under which Northern Ireland forms part of a separate customs territory to Great Britain.' So the message is clear not just from this Government but from the whole House".—[*Official Report*, Commons, 15/10/18; col. 410.]

Turning to Amendment 80—before I come to some of the points raised during the debate—the Government's position is that they will not seek to be in a customs union with the EU. We have debated this issue in this House and in the other place throughout the passage of this Bill—leaving aside the very clear response that is on its way to the noble Lord; he should be prepared for that. As has already been highlighted to the House, at Report stage in the Commons, MPs rejected an amendment seeking to keep the UK in a customs union with the EU.

On the specific points relating to import VAT, it is clear that the Government are highly cognisant of the concerns raised. I will deal with that point now because the noble Lord asked some very good questions on VAT treatment, and it is good to have an opportunity to put the position on the record. Goods from third countries are treated as imports, with VAT due accounted for on import or by the 15th of the following month as duty of customs. This means that, unlike acquisitions, there is a cash-flow impact because traders have to pay the import VAT and potentially recover it later when they submit their VAT returns. It also means that there needs to be an option to pay import VAT on the border, as not all businesses have the necessary guarantee to defer payment until the following month. Generally, import VAT is paid sooner on goods from non-EU countries than on goods from EU countries. This provides a cash-flow benefit to companies importing goods from the EU compared to businesses that import from non-EU countries. Without an UK-EU agreement to retain this treatment, goods entering the UK from the EU would be treated as imports and would be subject to the same rules as businesses moving goods from non-EU countries. This would mean businesses paying VAT on imports from the EU sooner, affecting their cash flow. The Government published a series of technical notices in August 2018 to help businesses prepare for the unlikely event of a no-deal scenario. The VAT technical notice, "VAT for businesses if there's no Brexit deal", announced that the Government will introduce postponed accounting for import VAT on goods brought into the UK.

The noble Lord, Lord Stevenson, asked why we accepted Section 54—originally New Clause 36—of the Taxation (Cross-border Trade) Act 2018. The Government did so because it was consistent with our position. It requires the Government to negotiate a reciprocal arrangement for the collection and remittance of VAT, customs and excise duties. The Government have been clear that both the UK and EU should agree a mechanism for the remittance of relevant revenue. The Government set out in their July White Paper that they propose a revenue formula that takes into account goods destined for the UK entering via the EU and goods destined for the EU entering via the UK.

The noble Lord, Lord Purvis, asked whether the customs territory is a customs union under GATT, and he deserves a full answer to his detailed question, so I commit to writing to him. That should be very clear to the noble Lord and all Members of the House—well worth waiting for.

Lord Berkeley of Knighton (CB): I ask this question as someone who is not a politician and who therefore sometimes gets quite confused about the repetition of entrenched views, which have led us to the undoubted stalemate that we are in. This really concerns the point made by the noble Lord, Lord Lansley. I heard the Minister's response, but it seems to me that everything I hear about Brexit suggests that the Northern Ireland backstop is a real sticking point. Is it not conceivable that, to get around that problem, the Government might have to consider some form of customs union?

7.15 pm

Lord Bates: It is a challenge when someone with the noble Lord's intellect begins a sentence by apologising for not being a politician and then asks for clarity at the present time. We are discussing this legislation, but we all know that we are in one of the most fast-moving, dynamic episodes of negotiation that this country has ever entered into. We are gradually working our way through. The White Paper was published at a moment when we were seeking to flesh out exactly what the Government's position was in response to the Commission saying, "We don't know what the UK's position is; we don't know what they want". Therefore, the White Paper was introduced at that point. Then there was the clamour for clarity for business—what it would do in the event of no deal—so the technical notices were issued. Then, we got to the position where we reached an outline agreement with the European Commission in December, against many people's expectations, along with heads of terms for what a future economic partnership might be. That was then presented to the other place and roundly rejected. Therefore, we have now begun another process, so I readily accept that if one wants to score points by stopping the clock at various stages along the process and pointing to certain inconsistencies in it, the Government are pretty easy fare for that.

Lord Kerr of Kinlochard: The Minister is making a very gallant effort and I applaud it. I enjoyed many of the things he said, particularly when he referred to a no-Brexit deal. I thought that was a very encouraging concept. I really cannot let him get away with where he is now, in this fast-moving situation he describes. Put yourself in the place of the EU 27: what are they supposed to think when the Prime Minister scuttles her own fleet? She orders her party to vote down the backstop in the treaty. The backstop is 21 articles, 10 annexes and 172 pages. The Prime Minister's officials have negotiated that line by line, month by month and it is there because we asked for it. Then she decides that the best thing to do with it is to replace it with alternative arrangements, which are now being devised by Mr Owen Paterson and Mr Stephen Barclay. The Minister tells us that this is a fast-moving situation

and it is quite hard to keep up with it, but there is nothing happening in Brussels but sheer astonishment at the failure of our system.

Lord Bates: That is the noble Lord's position on this: the reality is that the Prime Minister is seeking an agreement that can command a majority in the other place and that requires compromise. That is what the agreement represents. The House made its view on the withdrawal agreement clear; she is now seeing whether that can be addressed with the Commission. Personally, I wish her well and every possible success, as opposed to my own mis-speaking. Lest it be on the record, I am sure that Sigmund Freud would have observed that perhaps I had momentarily let slip an inner feeling, which, of course, has nothing to do with the position of Her Majesty's Government, which I consistently seek to put forward from this Dispatch Box and proudly support.

The noble Lord, Lord Purvis, asked about support for government amendments that preclude the facilitated customs arrangements. We would argue that there is nothing about the amendments made to the Taxation (Cross-border Trade) Act in the other place that is inconsistent with the draft political declaration that will inform the future relationship. On the point made by the noble Lords, Lord Hannay and Lord Stevenson, about insufficient focus on VAT implications, the Government have been clear that we are aware of the potential impact on businesses of any move away from the concept of acquisition VAT, but we have also set out that in any scenario we are seeking to avoid any adverse effects. Amendment 80 does not affect that in our view.

Lord Fox: On that last point, we keep talking about 29 March, but of course sales are already being made and shipping has already been arranged that may well arrive in this country or continental Europe after 29 March. The business decisions to invest, to make things and try to sell them have already been made, so minimising the impact is not possible. The impact has already started.

Lord Bates: Yes, there is a reason why we have brought back the agreement—to resolve the situation.

As for whether the amendments have been considered in the other place, the other place voted for two of the original amendments and had the opportunity to vote on another two but decided not to do so, so the other place made its view clear on that point.

Lord Hannay of Chiswick: On this point about VAT, I hope the Minister will forgive me for saying that he and I are probably slightly out of our depth on the detail of how this will work. From what he just said and from the guidance that he read out at some stage, it sounds as though the Government and HMRC understand that potential friction will come into our trade with the EU if we do not ensure that something like the present arrangements continue. Back in the 1980s, when I was involved in the matter, we avoided a perfectly appalling idea by Lord Cockfield of having a clearing house in Brussels into which everyone would pay all this VAT. We have a frictionless system and it sounds as though the Government understand that that should be preserved. But I rather doubt that that is consistent with the Taxation (Cross-border Trade) Act, because of the amendment on VAT that was put in by the ERG.

The best thing that we could ask of the Minister this evening is to go back and consider very carefully whether the Government should either accept Amendment 80 or give some fairly lengthy explanation of what they will do and how that is—if it is—consistent with the Act now on the statute book. That would be best. Then, when we return to this on Report, we will all have probably learned quite a lot.

Lord Bates: I am very happy to give an undertaking to the noble Lord that I will reflect with colleagues, particularly my noble friend Lady Fairhead, on the comments made on these amendments, notwithstanding the points that I have put on the record about the Government's position. We can return to these on Report and I will seek to give some further information in the gap in between Committee and Report. I hope, in the meantime, that the noble Lord will feel able to withdraw his amendment.

Lord Stevenson of Balmacara: That was an interesting and enlivening evening. I have come up with a brilliant title for my forthcoming novel—*Seven Degrees of Lunacy,* or could it be eight? That might be easier, although I doubt it. I have speculated at length about whether we are in *Alice in Wonderland,* as was suggested, but my favourite suggestion is that we are in *Gormenghast*, because we seem to be trapped in structures not of our own making, with a design that is not of our wish and with an outcome that is very uncertain and probably leads to madness. But enough of that.

One unifying thought was summed up neatly by the Minister in his last remarks when he said that we needed to think a little harder about what the problem is. Everyone who has spoken, other than the Minister, took the view that these issues had a common theme—the reasons may be different but the theme is that they all have the potential to derail us later down the track. The Government should think about that issue rather than the particularities of these issues. If it is going to be problematic to get an agreement in both Houses on a Motion for an extension of a customs union, because of the argument made by the noble Lord, Lord Lansley, about the inherent asymmetry of one set of rules for the US and another for the EU, that may not be helpful. I do not think we are saying any more than that. There is an opportunity here to do something to ease the roadblocks that we can see down the track, whichever track we go down.

Amendment 78 was part of the Chequers arrangements but is now otiose and it is not beyond the wit of others to point out that it still exists in statute and might cause difficulty further down the line. Amendment 79, as my noble friend Lord Hain said, bears directly on the backstop. Is it really sensible to have this power hanging over us in another piece of legislation as we get to the later stages of that, if that is what is going to happen? On VAT, it is not really about the agreement that might be coming but a broader issue about VAT in general, because there might be a better way of

[LORD STEVENSON OF BALMACARA]
collecting VAT that originates outside the UK. It is complicated and a short meeting might be a way to find the common ground that we want to take forward. I am grateful to the noble Lord for wading through that and having the doubtful honour of assigning his name to it in *Hansard*. It is useful to have it there and we will study it carefully.

I think there is time to have another look at this. Even if we disagree on some of the issues, it cannot be right for Parliament to pass legislation that it knows is not going to be of any use. I think that was the point the noble Lord, Lord Berkeley, was making. If this is where we are, why do we just not do it? We could do it differently and see if we can use the time to clear it up properly. That is the way I would like to see it go forward but it is not in my hands. I beg leave to withdraw the amendment.

Amendment 77 withdrawn.

Amendments 78 to 80 not moved.

7.27 pm

Sitting suspended. Committee to begin again not before 8 pm.

8 pm

Amendment 81 not moved.

Clause 9: The Trade Remedies Authority

Debate on whether Clause 9 should stand part of the Bill.

Baroness McIntosh of Pickering: My Lords, I am grateful for this opportunity to debate whether Clause 9 and Schedule 4 should stand part of the Bill. I just want to raise one or two points that, as my noble friend the Minister will recall, arose during our meeting way back in October or November, for which I was extremely grateful.

I tabled my opposition to the clause and schedule immediately after Second Reading because a number of issues relating to the role and powers of the Trade Remedies Authority arise from the increasing threat from the volume of imported products. I am particularly concerned about bricks, tiles and ceramics due to my interest in, for example, the York brick company, which I had the honour to work with as the local MP. These products emanate from potentially unsustainable sources, often from developing countries, and they are having a negative impact on our domestic production, as seen through the latest retaliatory tariffs from the US and, subsequently, China. I have some general and some specific comments that I wish my noble friend to respond to. I am particularly grateful to the Law Society of Scotland for raising these issues.

Paragraph 12 of the report of the Select Committee on the Constitution sets out the concern that there is a singular lack of detail on the functions and powers of the Trade Remedies Authority and that enormous discretion is given to the Secretary of State in relation to the constitution of this body, the appointment of its members and its operations. In particular, I draw my noble friend's attention to the committee's conclusion that,

"in constitutional terms, creating and empowering an important public body in such a manner is inappropriate".

In connection with Clause 9 and Schedule 4, can my noble friend indicate the length of appointment for members of the Trade Remedies Authority, and do the Government envisage these appointments being renewable and for a similar length of term? If we are inviting people to serve on this body, it is important that they are at least given security of tenure. That goes to the heart of their independence and impartiality, and it would detract somewhat from the ministerial discretion that currently lies with the Secretary of State. Under what conditions would the Government envisage the office of an official serving under the Trade Remedies Authority becoming inappropriate and how could it be removed? It would help the Committee to know that.

In addition, perhaps I may confirm with my noble friend that, in connection with the injury calculation which is the outcome of the Trade Remedies Authority's conclusions, the regulation will be laid before the House by the affirmative rather than negative procedure.

I am sure that my noble friend does not need me to rehearse the importance of the bricks, tiles and ceramics industry. A total of 2.5 million people overall are employed in the UK manufacturing sector, and this is a very strong part of that industry. As regards ceramics covering tableware and tiles in particular, these have already been affected—or one could say protected—by the two EU trade remedies in place for ceramics. It is important to give a message to the industry this evening that we will create in the Bill similar provisions to those that exist in the European Union at present.

Can my noble friend the Minister confirm that the injury calculation will be by affirmative procedure and—as some of the Commons amendments did not cover this point on the economic interest and public interest tests—that the Government will put on record how these tests will be interpreted in court and by the authority going forward? This is purely intended as probing. I obviously wish Clause 9 and Schedule 4 to remain part of the Bill, but I wanted to make some of these general points before we go on to discuss the amendments in the next grouping.

Baroness Neville-Rolfe: My Lords, I have some sympathy with my noble friend Lady McIntosh of Pickering but for a quite different reason. As I said all those months ago at Second Reading, we need a highly professional team to look after the UK's trade interests, but I am not convinced that we need a new authority separate from the trade department. I may be out of date, but my recollection is that the work in Brussels is done by the Directorate-General for Trade, not by a special agency—and it seems to get along very well, as we keep hearing.

I might not be able to convince my noble friend the Minister, but I emphasise that the proposed body must be of a very special type. The agency, if we must have it, should be run by people who are independent-minded with Civil Service values, not representatives of any

particular stakeholder sector. Such people must be able to stand up to the vested interests who will approach them in the way that they approach Brussels under the current arrangements. I remember lobbying DG Trade on bra quotas in Brussels. I have to say that I was one of many very fluent stakeholders interested in the cargos that were sitting on the sea and not arriving in the shops in Britain.

Lord Stevenson of Balmacara: My Lords, we are dealing with a clause stand part amendment in the name of the noble Baroness, Lady McIntosh. But she and the noble Baroness, Lady Neville-Rolfe, have raised a number of points that actually come in the next group. I wonder if for the convenience of the House we should merge these groups and hear now the speech by my noble friend Lord McNicol, which I have had the privilege of seeing. It covers much the same ground as that covered by the noble Baroness, Lady McIntosh, and the noble Baroness, Lady Brown, will probably come in on the ceramics aspects. It might be easier to finish this group together, so I suggest that my noble friend Lord McNicol speaks next.

Baroness McIntosh of Pickering: I am grateful to the noble Lord and will be content as long as my noble friend the Minister can answer my specific questions. My only concern is that they do not get lost in the general wash of the next grouping, as they are very specific.

Lord McNicol of West Kilbride (Lab): My Lords, my noble friend Lord Stevenson talked about a speech, but I think he might have overemphasised what we are going to go through. I have pulled together a few comments and was looking to move Amendment 83, but many of the issues overlap with the last two speeches so I will weave in some of the themes.

The group beginning with Amendment 83 deals largely with the setting up and running, as has been touched on, of the Trade Remedies Authority. I will deal with some of the specific amendments and work through them quite quickly because we have another two groups to work through this evening. Many of them are probing amendments to solicit further clarity and details from the Minister on the running and formation of the TRA.

Amendment 83 itself touches on consumers and would add a third subsection to Clause 10(2) not just looking at countries, exporters or producers but adding a further consideration—the consumer. That is a sensible consideration that the TRA should be asked to look at when making any decisions.

Amendment 84 touches on the annual reports that the TRA needs to prepare and sets out a bit more detail about those, looking at any of the guidance, advice or assistance that is given to the Secretary of State. Probably most important is the final part of it regarding the laying of the report in front of Parliament. That is not touched on in detail in the Bill just now, and this adds in that little bit extra.

The noble Baroness, Lady Brown, and others will touch on Amendment 101A, but suffice to say that including and involving UK producers and trade unions is obviously a sensible way forward. It would not tie the hands of the Minister, the chair or the chief executive, but would bring in organisations and individuals who could bring wide and independent knowledge to the formation of the TRA.

Amendment 102 seeks that the chair be vetted by the International Trade Committee of the other place, which is just sensible good practice and happens already with many other bodies of similar stature to the TRA.

Amendment 104 touches on non-renewable terms. The reason for tabling it is that, all too often, individuals who have been appointed to boards have an eye on the reappointment that is coming at the end of their time. Single-term appointments are becoming more common on boards, which means that those individuals can be far sharper and clearer, not tied up in any considerations about the next set of appointments.

Amendment 105 and 106 tie together quite neatly and delve a little more into the detailed knowledge and expertise that we would expect members of the TRA to have. The Bill itself does not go into any specific detail on this so the amendments would put in a little more detail about the individuals and their having knowledge and expertise. God forbid that someone would be appointed to a board for a political reason by the Secretary of State. The amendment would just add a little more depth and weight to those individuals.

Amendment 106 again touches on the criteria, looking at consumers, producers, trade unions and workers being involved with that.

Amendment 107 brings more detail in the clause regarding individuals, going back to the earlier question about how you set what "unfit" is. The Bill itself is quite bland on this; this amendment just brings a little bit more clarity and detail to it. Sub-paragraphs (a), (b) and (c) have been used by many other boards for the ability to exclude individual members if they fall below the expected standard.

8.15 pm

Amendment 108 touches on gifts, in a sensible way. Many organisations and businesses have this now—in fact we have it here. So why not bring a little bit more detail and good practice in on recording the gifts, if they were to be received by the chair or any other member?

In the last two, Amendment 109 considers how the report is involved with and deals with devolved Administrations, putting the inclusion of Scotland, Wales, Northern Ireland and other regions of the UK into the Bill itself. It ensures that the work is shared across the full gamut of the devolved Administrations.

Amendment 110 is a very small amendment, but it removes the Secretary of State's ability to interfere, as I see it, in the working of the TRA. It allows the TRA to act and deliver its work independently, without there being the possibility of the Secretary of State pushing their will on to the decisions that the TRA would have to make.

Lord Lansley: My Lords, if we are going to anticipate the longer group of amendments, which impact on Schedule 4, I will say a word about Amendments 103A and 107A, which are in my name.

[Lord Lansley]

I shared, I confess, the view of my noble friend Lady Neville-Rolfe for quite a long time. The conclusion I came to is that we pretty much have to accept the structure which says that we have an independent Trade Remedies Authority, rather than one integral to the Department for International Trade. The analogy is with competition activity. The European Commission runs its own competition regime from a directorate-general of the Commission, with a commissioner in charge. We may think that is right or wrong, but the point is that it is internationally recognised that in that respect, the Commission operates at a significant remove from the day-to-day political pressures in a single country. In this country, we do not operate on the basis that we have a government department providing the competition authority; we do it independently. There is a better analogy there. There is also the analogy of the International Trade Commission in Washington, which is recognised as operating independently of the day-to-day political pressures that otherwise might be exercised in the US Administration or if it were subject directly to Congress. There are analogies that cut both ways, but I am persuaded that having a separate Trade Remedies Authority is best.

It is tricky, because we do not have that many people who are very good at managing trade remedies. We are going to end up with one set of them in the Trade Remedies Authority and another set sometimes in the Department for International Trade having to judge the recommendations being made by the Trade Remedies Authority. I am not quite sure that we shall have enough people to do all those tasks. I hope we do, but it will not be immediately obvious.

Paragraph 2 of Schedule 4 states that a chief executive of the Trade Remedies Authority is to be,

"appointed by the Chair with the approval of the Secretary of State or, if the first Chair has not been appointed, by the Secretary of State".

My Amendment 107A would simply leave out paragraphs 17 to 23, which all relate to the circumstances where a chief executive is appointed by the Secretary of State. We do not want to leave in statute for the longer term that the Secretary of State may appoint the chief executive. It should be the responsibility of the board. That is generally true for most other independent bodies of this kind. I do not see any reason why we should trespass across that if the independence of the Trade Remedies Authority is integral to its function.

All this seems to have been written in the expectation that it would become law at about the same time as the Taxation (Cross-border Trade) Bill did back in September. Back then, there was not a chair-designate of the Trade Remedies Authority, nor was there a chief executive-designate. We now have both. There is no practical reason why the chair cannot be appointed alongside other members of the board, so that they can take responsibility for the appointment of the chief executive. I see no grounds for leaving in the Bill this statutory provision compromising the body's independence.

My Amendment 103A would specify that, when the Secretary of State came to approve the appointment of a chief executive as proposed by the chair of the board, that should be subject to a report from the International Trade Committee of the House of Commons. I looked at the January 2019 updated guidance from the Cabinet Office on the 50 leading appointments made with pre-appointment hearings by Select Committees. Back in 2008, when I was Secretary of State in the Department of Health, we had seven such appointments, which I think was the largest number of any single department. The Department for International Trade has no such appointments—it is quite a new department—but this is its principal body. In so far as the Select Committee on International Trade is to have a view, it seems that it should have a view about the chief executive and the chair of the Trade Remedies Authority. To be honest, I may have got the amendment wrong; it may be that it is better that the chair be appointed by the Secretary of State following a report by the International Trade Committee—forgive me if I have got it in the wrong place—as the chair is more likely to be the person who should be the subject of scrutiny by the committee. I may reserve that point, as distinct from what is written in Amendment 103A.

I cannot see a good reason why there should not be such scrutiny. The criteria seem threefold: is it important, does it have impact, and does it require independence? All three seem to apply in the case of the Trade Remedies Authority. The amendment would not require the approval of the Select Committee; it would simply require a hearing to take place and a view to be expressed. We know from precedent that on nine occasions Select Committees have made a negative report on appointments proposed by Ministers. In six of those cases, Ministers have proceeded in any case. The amendment is not to prevent Ministers making the appointment that they wish to make; it is to give the Select Committee in another place an opportunity to make a report on the proposed appointment of a chair.

Baroness Brown of Cambridge (CB): My Lords, I shall speak to Amendments 101A and 103B in my name. I thank my noble friend Lord Kinnoull for adding his name to both amendments and the noble Baroness, Lady McIntosh of Pickering, for supporting 101A. I have two further amendments in the next group—do not worry, I am not suggesting that we amalgamate these, but I will provide some common background that applies to all four amendments before I speak briefly and specifically to Amendments 101A and 103B.

Materials are very important to us. I happen to be a materials scientist, so I would say that. They are important economically and strategically: obviously, they are the start of the supply chain for anything we manufacture. Advances in materials underpin the technologies and devices we depend on, from the structures and blades of wind turbines, to batteries for electric vehicles, to materials which allow the slow release of drugs in the body, to materials that enable faster communication of data—do not worry, I shall not give a long list. While we have world-leading academic expertise in materials, many of our materials industries are under pressure, as the noble Baroness, Lady McIntosh of Pickering, highlighted. Many of

these industries share some common features and it is these common features that make the Trade Remedies Authority so important for them.

Many, such as steel and ceramics, are energy-intensive, so as we decarbonise our economy they will increasingly need to invest in new technologies, such as carbon capture and storage, hydrogen-fired kilns and things to drastically reduce or eliminate their CO_2 emissions. They are affected by our very necessary requirements for high environmental standards. Many are located in economically vulnerable parts of the country and, as the noble Baroness, Lady McIntosh, mentioned, many have experienced serious problems in the past arising from dumping and subsidy by overseas Governments. Current world trade issues, such as the US-China trade dispute, resulting in overproduction in many areas in China, and Brexit, are understandably causing concern.

So our materials producers, along with many other industry sectors, welcome the establishment of the Trade Remedies Authority in the Bill. They think the UK needs a strong and independent authority to investigate alleged dumping and subsidy cases and to recommend remedies. Producers need to know that the TRA will be a body that understands the impacts of dumping and subsidy on UK companies, to give them the confidence to continue with their investment programmes—investment that will be critical to delivering the Government's clean growth strategy. We have already heard a bit about the definition of the membership of the TRA and its governance. Both Clause 10 and Schedule 4 make the independence of the TRA a very clear objective. However we have already heard that this does not sit entirely comfortably with the chair and non-executives being appointed entirely at the discretion of the Secretary of State. By contrast, the TRA will have wide discretion in the way it conducts trade remedy investigations, which is clearly crucial for its independence.

However, in combination, these factors build a degree of uncertainty into the system for manufacturers. A strong message about the composition of the TRA board, giving assurance that individuals with current experience in the manufacturing industry, from both a management and worker perspective, would be there alongside trade remedy experts, economists, academics, legal experts and people with other relevant skills would help remove uncertainty and risk for UK producers. Indeed, as the noble Lord, Lord Lansley, reminded us, because trade remedies have been a Brussels competence, trade remedy expertise is likely to be in somewhat short supply in the UK. It is critical that the TRA board is not made up mainly of theoretical modellers and economists but has a real balance of theory, analysis and practical, hands-on experience. The recent move by the Government to accept the principle of involving those most affected by trade policy in its development—for example, through the recruitment of a diverse stakeholder strategic trade advisory group—is very welcome. Trade remedies should be no exception, with both producers and trade unions involved.

Amendments 101A and 103B would ensure that both manufacturing and trade union experience are present on the TRA board, and that there is consultation with stakeholders before appointments are made. I hope the Minister will be able to confirm that the Government recognise the benefits of this broad approach for the TRA membership.

8.30 pm

Lord Fox: My Lords, I am struggling, because I fear we are mixing our drinks a little. On the one hand, we have had some debate—particularly from the noble Lords, Lord McNicol and Lord Lansley—on the mechanics of a TRA. That is, what sort of people do we want, and how will they be governed? We clearly want competent people, which is to some extent going to be a tough ask—not because people are not clever enough, but because they have not practised this particular activity. On the other hand, the noble Baronesses, Lady McIntosh and Lady Brown, are talking about the politics and economics of trade remedy. In a sense, the noble Lord, Lord Lansley, alluded to the nexus between that decision—the politics of trade—and the role of the TRA. This debate is not unpicking those two activities.

We talk about having a wholly independent TRA, but as a country there seems to be some political convergence around the idea that we have an industrial strategy. Are the Government going to run one independently of the other? I am not sure that Germany does that. Even though Germany is beholden to Brussels, I am pretty sure that its trade policy—the way in which it works through Brussels—is very much beholden to its industrial strategy. Further homework is required for all of us.

I sympathise with the speech of the noble Baroness, Lady McIntosh, on the ceramics industry. That industry benefited in this country from the political clout of Spain and other countries which have similar problems. If we leave the European Union, that support and clout will be gone. That will be true for many industries in this country, not just ceramics—agriculture is a huge loser in terms of lobbying in a post-Brexit world.

The question to ask ourselves is how much clout this TRA will have, when you have got the United States, the European Union and China. Let us say that this is a steel-dumping question. Does it matter what the TRA will do in the face of those challenges? We are arguing all sorts of important things, but by coming out of the European Union, we are reducing any kind of clout we will have in future trade decisions.

The Earl of Kinnoull (CB): My Lords, I rise briefly in support of the noble Baroness, Lady Brown, and associate myself with all her remarks. I also associate myself with the noble Baroness, Lady McIntosh—I agreed very much with what she had to say.

Amendments 101A and 103B are probing in nature, and I will address a few thoughts to this TRA membership question. In Schedule 4, the TRA is proudly declared to be independent. That is important in trade, because, as one goes through Article 6 of GATT, and the 1994 associated agreement on that article, one sees that the whole idea behind trade remedy processes is that they are fair and are not being used as political weapons by the countries wielding them. That independence is therefore philosophically important to preserve. And

[The Earl of Kinnoull]
yet, in Schedule 4 we find that the Secretary of State will appoint all the non-executives. In addition, the non-executives will always be in the majority, and the Secretary of State can fire all of them. To add icing to the cake, the Secretary of State has the power to issue guidance, and the TRA must "have regard" to it. That does not look to me like a recipe for independence. It would mean that the TRA would begin life with a bad image, and it would be difficult for it to appear a useful, independent tool internationally.

I worry that, if another body had a similar structure which might have political interference—although I do not think we would actually operate it badly—we could be on the wrong end of something. We would not be able to criticise, because it would have the same structure. I join other noble Lords in very much looking forward to what the Minister has to say about the independence of the TRA, and about the points that I and others have made.

Baroness McIntosh of Pickering: My Lords, I shall speak to Amendment 101A and, without rehearsing the points, I entirely endorse what the noble Baroness, Lady Brown, and the noble Earl, Lord Kinnoull, said in speaking to the amendment. The Minister was kind enough to have a meeting with the team and myself, but I have this awful feeling that she will not support this amendment. I would like to give her a bit of bottle this evening and say why she must adopt the amendments, particularly Amendment 101A. A similar amendment was not carried in the House of Commons but by a very narrow margin and it goes to this point that a number of noble Lords have said this evening—the process must be, and be seen to be, fair in appointing and sustaining members of the TRA, and they must operate independently and impartially. I make this plea to the Minister: the Government must be seen to rein in some of the powers of the Secretary of State, which will be pretty broad if we let the Bill go to its final stages without making these points.

I entirely support what my noble friend Lord Lansley said about why an independent Trade Remedies Authority is required, and I should have declared an interest: I spent a very enjoyable six months in 1978 when I was very young, very keen, and very green, with the EU Commission—DG IV, now known as DG Comp. We did important things, such as read the *Financial Times*, which was amazing because a number of companies were announcing they were merging without having told the European Commission or the UK home authority, so it is absolutely vital that we have an independent authority such as the Trade Remedies Authority.

To respond to the point made by the noble Lord, Lord Fox, we need to give the businesses in this country the knowledge that there will be a remedy which replicates the remedies that are currently available. I entirely support his point that it will not be EU-wide, but we do need some anti-dumping and retaliatory measures at our disposal in this country.

Lord Fox: It will be very hard to do that—I was not suggesting that they should not have that support.

Baroness McIntosh of Pickering: It will be hard, but I do not think we can let the matter go. That is why Amendment 101A should be on the Marshalled List and not consigned to room 101.

Lord Purvis of Tweed: My Lords, I wish to make two brief points in this large but important grouping. The first is in response to the point made by the noble Baroness and my noble friend Lord Fox. When the Secretary of State spoke at Second Reading of this Bill in the other place, he indicated that the Government's position on the anti-dumping remedies regime would be public long before we considered this Bill. We are, to some extent, debating blind in not knowing what the Government's proposals are. That is regrettable, so if the Minister can give some clarification, that would be very helpful.

The second point is really stimulated by the noble Earl, Lord Kinnoull, and the noble Lord, Lord Lansley: why are the Government continuing with Schedule 4 as it is currently drafted? As the noble Lord, Lord Lansley, said, the proposal would have been that the Secretary of State would appoint the chair of the TRA and then the chair would appoint the chief executive —that is in Schedule 4(2)(1)(a) and Schedule 4(2)(1)(c). If no chair had been appointed, the Secretary of State would appoint. In the Government's Statement on 26 October, they announced the appointment of both the chair designate and the chief executive designate at the same time. I do not know how that interacts with this legislation, and on what basis the chief executive designate was appointed. I am not questioning those two individuals. If the intention was to have a truly independent body, the fact that the first chair had been the UK Trade & Investment representative raises some questions. I am not questioning the quality of the appointments. However, I am not sure how the fact that the announcement of both appointments was made on the same day interacts with the Bill, and on what basis both the chair and the chief executive were appointed as designate at the same time. As the noble Lord, Lord Lansley, said, either that is not consistent with the Bill, so the Government acted beyond how they said they would act, or perhaps we should just delete this aspect in its entirety for the sake of neatness.

Baroness Neville-Rolfe: On Amendment 101A, I agree with proposed new subsection 1(c), where you have,

"a chief executive appointed by the Chair with the approval of the Secretary of State or, if the first Chair has not been appointed, by the Secretary of State".

The latter has already happened, so, as the noble Lord said, that becomes redundant. However, I am not convinced that all the executive members should be appointed by the chair without reference to Ministers. I have been involved in lots of appointments in different bodies over time, and the fact of the matter is that normally appointments are put forward and are approved ministerially, and this helps make the appointments sensible, enduring and independent.

For the same reason, I do not agree with the suggestion of the noble Baroness, Lady Brown, that we should require representatives of different groups. I can see exactly what she is trying to achieve, which is to have

good, sensible people who would care about economics, people and devolved Administrations. However, my own experience is that if you restrain yourself in this way, you find that you are looking for somebody who has to be in a specific category, maybe there is nobody of quality at that time—especially as the pay rates in quangos are quite low compared with other opportunities for these people—and you get yourself into difficulty. I would favour simplicity, and independence achieved by having a separate agency, whatever my views may be on that.

Baroness Fairhead: My Lords, I thank all noble Lords for their contributions to this debate. In particular, I thank my noble friend Lady McIntosh for the first grouping, and the noble Lord, Lord McNicol, for the second. I confess that I was grateful to the noble Lord, Lord Stevenson, for helping me merge these two groupings, but I was probably even more grateful to the noble Baroness, Lady Brown, for saying that she would not extend that to the next grouping as well.

I will try to address these as best I can, given the significant number of elements that were raised. Clearly, a key priority of the Government is to help businesses expand their global presence. However, while we work to help increase exports, we must ensure—I hear complete agreement on this around the Committee—that our domestic industries are shielded from the damaging effects of unfair trading practices and unexpected surges in imports. That is exactly why the Government are setting up the new Trade Remedies Authority—TRA—to give that safety net to businesses, which is provided for by Clause 9 and Schedules 4 and 5.

My noble friend Lady McIntosh of Pickering asked how this related to the Constitution Committee's report. I can confirm that the Government have responded to that report. The main functions and powers of the TRA are set out in the Taxation (Cross-border Trade) Act, and setting up the body, as we are doing in this Trade Bill, is normal practice.

Free trade does not mean trade without rules. The WTO allows its members to provide a safety net, which we are doing. This safety net usually takes the form of an increase of duty on imports of specific goods following an investigation. Trade remedies, as these increased duties are known, are vital to level the playing field and restore our competitive balance. That is critical in areas such as ceramics, steel, and a number of other sectors. Failing to put the trade remedy function in place would have a damaging effect on those industries and the UK economy more widely, and we cannot let that happen.

As several noble Lords have mentioned, this is currently an EU competence. Investigations, decisions and monitoring are carried out by the EU Commission on behalf of EU member states. Once the UK leaves the EU, the European Commission will no longer perform those functions. That is why we are creating the TRA. This will ensure that we can continue to provide that safety net and help protect the 2.5 million people who work in the ceramics industry, for example. The framework for our trade remedy system is set out in the Taxation (Cross-border Trade) Act 2018. My officials worked with UK industry, including the ceramics and steel industries, during the development of that framework.

My noble friend Lady McIntosh asked about secondary legislation on injury calculations. The detail of the technical assessments of the TRA will be set out in secondary legislation under the Taxation (Cross-border Trade) Act. This has already been passed by the other place, which agreed that the negative procedure is the appropriate scrutiny mechanism.

8.45 pm

Baroness McIntosh of Pickering: This is a new procedure, but presumably it is open to an individual Member of your Lordships' House to intervene to say that they do not agree with the negative procedure and switch it to the affirmative if they made the right case to do so.

Baroness Fairhead: I confess that I am unaware of the protocol in this regard. It is a ways and supplies Act and was deemed by the Speaker to be such, but I will leave that point to those who are more au fait with protocol.

Lord Stevenson of Balmacara: I am not sure that this will help very much, but a negative procedure is a negative procedure. It can be questioned, but the way to do so is by tabling an amendment within the requisite period after the order has been laid that would be fatal to it. That is normally described as the nuclear option, which suggests that it does not happen very often—in fact, it has happened only once in the past five years, I think; and we on this side of the House are certainly chary about doing it. The affirmative procedure is actually not that much more effective: you still need the nuclear option, but at least there is a requirement on the Government to bring it to the House, so it will be debated, irrespective of their wishes.

Baroness Fairhead: I thank the noble Lord for that clarification.

My noble friend also raised the economic interest and public interest tests and how they would be interpreted by the courts. The economic interest test will be based on the list of economic criteria set out in the Taxation (Cross-border Trade) Act—I think I will call it the TCBTA for brevity. The TRA must take all of those into account, and so must the courts. With regard to the public interest, as part of the final decision-making, the Secretary of State will have an opportunity to intervene where there are circumstances in which the imposition of trade remedy measures are not, in his or her view, in the public interest. This could include national security considerations, for instance, but other examples may arise in individual cases, so it is important that the Secretary of State has a degree of discretion in this area such that all wider public interest considerations are taken into account. The ability of Ministers to undertake a final sense check in this way is a common feature in many comparable regimes, such as Australia and Canada.

[Baroness Fairhead]

Stakeholders have expressed their support for the establishment of the TRA. The CBI said that it strongly supported the initiative to set it up, and the British Ceramic Confederation called for the Government to prioritise the TRA to ensure that it will be fully operational by the March 2019 deadline, and this must include appointing the board.

The final area raised by my noble friend was about whether poor social and environmental standards would be taken into account. We recognise that the EU has recently introduced reform to take poor social and environmental standards into account. The UK plays an active role in upholding labour and environmental standards across the world both as a member of the ILO and by actively promoting human rights. However, our view is that trade remedy cases are not an appropriate vehicle for such issues, and these factors are not referred to in the WTO. We want to ensure that economic growth, development and environmental protection go hand in hand. We are exploring all options in the design of future plurilateral and bilateral trade and investment agreements, including with regard to human rights and environmental and labour protections. In practice, any cost advantages enjoyed by an exporting country as a result of low labour or environmental standards or costs will be reflected in its export prices and hence will already be taken into account when calculating the injury margin.

I turn now to Amendment 82, tabled by the noble Lord, Lord Purvis, and Amendment 83, tabled by the noble Lord, Lord Stevenson. I assure the Committee that Clause 10(1)(b) already allows the Secretary of State to seek,

"advice, support and assistance … in connection with the … functions of the Secretary of State relating to trade".

This could include the conduct of trade within a customs union and the impact of third-country trade remedy measures on UK consumers. Were we to accept this amendment, it could undermine the intended non-exhaustive nature of the current drafting and potentially make it less effective.

On Amendment 84, tabled by the noble Lord, Lord McNicol, we appreciate the need for the TRA's activities to be transparent. Paragraph 31 of Schedule 4 already requires the TRA to report annually on the exercise of its functions. We would therefore expect the TRA to record any requests from the Secretary of State for advice, support and assistance in its annual report. This is because this would be considered part of the TRA's statutory functions. We therefore do not feel that this amendment is required.

Turning to Amendments 101A and 103B, tabled by the noble Baroness, Lady Brown, whom I met last week, I confirm that we are committed to supporting UK manufacturers and producers. That is why we have engaged so extensively with industry during the establishment of the TRA. However, we do not believe that representatives of any specific organisation should be on the TRA board. It is vital that it is, and is seen to be, wholly impartial, and for the membership to be based on securing the right blend of skills and expertise. That said, I assure the Committee that the TRA chair job description makes it clear that they will be expected to maintain effective relationships with stakeholders—including manufacturers, trade unions and the devolved Administrations—and to incorporate their perspective into board discussions where appropriate. We will also ensure that the appropriate terms on working with stakeholders are included in the terms of the TRA chair's contract. Some of the TRA's wider senior leadership, including its non-executives, may have experience in a particular sector, devolved nation or region. However, that alone must not be why they were chosen. The noble Baroness, Lady Brown, also asked whether we could have specific representatives. We believe that could possibly undermine the TRA's independence and impartiality, and we want to make sure that the TRA's expertise is complete by allowing the board members to be appointed not on the basis of where they are from but because they have the right skills and expertise for the blend of skills required on the TRA.

On Amendment 102, I assure the Committee that we are committed to ensuring the independence, impartiality and expertise of the board. That is why the Secretary of State has requested that the Commissioner for Public Appointments regulates all public appointments to the TRA.

My noble friend Lady Neville-Rolfe asked why we were setting up a new body rather than just exercising the function within government. I agree entirely that the important thing is that the board has to be independently minded. Decisions on these cases can have a profound impact on the markets. That is why we need an objective and independent investigation process that businesses can trust. The TRA will be responsible for carrying out detailed technical investigations and delivering impartial recommendations on trade remedies to the Secretary of State. The Secretary of State will then be responsible for making a final determination on whether to accept or reject recommendations to impose measures.

We have also been asked—again, by my noble friends Lady Neville-Rolfe and Lord Lansley—why we have not established the TRA as an executive agency. We looked at best-practice comparable agencies across the world, and we are trying to ensure the right balance between independent, impartial, objective investigations that our businesses and trading partners can trust and accountability. That is the critical thing that we looked at.

The Commissioner for Public Appointments will be responsible for providing independent assurance that the Secretary of State follows the Governance Code on Public Appointments when appointing TRA non-executives. He or she will be required to comply with the governance code, which outlines rules around term lengths and renewing the appointments of non-executive members. Executive members will be TRA public servant staff, whose recruitment will be made in compliance with the usual public sector rules. The governance code makes it clear that:

"The ultimate responsibility for appointments … rests with Ministers".

It states that there is an important role for Parliament in ensuring Ministers are held,

"accountable … for their decisions and actions".

However, this scrutiny should not extend to approving or vetoing their appointments. This would be an expansion of standard Select Committee powers.

Amendment 103, tabled by the noble Baroness, Lady Jones, concerns maintaining safety and public confidence in the food we eat. She is not here, so all I can do is confirm that this Government will remain committed to environmental protection standards once we have left the EU.

Amendments 103A and 107A were tabled by my noble friend Lord Lansley. I reassure noble Lords that this power is intended simply as an operational contingency measure in the TRA. As such, it can be used only before the first chair has been appointed. My noble friend and other noble Lords asked whether that still makes sense given we now have a chair-designate. I will definitely reflect on that, because it is a good point. On appointing the chair, as I said, the chief executive will be a public servant and, as my noble friend Lord Lansley agreed, it would not be appropriate for a Select Committee to be involved in their recruitment. I assure the Committee that the chief executive-designate has been recruited on merit following a fair and open competition, in line with the Civil Service Commission *Recruitment Principles*. All future TRA chief executives will be appointed on the same principles.

My noble friend Lord Lansley and the noble Lord, Lord McNicol, asked whether the ITC should conduct pre-appointment scrutiny. It is the view of officials in the department that the TRA chair role does not meet the Cabinet Office's criteria for determining whether public appointments should be subject to Select Committee pre-appointment scrutiny. However, we are committed to ensuring that appointments are conducted in the right way, consistent with standard practice across government. The governance code states:

"Ministers when making appointments should act solely in terms of the public interest",

and, likewise:

"All public appointments should be governed by the principle of appointment on merit".

We therefore feel that there is already sufficient oversight and scrutiny of that process in place.

9 pm

Lord Stevenson of Balmacara: I will intervene before the noble Lord, Lord Lansley, does—I am sure he was just about to. I do not want to extend this, but the noble Baroness has just spent slightly longer than three or four minutes playing up how important this role is and how crucial the new body will be to the future of our trading policy. She explained, in some detail, the difficult position, the reason it is independent and everything else. She cannot also then argue that it does not fulfil the very clear lines given by the noble Lord, Lord Lansley, on the important need for independence and for it to be seen to have the trust of all concerned, including Parliament. Will she take that back?

Baroness Fairhead: I am happy to take that back. I have heard the point. I asked whether there was a practice and was advised that this was the view we had arrived at, but I will certainly reflect on what the noble Lord said and take it back for further consideration.

On Amendment 104, tabled by the noble Lord, Lord McNicol, it is important that the Secretary of State has the ability to ensure that the TRA has the right leadership in place. Again, I reassure the noble Lord that the practices and procedures will be followed.

My noble friend Lord Lansley speculated on whether we could use an existing arm's-length body rather than create a new one. There are two reasons why we believe we need to create a new non-departmental public body. First, no existing NDPB possesses the required pool of talent and expertise, or, secondly, offers the right balance of independence and ministerial oversight, to deliver the trade remedies framework as set out in the TCBT Act. I can confirm that we reached that decision following a thorough review of the arm's-length bodies landscape.

Amendments 105 and 106 refer to the Secretary of State, rather than the chair, appointing executive members of the TRA board, and would therefore expand the Secretary of State's appointment powers. We believe that might undermine the TRA's independence. It would also be undesirable to include a statutory requirement to have regard to this set of criteria, as it might be unnecessarily restrictive. My noble friend Lady Neville-Rolfe has great expertise in this area. As she knows, it is important to have the right skills and the right blend on a board. For example, it may be important for some executive members to have HR or finance experience to ensure the TRA's smooth operation. This would be a decision for the TRA chair.

Turning to Amendment 107, under paragraphs 9 and 10 of Schedule 4, the TRA chair is able to remove an executive member of the TRA board, and the Secretary of State a non-executive member, if they consider that person,

"unable or unfit to carry out the functions of the office".

This already allows the TRA chair and the Secretary of State to determine whether to remove board members in the event that they become insolvent, receive a criminal conviction or are otherwise deemed unsuitable. We therefore do not believe that this amendment is necessary. In addition, all members of the TRA will be required to comply with the Cabinet Office's *Code of Conduct for Board Members of Public Bodies*, which sets out the seven principles of public life that should govern the behaviour of public officeholders.

Turning to Amendment 108, let me assure noble Lords that the TRA will be required to follow the relevant provisions in *Managing Public Money*, which sets out that arm's-length bodies must maintain a register of gifts. We would also expect the TRA to record in its annual report any gifts it receives.

I thank the noble Lord, Lord Stevenson, for tabling Amendment 109. We welcome the devolved Administrations' interest in the TRA and understand the need to ensure that they are able to engage with it in the right way. I can confirm that the Secretary of State has committed to sharing the TRA's annual report with the devolved Administrations once he has received it. I can also confirm that we have been in contact with, and will shortly be writing to, the devolved Administrations setting out further commitments.

On Amendment 110, tabled by the noble Lord, Lord McNicol, there are certain situations where the Secretary of State will need to issue guidance to the

[Baroness Fairhead]
TRA. That is why it would not be appropriate to set out certain detail in legislation. Issuing guidance instead of legislation would give the TRA the operational flexibility it needs to be able to decide how to deal with matters on a case-by-case basis. However, to protect the TRA's independence, and to ensure that this power is used only in appropriate circumstances, we have placed clear statutory restrictions on the Secretary of State's ability to issue that guidance.

I am aware that I possibly have not fully answered the question from the noble Baroness, Lady Brown of Cambridge. We recognise the critical role played by producers and manufacturers: that is exactly why we have put a system in place and engaged extensively. We look forward to continuing to do so.

My noble friend Lady McIntosh suggested that it was not adequate that the Secretary of State was required only to have regard to the independence, impartiality and expertise of the TRA. The imposition of a duty on the Secretary of State is a common approach and can be found in other relevant legislation. For example, the Higher Education and Research Act 2017 requires the Secretary of State to have regard to the need to protect the institutional autonomy of English higher education providers when issuing guidance to the Office for Students. These are statutory requirements and cannot be ignored.

Lord Purvis of Tweed: I do not wish to make a glib point, but the Minister has referred to the Office for Students. The episode in relation to that office should remind us why we take seriously these aspects about the recruitment of those who will be the most senior in the TRA office. The Office for Students should be a good example for the Government of how an appointment process, while it might be prescribed in legislation, can be conducted very badly in practice. We are trying to avoid a repeat of what happened with the Office for Students.

Baroness Fairhead: I am grateful for that clarification, but that is one example that was just plucked out and it has a clear statutory requirement.

On the basis of the information I have given and my commitment to take some of these points back for reflection, I ask noble Lords not to press their amendments.

Baroness McIntosh of Pickering: I am most grateful to the Minister for her full response. Picking up the mood of the Committee, I think there are a number of issues here on all sides that were reflected in the other place. We do not wish to delay the debate this evening, but we will return to this issue on Report. That is no reflection on my noble friend's views, but perhaps on the intransigence of her department.

Clause 9 agreed.

Clause 10: Provision of advice, support and assistance by the TRA

Amendments 82 to 84 not moved.

Clause 10 agreed.

Amendment 85

Moved by ***Lord Stevenson of Balmacara***

85: After Clause 10, insert the following new Clause—

"Appeals against decisions by the TRA and Secretary of State

(1) This section applies to the following decisions—

(a) a decision by the TRA under provision made by or under Schedule 4 to the Taxation (Cross-border Trade) Act 2018,

(b) a decision by the Secretary of State under provision made by or under Schedule 4 to the Taxation (Cross-border Trade) Act 2018.

(2) A person affected by a decision to which this section applies may appeal against it to the Upper Tribunal.

(3) The means of making an appeal is by sending the Tribunal a notice of appeal in accordance with Tribunal rules.

(4) The notice of appeal must be sent within the period specified, in relation to the decision appealed against, in those rules.

(5) The notice of appeal must set out—

(a) the provision under which the decision appealed against was taken; and

(b) the grounds of appeal.

(6) The grounds of appeal must be set out in sufficient detail to indicate—

(a) to what extent (if any) the appellant contends that the decision appealed against was based on an error of fact or was wrong in law or both; and

(b) to what extent (if any) the appellant is appealing against the exercise of a discretion by the TRA, by the Secretary of State or by another person.

(7) In this section references to a decision under Schedule 4 to the Taxation (Cross-border Trade) Act 2018 includes a decision not to use an action available under the powers in that Schedule.

(8) For the purposes of this section a decision to which effect is given by the exercise or performance of a power or duty conferred or imposed by or under an enactment shall be treated, except where provision is made for the making of that decision at a different time, as made at the time when the power is exercised or the duty performed."

Lord Stevenson of Balmacara: We can be relatively brief on these amendments; they are substantial in their drafting, and the points have been made so we do not need to repeat them. We have been dealing until now with the procedures and set-up of the new body. These are proposals for guidance on some of the ways in which future policy might be developed and taken forward. Having said that, Amendment 85 follows an exchange in the other place, where it was confirmed that there would be an appeals mechanism, but there is still no reference to that in the Bill, as far as I can see. This is a suggestion for a way in which the appeals mechanism—which should be there or, as agreed in principle, will be there—against decisions by the TRA and the Secretary of State might be set out. I offer it to the Government for their consideration.

Lord Lansley: I am not clear. Is the noble Lord's intention behind the amendment that the Upper Tribunal would look at the merits of the decision or simply at the processes? Are we simply talking about a judicial review process?

Lord Stevenson of Balmacara: I read that a few moments ago and now I have lost it. I think it is on the merits and on the process. To that extent, because this is a probing amendment, I will not push this too hard and it is for the Government to decide. In my limited experience in your Lordships' House, every time that I have led on a Bill we have come up against this question of what an appeal actually means. I have detected that the Government have gradually been moving away from merits-based appeals, because they seem to take up an awful lot of time, and argue that appeals done simply on a JR basis are becoming increasingly softer-edged, rather than being simply about the process. Therefore, the two come together and the legislation has tended towards being purely on the procedural elements.

I retain the rather purer view that there should always be an appeal system in some way, in which case it should not simply be limited to the procedures because that just restarts the clock. It should also include merits. But that is a matter for the Government to consider. The question was: if, in the other place, the Secretary of State has confirmed that there would be an appeal system, what is it and can we please have it clearly explained before we get to Report?

Baroness Neville-Rolfe: Has the noble Lord considered whether one could have an appeal to the courts? Of course, on the EU model that we were discussing earlier, the appeal is to the ECJ.

Lord Stevenson of Balmacara: I will get through this very quickly and then questions can flow in. Amendment 85, which has already been accepted, therefore sets out an appeals process for the Government to respond to. Amendment 86 relates to how these are disposed of and the procedures for that. The two go together and will be difficult to separate, but again the Government must take that forward.

We have already had reference to how recommendations from the TRA for action or no action would be based on two issues—an economic interest test and a public interest test—but we do not have any definition of those. They are obviously good ideas and sensible approaches, around which decisions can be placed, but the narrow question of what they constitute and, more importantly, how they would be kept in scope with how people's views change over time, is not dealt with in the Bill. Therefore, Amendment 87, which deals with the public interest test, and Amendment 88, which deals with the economic interest test, set out not so much the detail of what they consist of but the process under which they might be organised.

Lord Lansley: I agree that the public interest test is not defined anywhere, but is the economic interest test not defined in paragraph 23 of Schedule 5 to the Taxation (Cross-border Trade) Act?

Lord Stevenson of Balmacara: I am grateful to the noble Lord for his interventions, which are always helpful, but I was going on to say that the economic interest test is different from the public interest test because some aspects of it are fleshed out. But the intention of Amendment 88 is to extend that slightly to ensure that two things happen. The first is that there should be a consultation about what the economic interest test is among those whose interests might be affected by it. Those involved in,

"employment, economic health and prosperity, and productivity",

which includes trade unions, businesses and consumers, should be consulted on how one constitutes the economic test.

Secondly, it is important that the test must reach not just for a national economic view but down to a regional, or even sub-regional, point of view. The suggestion would be for the devolved Administrations and for the various regions of England to be parts of a group that could respond on things. Clearly, an economic test dealing with a small aspect of the ceramics industry based in a particular area will be different from one dealing with a major national employment issue.

Again, these amendments are not meant to be accepted as written, but they are probing suggestions to get the Government to flesh out in more detail their thinking behind this.

We always talk about what is in the public interest but never define what that means. I am not trying to define it. I am saying that it would be useful to have a process under which, from time to time, a Secretary of State who wished to employ that as part of the process for the TRA had to consult and then come forward with proposals through Parliament for what that constituted. That is what these amendments are all about.

Finally, Amendment 89 in my name suggests that TRA investigations can be considered complete only when they involve the devolved Administrations and the devolved authorities. I hope that will also commend itself to the Government. I beg to move.

9.15 pm

Baroness Brown of Cambridge: My Lords, I will speak briefly to Amendments 90A and 90B in my name. Again, I thank my noble friend Lord Kinnoull for adding his name to both amendments.

As we have heard, the Taxation (Cross-border Trade) Act sets the overarching rules under which the UK's new Trade Remedies Authority will operate. The Act states that trade remedy measures do not need to be adopted if the TRA or the Secretary of State decides that they do not meet the economic interest test, as we have heard. When applying the EU's equivalent—the Union interest test—special consideration must be given to the need to remove the injurious practice, that is the dumping or subsidy by another country, and restore competition. It is this special consideration that gives the EU test a presumption in favour of the adoption of measures. The materials industry, in particular, is concerned that this consideration is absent in the UK Act.

I appreciate that government amendments at Report stage of the Taxation (Cross-border Trade) Act improved the wording around the economic interest test and Ministers have assured manufacturers that the intention is that there is a presumption in favour of adoption. However, the words contained in the Act fall short of

[Baroness Brown of Cambridge]
such a presumption. Amendment 90A would give clearer direction to the TRA in exercising its duty to conduct an economic interest test. The intent is to establish firmly a presumption in favour of adoption of measures and hence to continue the protections that UK manufacturers currently benefit from while we are members of the EU. I recognise that the Government have indicated that the presumption in favour of adoption is their intent and that there may be other ways to strengthen this message to support and assure our manufacturers. I look forward to the Minister's response as to how this might be addressed.

I think we have probably already discussed Amendment 90B. The noble Baroness, Lady McIntosh of Pickering, already highlighted the issue of rules about the operation of trade remedies coming through secondary legislation as a result of the provisions of the Taxation (Cross-border Trade) Act. I will not go on for much longer about it because we have already heard the Minister's response. But I would like to take the chance to emphasise again that these are hugely important rules that will have a profound impact on UK manufacturers' ability to get a level playing field when overseas competitors are not playing by the rules. I also emphasise my strong conviction that these statutory instruments should be affirmative ones, approved by resolution of both Houses.

The Earl of Kinnoull: My Lords, I do not want to comment on the two amendments I have signed. I want to urge some support for the noble Lord, Lord Stevenson of Balmacara. I have in front of me Article 13 of the 1994 agreement which supplements Article VI of GATT. Entitled "Judicial Review", it says:

"Each Member whose national legislation contains provisions on anti-dumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 11".

It then goes on to say that the tribunal must be independent of the authorities that have made the determination. It is an international obligation for there to be exactly what the noble Lord, Lord Stevenson, proposes in his amendments. I think we need to pick that up and put it in the Bill.

Baroness Neville-Rolfe: My Lords, I apologise to the noble Lord, Lord Stevenson, for interrupting him. Of course, there is a requirement to have proper appeals, as has just been elegantly explained by the noble Earl, Lord Kinnoull, but I was interested in whether they had to be the subject of special tribunals or whether they could in fact be fitted into the existing court system. My main concern as a former business person is with speed. Sometimes tribunals, public interest tests and so on can be a field day for lawyers and the whole thing can take a very long time. That is not what we want. We want to be able to make sure that the interests of our industries and other players are properly protected.

Lord Lansley: The noble Lord, Lord Stevenson, is absolutely right that the economic interest test is present in both Schedules 4 and 5 to the Taxation (Cross-border Trade) Act. As set out there, the test seems to me to be capable of being, and is required under the legislation to be, taken down to the level of individual industries, looking specifically at affected industries and consumers and the likely impact on particular geographic areas or particular groups. It seems to me that the economic interest test is already capable of being disaggregated in the ways that the noble Lord is calling for.

The noble Lord and I have joined together on the issue of the public interest test in the past. I am not sure that you can define it in advance—that is the difficulty with it. Trying to write down what public interest the Secretary of State has to weigh up seems to be intensely difficult, as distinct from the economic interest test. It might include defence industries and security interests, and we see that coming through in relation to competition. We also see it in broadcasting and competition regimes. There are a range of competition-specific public interests, and I do not think that we are necessarily looking to restrict the test in that way in this legislation. Frankly, we might be better off simply looking at it and, if there are particular public interests that have to be protected as time goes on, we should perhaps have the power to add to them by way of regulation, as is the case with competition legislation.

Baroness Fairhead: My Lords, I thank the noble Lords, Lord Stevenson and Lord McNicol, and the noble Baroness, Lady Brown, for tabling these amendments. I take the opportunity to clarify initially that the Trade Bill does not set out the policy framework that the TRA will be responsible for operating. These provisions are already set out in the TCBT Act 2018, including the economic interest test, which places a requirement on the TRA to consider the wider economic impacts of imposing measures on other affected groups, such as downstream users and consumers.

The economic interest test provides continuity from the Union interest test in the current EU system. However, we listened carefully to concerns that the Union interest test is, for example, too opaque and does not set out how different interests are to be considered. Therefore, as my noble friend Lord Lansley correctly stated, the Act specifies the economic factors which must be considered under the test, and that will provide businesses with greater clarity over how the test is applied. That is what business has asked us to do. In terms of the public interest test, I can only endorse what my noble friend Lord Lansley said.

In addition, there is an explicit presumption in the Act that, where injury is caused by dumped or subsidised goods, the TRA will make a recommendation to the Secretary of State for the imposition of measures. The Government amended the legislation during its passage to make that absolutely clear. The burden of proof rests on the TRA to show that measures will be detrimental to the wider economic interest; otherwise it must make a recommendation, and any failure to do so will be subject to appeal. I assure your Lordships—particularly the noble Baroness, Lady Brown, who raised this matter—that this presumption will have the effect of ensuring that special consideration is given to the injury caused to UK industry by imports of dumped

or subsidised goods. I wanted to say that explicitly in Committee here because I know of some of the concerns in the ceramics industry.

The Act also places the same presumption for the imposition of measures on the Secretary of State and makes clear that the Secretary of State can only reject the TRA's recommendations for measures on public interest grounds, or where he determines that the economic interest test is one the TRA could not reasonably have made. Any such decision can be appealed by interested parties and must be explained in a Statement to the other place.

With respect to Amendment 87, tabled by the noble Lord, Lord Stevenson, I remind the Committee that we are committed to ensuring that our industry receives protection. That is why we will transition those EU measures that matter to UK industry, including on steel, ceramics and chemicals, into our system once we have our own, independent trade policy. We will monitor the effectiveness of the trade remedies system and, if we find that it is not working as it should, we will of course make any changes necessary.

As I mentioned before, I am sure that the Committee will understand that the public interest issue is not something we can review or consult on. What constitutes public interest will change depending on the economic and geopolitical circumstances of the day, and the Government must have the flexibility to respond to such changes. This is a power that we expect to be used in rare cases and, when it is, again the Secretary of State will be required to lay a Statement before the other place justifying its use.

Your Lordships have raised rightful questions on the role of the devolved Administrations in relation to trade remedies. Importantly, the economic interest test mandates that account must be taken of particular geographic areas, as well as other economic matters that may be considered relevant. This will ensure that the impacts of measures on different regions—including Scotland, Wales, Northern Ireland and regions of England—are given due consideration where appropriate and will include any information that is shared, or issues that are raised, by the devolved Administrations.

Further, regarding Amendment 89, tabled by the noble Lord, Lord Stevenson, I reassure the Committee that any party not defined as an interested party may register its interest in a particular case with the TRA and will then become a contributor. This will include the devolved Administrations. Contributors will be invited by the TRA to submit relevant information, which it will be obliged to take into account in the investigation as appropriate. My officials will advise the devolved Administrations when an investigation is opened by the TRA, which will alert them to the need to take a decision on whether or not to register.

Where the TRA terminates an investigation without recommending the imposition of measures, it is required to publish details of its recommendations and decisions. Contributor status will mean that DAs will automatically be notified by the TRA of actions it has taken. But I recognise that they will also—rightly, in their capacity as devolved government—have an interest in the decision made by the Secretary of State, including in having an opportunity to offer views on relevant public interest considerations which he should take into account when arriving at a decision. I can confirm that my officials will work with their colleagues in the devolved Administrations to put appropriate arrangements in place.

I turn now to Amendment 90B and thank the noble Baroness, Lady Brown, for tabling this amendment. As I have explained, the Taxation (Cross-border Trade) Act has already been considered, and passed, by the other place, which has accepted that the negative procedure is the appropriate scrutiny mechanism, as we discussed earlier.

With regards to Amendments 85 and 86, the noble Lord, Lord McNicol, is right that there should be an appeals process; indeed, this is necessary to be compliant with our WTO obligations. We do not support the amendment, but I assure noble Lords that there are already powers in the Taxation (Cross-border Trade) Act to establish an appeals system for the UK's trade remedies system, and my officials have been working closely with the MoJ to develop a clear, transparent process. I completely accept the point made by the noble Earl, Lord Kinnoull, about how critical this is. I also agree with my noble friend Lady Neville-Rolfe that speed matters to companies too.

There will be an initial consideration when an appeal is raised by the TRA, followed by a right of appeal to the Upper Tribunal. This ensures that basic administrative errors can be resolved more quickly and effectively than moving straight to the tribunal, so limiting those cases to more substantial issues of law. It combines independence, as required by WTO law, with the advantages of a proportionate and efficient system. As the Secretary of State informed the International Trade Select Committee in his letter of 14 January, the judicial route for appeals will be to the tax chamber of the Upper Tribunal. The Tribunal Procedure Committee, the responsible statutory body, has recently completed a consultation on the rule changes required to allow the Upper Tribunal to hear trade remedy cases. Once that process has been fully completed, the necessary appeals statutory instrument will be laid in due course and scrutinised in the normal way.

Our proposed regime draws on international best practice from comparable WTO members. Its measures provide for the assessment of whether there was an error in law based on the evidence that was available to the decision-maker at the time, and some include processes akin to the TRA's reconsideration.

I hope my responses have provided reassurance to your Lordships and that the noble Lord feels able to withdraw his amendment.

9.30 pm

Lord Stevenson of Balmacara: I am very grateful to the Minister for that very full response. I think she covered most of the points that I raised. I am very happy to read *Hansard* but I am sure I will be satisfied when it comes to it.

The only issue that I would like to leave with her and her team is that she said, with particular reference to the operation of the public interest test and the economic interest test, that if they were not working they would be changed. Obviously learning from

[Lord Stevenson of Balmacara]
experience must be right, but my question is: are there powers in the existing draft legislation to allow that? If not, would it not be sensible to take them at this stage? We would be happy to co-operate on that in those circumstances. With that, I beg leave to withdraw the amendment.

Amendment 85 withdrawn.

Amendments 86 to 89 not moved.

Amendment 90 had been withdrawn from the Marshalled List.

Amendments 90A and 90B not moved.

Amendments 91 to 96 had been withdrawn from the Marshalled List.

Clauses 11 to 14 agreed.

Clause 15: Commencement

Amendment 97 not moved.

Clause 15 agreed.

Amendment 98

Moved by ***Lord Stevenson of Balmacara***

98: After Clause 15, insert the following new Clause—

"Conditions of commencement

The provisions in Parts 1 to 3 of this Act may only come into force if—

(a) a withdrawal agreement and a framework for the future relationship have been approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown for the purposes of section 13(1)(b) of the European Union (Withdrawal) Act 2018, or

(b) the House of Commons has passed a motion "That this House approves of the United Kingdom leaving the European Union without a withdrawal agreement and a framework for the future relationship"."

Lord Stevenson of Balmacara: By this stage of the proceedings the Minister is usually tearing up her notes and packing her bag while the team are leaving the Box, and the Committee is allowed to descend into a sort of torpidity at the end of a long and heavy day—day four, in this case—while we heave a sigh of relief. However, I have always wanted to table an amendment about the commencement of a Bill because it is something that we always forget to look at.

I was mulling this over a few weeks ago and thinking about what aspects of commencement one could look at. It is all very straightforward, although Clause 7(1) has a strange thing where it says:

"Regulations under section 1(1) or 2(1) may … make transitional, transitory or saving provision".

I was wondering what on earth they were and thinking about a suitable probing amendment when I happened to run into the noble Lord, Lord Hannay, who said, "I've been thinking about commencement and we ought to do something about it". Out of that we hatched this wonderful amendment, which is the last one that we are going to move tonight, and I hope the Committee will accept it as it stands. It provides a sensible and clear exposition about what position Ministers should be in before they begin to implement these procedures. It is very simple, inserting a new clause further to Clause 15(2), which says that the powers that would otherwise,

"come into force on such day as a Minister of the Crown may by regulations made by statutory instrument appoint; and different days may be appointed for different purposes",

Those are two quite clear conditions that have to be met. I beg to move.

Lord Purvis of Tweed: My Lords, I am happy to contribute to the successful realisation of the noble Lord's ambition to have an amendment on commencement.

I want to make two final comments because I know the Committee has been working hard in offering scrutiny to the Bill, but before I do so I wish to thank the Ministers, and indeed the whole team, who have tried to answer on what was on some occasions an impossible situation. Earlier the noble Lord, Lord Bates, aptly commented on how fast things have been moving, and I think the Ministers have had a degree of sympathy from the Committee. However, this is serious. As the noble Baroness, Lady Neville-Rolfe, said, businesses need urgency as they operate. They need urgency in their day-to-day practices but also when it comes to knowing what the Government's position is.

In advance of the next stage, if there is one, it is helpful that all the usual channels are here. I do not think the Committee needs any reminding of the decision of this House, very clearly stated, that greater information is needed on both the Government's policy and intentions on how it sees trade agreements being put in place, as well as the relationship with the devolved Administrations. If that is not forthcoming, the House has sent a clear signal that there will not be a Report stage. However, on the basis that there will be, the information that is needed on the current position on the intended trade agreements needs to be forthcoming. There also needs to be clarity on—if we are going to be crashing out on WTO rules—the position of operating on non-certified WTO rules.

The relationship with the devolved Administrations, while a little clearer, needs more fleshing out. This is not just about constitutional courtesies with the Scottish and Welsh Parliaments and Northern Ireland authorities. Trade agreements could disproportionately affect parts of the United Kingdom, which will affect livelihoods and public services in those areas. They need to be not just consulted, but involved. Contrary to the Government simply wanting continuity agreements for trading relationships, we also want to see the rolling over of the same amount of parliamentary scrutiny that the European Parliament would afford trade agreements, which this Parliament will be denied unless this Bill is amended.

Finally, we need to be looking forward to the future. The noble Lord, Lord Lansley, and others, have made very constructive contributions. If we are to have a customs arrangement—which, if it covers the majority of our trade with our biggest market, will be a customs

union—then the clarity about how that will be conducted will be important. While we are at the end of the Committee stage, I hope that the Minister has received strong signals that there are still questions that need to be answered. Those answers need to be forthcoming before this House will consider the Report stage.

Lord Hannay of Chiswick: My Lords, I am not sure that the noble Lord, Lord Stevenson, did me a great favour by alleging that I had partial paternity of this amendment, but I will leave that to one side. It is a very simple amendment, setting in statute the view that has been expressed twice by this House, by massive majorities, and once in the House of Commons last week: that leaving the European Union on 29 March by default without an agreement should be excluded. That is what this amendment proposes to do. It does not prevent this Act, as it would be, coming into effect in the event of the meaningful process being successfully completed in the other place. Nor does it do so if the other place should, in the extraordinarily unlikely circumstances, actually decide that we should leave without a deal. However, it rules out leaving by default as a condition for the entry into force of the provisions in this Act. No more needs to be said, and I have a feeling that we may wish to debate that rather more decisively on Report.

Lord Lansley: My Lords, I am speaking on behalf of my noble friend Lady Altmann, who is unable to be here and asked me to extend her apologies. I think she would have shared the view of the noble Lord, Lord Hannay, that Amendment 98 would not prevent our exit without an agreement, which is the default situation under the statute law as it remains, but it would certainly enable one to put into the equation consideration of the damage and chaos that would result if one were to leave by default without an agreement and without the statute book and continuity agreements being in place. Both Houses would have to think hard about that. It is a contest between different visions of what kind of chaos might ensue. Unfortunately, that is essentially where we are.

My noble friends on the Front Bench have done a grand job, not least in keeping us on track, wherever possible, in understanding the importance of getting this legislation into the right structure rather than being distracted too often and too far into discussion of Brexit. I think we agreed at Second Reading that the Bill is occasioned by Brexit but is not really about it; nor, technically, is it about the future processes and structures of free trade agreements. Their approach has enabled us to have what I think will be some interesting, positive and constructive discussions on Report, arising out of this Committee, when we can really focus on one or two specifics. My noble friends will have been given an indication of what kinds of considerations will be important to the House in thinking about free trade agreements as they come along.

Lord Hain: My Lords, I realise that the hour is late, but I rise to support Amendment 98, which would make it much more difficult for the Government to preside over a default no-deal Brexit, and to encourage the development of alternative strategies.

Due to the failure of the Government to develop a credible Brexit strategy, there is now a grave danger of the UK crashing out of the European Union on 29 March—in just over 50 days' time—as the default option. This would have truly devastating consequences. However, because of the Brexit-related legislation already on the statute book defining exit day as 29 March 2019, it is possible that Parliament will not have the powers to stop it happening.

The amendment would therefore put a limitation on the commencement of the Trade Bill and provide that Clause 2(1), which gives the Government powers to implement international free trade agreements, can be implemented only on the condition that either: Parliament has approved a negotiated deal; the Government have requested an extension of Article 50; Parliament has approved a no-deal departure; or Parliament has voted for a second referendum. It would also offer your Lordships' House a chance firmly to reject the possibility of the UK crashing out of the EU in a no-deal scenario.

The hard Brexiteers of the European Research Group, who assert that no deal would be an acceptable option, argue that Britain's trade outside the EU is increasing at a much faster rate than trade with EU countries. However, this ignores the fact that measuring growth starting from a much lower base is always higher in percentage terms. They also fail to mention that trade with non-EU countries is not a binary choice and has been boosted by the EU's own trade agreements with those countries, from which the UK benefits as an EU member—witness Germany's spectacular trade increases with China, for instance. If noble Lords have any doubt about this, they should look at the website of the Department for International Trade. In the case of the recent trade agreement between the European Union and Canada, we read:

"UK trade with Canada up 14% since new free trade agreement introduced".

This is a reference to CETA, the Comprehensive Economic and Trade Agreement between the EU and Canada, which was signed in 2017 after seven years of negotiations. EU free trade agreements with non-EU countries such as Canada, South Korea and Japan were negotiated with the leverage and weight of the 500 million-strong market of the whole EU, which the UK will lose after Brexit. Brexiteer fantasies about WTO rules ignore the complexity of the necessary reallocation of the UK's share of EU tariffs and quota schedules, which will require difficult negotiations. They also disregard the application of rules of origin to UK goods trying to enter the EU market, which the Government have previously estimated could cost firms between 4% and 15%.

9.45 pm

The dire consequences of a no-deal Brexit were summarised by the *Financial Times*:

"Trade with the EU would switch to World Trade Organization terms, raising customs checks and tariffs overnight. Capital could flee the City of London, followed by a run on the pound. Food supplies would be at risk because of the uncertainty over certification and standards. The UK's ports and airports would be thrown into disarray. The list is endless, and no amount of wishful thinking can overcome this reality".

[LORD HAIN]
Otherwise, why have the Government announced that they are spending £4.2 billion on mobilising the Army and chartering additional ferry capacity to bring in vital supplies of medicine, food and fuel in the event of no deal? Why have they set out contingency measures in more than 100 technical notices, which set out nightmarish scenarios in numerous sectors? Such preparations show that the Brexiteers who have talked about a "managed no deal" and who have claimed that "falling back" on WTO terms would be no problem, are living in a fantasy world. Their assertions, including by the noble Lord, Lord Lilley, among others, have been described as "nonsense" by Professor Alan Winters of the UK Trade Policy Observatory. Of the 164 member countries of the WTO, none trades on WTO terms alone; all have at least one bilateral or regional trade agreement with other countries, especially their nearest neighbours.

The reality is that trading on WTO terms would risk border delays, which would hit just-in-time cross-border supply chains, affecting areas of the UK dependent on advanced manufacturing in particular. The Environment Secretary, himself a leave supporter, recently told farmers that WTO tariffs on beef and sheepmeat will increase by over 40%. The British Food Importers & Distributors Association has warned that WTO rules would mean food prices going up by over 20%. If, because of tariffs, there is a big hike in prices in April as a result of no deal, that will have consequences for our manufacturers, businesses and consumers across the country. It is therefore hardly surprising that, following the Prime Minister's defeat on 15 January, more than 170 of the UK's most significant business leaders, who together represent more than £100 billion in annual contributions to the UK economy, confirmed that the priority now was to prevent what they describe as,

"a chaotic crash-out from the EU",

by backing a second referendum.

This cataclysmic predicament has arisen because the Prime Minister has chosen to placate the deluded hard Brexiteers, who blissfully ignore that the UK is now part of a deeply integrated European economy and hanker after some imperial golden age. Yet the UK exports nearly five times as much to the EU than to the Commonwealth, which does not function in the same way as an integrated trading area. It is important to note that, two and a half years after the Brexit referendum, the International Trade Secretary, Liam Fox, had to admit recently that not one new trade agreement will be ready to be implemented by 29 March in the event of no deal. Tragically, therefore, the opportunity for the UK to maintain global influence as a leading member of the EU, with an ability to shape the future and continue to benefit from the global network of trading relationships being created by the EU, is being thrown away. As a medium-sized economy, if we turn our back on the world's largest, richest single market right on our doorstep, we will become a rule-taker.

If Brexit is postponed or rescinded, the treaties of the European Union, including its trade deals with other non-EU countries, will still apply to the UK. However, with a no-deal Brexit, they will all cease to apply on 30 March. That is why it is imperative for Parliament to put safeguards in place now, including passing this amendment. Surely we cannot just watch the country drift rudderless towards the rocks of no-deal isolation while the Government allow the clock to wind down.

Baroness Fairhead: My Lords, I am delighted to allow the noble Lord, Lord Stevenson, to realise his ambition, but I also agree with the noble Lord, Lord Purvis, that this is important. Therefore, no torpidity is allowed, even at this late stage.

As this is the last group of amendments, I hope the Committee will indulge me with a short concluding comment, allowing me to record my appreciation to noble Lords who have taken part in all the debates. The quality and constructive nature of the engagement has been incredibly valuable—not just in the Chamber, but outside in meetings. I particularly thank the noble Lords, Lord Stevenson, Lord McNicol and Lord Purvis. On a personal level, I also thank the Bill team for some tremendous work, and my valiant and true noble friends Lord Bates and Lord Younger.

The Committee has provided us with a valuable opportunity to probe the detail of the Bill. It has also allowed all sides to listen to other noble Lords' sometimes conflicting points of view. We now have some time in which to reflect on the views we have heard in these debates. We shall be using that time carefully, and I look forward to debating the Bill further on Report.

Before addressing the specifics of the amendment moved by the noble Lord, Lord Stevenson, it is important to outline the Government's approach to leaving the European Union in the light of recent events in the other place. As this House is aware, the other place rejected the proposed withdrawal agreement and political declaration, with just 202 MPs voting in favour. However, following the debate last week, a majority of MPs have now said they would support a deal with changes to the backstop.

Combined with measures to address concerns over Parliament's role in the negotiation of the future relationships and commitments on workers' rights, the Government are now confident that there is a route that can secure a majority in Parliament for leaving the EU with a deal. The Government will now take this mandate forward and seek to obtain legally binding changes to the withdrawal agreement that deal with concerns on the backstop, while guaranteeing no return to a hard border between Northern Ireland and Ireland.

As the Prime Minister said, we acknowledge that there is limited appetite for change in the EU, and negotiating it will not be easy. However, in contrast to a fortnight ago, Parliament has made it clear what it needs to approve the withdrawal agreement. Tuesday's vote shows that Parliament does not want to leave the EU without a deal, and the Government are therefore working hard to achieve one. The noble Lord, Lord Hain, eloquently talked of the importance of the EU trade deal.

However, simply opposing no deal is not enough to stop it, and the Government must now redouble its efforts to get a deal that Parliament can support. The

Prime Minister has agreed to discuss the best way the Government can deliver what I would call the Spelman amendment.

The amendment to the Trade Bill here today would not prevent a no deal. The only ways to prevent a no-deal outcome are either with a deal or by revoking or extending Article 50, which is not government policy. The Trade Bill cannot therefore be used as a sort of proxy to prevent the UK leaving the EU without a deal. This amendment, or other tweaks, will not stop a no deal, but will simply increase the risks of a worse outcome in a no-deal scenario. We are clear that the very best way to leave the EU is with a deal and an implementation period, and that is absolutely the aim of this Government.

I also repeat that, although leaving with a deal which ensures an implementation period is our clear aim, any responsible Government must also develop contingency measures in case of no deal.

I turn to Amendment 98, tabled by the noble Lords, Lord Stevenson, Lord Hannay and Lord Purvis, and my noble friend Lady Altmann. I have welcomed the debate and your Lordships' scrutiny of the Bill, which really underlines the value of this House. The challenge has been constructive, extremely helpful and underpinned by the genuine knowledge of so many noble Lords. The Government will reflect carefully on the points; we have committed to come back with proposals and will do so before Report. Having gone through Committee, I hope the whole Committee will acknowledge the importance of the provisions in the Trade Bill, and the need for any responsible Government to bring forward these provisions whether or not there is a deal with the EU.

As the Committee will be aware, the Trade Bill covers four important and essential areas to ensure continuity for consumers, businesses and our international trading partners. The purpose, as we said—I was trying to keep the number of repetitions low—is continuity. The Bill provides: powers needed for the UK to implement the GPA, maintaining the access of UK companies to some £1.3 trillion-worth of business, and to ensure that we get the best deal for taxpayers; powers to enable the UK to transition trade agreements that currently exist between the EU and other countries, and to which we are currently a signatory via our membership of the EU to prevent any disruption to UK businesses or our consumers; critical powers to establish a new UK Trade Remedies Authority to provide that critical safety net to protect domestic industries from unfair practices; and powers to collect and share data on trade. This will help us build a richer picture of UK trading patterns to help the Government identify new opportunities, and provide data to support TRA investigations. I hope the Committee will recognise that these are sensible measures and that any reasonable Government would be legislating in these areas in the light of our exit from the EU.

Last week's vote in the other place shows us that Parliament does not want to leave the EU without a withdrawal agreement and future framework. Although I recognise the position of many in this House is not to leave without a deal, as I said at the start, this mandate from Parliament is not enough on its own to stop no deal. That is why the Government will now redouble their efforts to get a deal that Parliament can support. It is for those reasons that I urge the noble Lord to withdraw his amendment.

Lord Stevenson of Balmacara: I am grateful to the Minister for her kind words and the way in which she turned down our hope of a late but well-deserved goal. I always say to my colleagues that they must stop using sporting metaphors because they do not work for half the population of the House but here I am, about to refer to the second half. I am sorry about that.

In her thanks, the Minister should have also recognised herself; I will do it for her because I am sure she is too embarrassed to do it. It is almost impossible to believe that this is the Minister's first Bill. She has handled us with considerable assurance and a wonderful sense of calm. Every time she rises it is a great balm to those who might otherwise want to cause trouble and do terrible things in a House which is noted for its civility and gentility. I do not know what the word is for sororal approaches—I will probably get in trouble for that as well. It has been a very good experience so far; we look forward to the second half—sorry about that. We think we can work together and there are things here we can work together on, and we should try to hammer out such agreements that we have. There may be differences—quite principled ones which we need to address—but I do not think we should worry about that; the House should be asked for its views on a number of points that we have covered in Committee. It has been a good experience and I am happy to withdraw the amendment.

Amendment 98 withdrawn.

Clause 16 agreed.

Amendment 99 not moved.

Schedule 1 agreed.

Schedule 2: Regulations under Part 1

Amendments 100 and 101 not moved.

Schedule 2 agreed.

Schedule 3 agreed.

Schedule 4: The Trade Remedies Authority

Amendments 101A to 110 not moved.

Schedule 4 agreed.

House resumed.

Bill reported without amendment.

House adjourned at 10.01 pm.

Grand Committee

Monday 4 February 2019

Arrangement of Business

Announcement

3.30 pm

The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB): My Lords, if there is a Division in the House, the Committee will adjourn for 10 minutes.

Public Procurement (Amendment etc.) (EU Exit) Regulations 2019

Considered in Grand Committee

3.30 pm

Moved by ***Earl Howe***

That the Grand Committee do consider the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, procurement by the Government and public sector bodies represents a significant sector of the UK economy. It is essential to the day-to-day running of government and is appropriately regulated. The Government are committed to ensuring the continued functioning of this important marketplace when we leave the EU. If a transitional deal is agreed with the EU then the existing procurement regulations will remain in place during the transition period. However, if no deal is reached with the EU then certain aspects of the existing regulatory scheme for public procurement will be deficient and will simply not work. The draft regulations before the Committee seek to address those deficiencies that would arise in a no-deal scenario.

The amendments made to the legislation reflect the UK's new status outside the EU. It provides a balance between the need to maintain continuity based on established principles and the existing framework with the need to correct deficiencies to the extent permitted by the European Union (Withdrawal) Act. This will ensure the legislation is operable, effective and makes sense. This instrument primarily makes amendments to three sets of regulations—the Public Contracts Regulations, Utilities Contracts Regulations and Concession Contracts Regulations—that regulate public procurement in England, Wales and Northern Ireland. These sets of regulations implement EU directives on awarding contracts and concessions in the public and utilities sectors, outside the fields of defence and security.

This instrument amends or revokes various EU regulations and decisions relating to public procurement that will become retained direct EU legislation on exit day. It also makes small amendments to various pieces of domestic legislation, including some primary legislation, that are not primarily about public procurement but which contain public procurement references that will become deficient on exit day. These changes address the UK's new position outside the EU while continuing to facilitate a functioning UK internal market.

As we leave the EU, the UK is working to join the WTO government procurement agreement in its own right. We are currently a GPA member through being an EU member state. I am pleased to say that the other GPA parties have agreed in principle to our market access offer and accession. We have taken precautions against the UK's accession not being fully completed by exit day. One of the amendments to the public procurement regulations ensures continued guaranteed access, rights and remedies on current terms for suppliers from existing GPA countries for a time-limited period from exit day. Without this amendment, suppliers from GPA parties would no longer have the guaranteed access, rights and remedies that they currently enjoy in our public procurement contracts. This will mitigate the risks of a short gap in GPA membership by facilitating continued market access.

Through the amended regulations, control over public procurement is returned to the United Kingdom. All notices for public procurement opportunities will in future be published on a new UK e-notification system. Business continuity is meanwhile assured through the transitional provisions that will generally apply the amended regulations, even in relation to procurements that are already under way on exit day.

In a no-deal scenario, this instrument reflects the UK's status as a non-member state, at the same time as ensuring a functioning internal market exists that complies with the requirements of the GPA. It provides the continuity and legal certainty required by public procurers and suppliers. I commend the regulations to the Committee and beg to move.

Baroness Hayter of Kentish Town (Lab): I thank the Minister for introducing the regulations, and those who drafted them for their hard work. Shall we get the good points out of the way first? I thought there were three. The first is that any regulation-making powers under the 1958 list will be by affirmative procedure—a tick for that one. The second was the ban on convictions being carried over as grounds for exclusion—tick. Thirdly, it looks as though Gibraltar has been included, which I assume is with the agreement of the Government of Gibraltar—tick. However, I have a number of questions.

One of my major questions is about the bold statement that no impact assessment has been made, despite the regulations introducing a requirement for businesses to use a new e-notification system that might include considerable changes to their own data systems, requiring software changes and internal training. These things never just happen, and preparing for them could well be expensive for the companies involved. That is a concern, given that the Explanatory Memorandum also states that there has been "no consultation". It is hard to see how on earth it could have been decided that there would be virtually no cost to the companies affected, particularly small and medium-sized companies. It is exactly those companies, which do not have their own sophisticated IT departments, that could therefore face quite a challenge. It would be helpful to have some explanation of why no consultation and testing took place with them, and how it was therefore possible to take the view that the change would have no impact.

[Baroness Hayter of Kentish Town]

My second question relates to the exit date. I think that I am right that no definition is given in the regulations, presumably because they are made under the withdrawal Act of 2018, which itself defines exit day. I know that the Minister will not comment on this, but a number of us think it extremely unlikely that we will leave on 29 March and that there will very likely be a request for an extension to Article 50, and therefore a change of exit date. Should exit day be amended by statutory instrument under, I think, Section 20(4) of the Act, does that automatically amend the date on which these regulations would come into force? Would the eight months after which Regulations 6, 8 and 10 would come into force automatically follow the new exit date?

My third question is about e-notification, which I touched on earlier. I am worried about it because this is a no-deal preparatory statutory instrument, which sort of assumes that there will be no deal in seven weeks' time. It would be helpful if the Minister could indicate when he considers that the e-notification system will be up, ready to run and fully tested; hopefully, it will be pre-tested with potential users. Some response on that would be helpful—as would some thoughts on what happens if it is not ready on exit date, particularly as another part of the regulations says that notices cannot be published on any other national portal until they have appeared on the e-notification system. Since we know that these things do not always appear quite on time, what happens if the system is not ready by 29 March? Can the Minister also tell us what sort of training and support will be given to those who need to access it? Perhaps he might know, or be given guidance on, how different this system is from the one currently used with EU procedure.

My fourth question turns to the GPA. The Minister said that the other parties have agreed in principle to us becoming a member of the WTO Agreement on Government Procurement. However, I am interested to know why, both in the regulations and in what he says, there is an indication that that might not have happened by exit date. Paragraph 7.20 of the EM suggests that it may not have happened. Can he explain why there might be a delay, given that we have applied, I assume, and he has heard that the other parties are happy? Basically, what is the problem?

My fifth question is about the CMA. The purpose of these regulations is to ensure that the "award of public contracts" is done in a market which is,

"open and competitive and that suppliers are treated equally and fairly".

As I understand the regulations, the CMA will oversee and enforce this but that is something of a problem in that we do not yet know the nature of the state-aid regime post Brexit. We do not know the anticipated regime, nor exactly how it will oversee and enforce it. Obviously, state aid is very relevant to procurement, but the market is populated by international actors. They, and our people doing the procurement, will need to be clear about what the regime is. The relevant SI for the CMA bit of this was laid only on 21 January, and there is no indication of when the CMA will publish its policy statements. It says it will be before the end of March; should we come out on 29 March without a deal—which is what this instrument is about—there will be almost no time for anyone to know what the policy on which it will work to oversee the market is.

The Minister will be very pleased to know that I have only seven questions. My sixth question is about the financial threshold. The role of converting the GPA threshold into sterling will fall to the Cabinet Office Minister under these regulations. I was not clear about how this decision will be communicated. At the moment this is done through the normal EU channels but once that no longer happens, what is the transparency? This should be quite a simple decision and how it will happen is laid down, but it would be good to know how it will be communicated.

My last question is about something that I am sure everyone in the Room except me knows, so I ask it very much for my own benefit. It is about social obligations. A contracting authority can refuse to award a contract to the lowest bidder if the bidder,

"does not comply with certain … obligations in the field of social, environmental and labour law".

I understand what environmental and labour law cover, but I am personally unsure whether "social law" would include consumer law, or whether it is more about social benefits and so on. For my benefit, could the Minister clarify whether consumer law would be covered? I am sorry that I have lots of questions, but that is partly why I asked my colleagues if they minded me going early. I think that gives other people in the Room a chance to find the answers before the Minister has to reply.

3.45 pm

Lord Wallace of Saltaire (LD): My Lords, having read this lengthy SI and being conscious of the other 600 or so coming our way, my sympathy for the officials working on Brexit is deeper than before. My despair at the Government refusing to rule out a no-deal Brexit is deepened when I think that some of all this is to guard against the contingency of no deal and would not be necessary if we ruled out that possibility. I know that a huge amount of extra work is going on across Whitehall to guard against a contingency that Parliament would not accept if we found ourselves drifting towards it. However, in the event of a withdrawal agreement, we will still have public procurement issues.

I want to ask primarily about the agreement on government procurement and the adjustment of moving to WTO terms, so to speak, in moving from the EU regulations to the GPA. Like the noble Baroness, Lady Hayter, I heard the Minister say that others have "agreed in principle" to this and that we are "working to join" the GPA, which suggests that we will not have joined by the end of March. I hope that he can tell us when we might do so and what will happen if we leave in an orderly fashion in the next few months—I do not know how we will manage that but we will try to do it somehow—before we have joined the GPA, with a gap in between.

I note that paragraph 12.3 of the Explanatory Memorandum says that,

"in a no deal scenario where the UK is not participating in the GPA, it may be that economic operators would no longer have guaranteed access to the procurement markets of GPA parties (including the EU) or the remedies provided for by them".

I understand that to mean that British companies will suffer in having no access to other countries' markets. What would the situation be? Can the Minister explain a little about the difficulties we appear to have run into between October and November last year in applying to become an independent member of the GPA? Why was the United States so resistant to UK admission, as some of the documents I have looked at suggest? Are Her Majesty's Government confident that, in rejoining the GPA as an independent country, we will find that procurement in the United States—by states as well as by the federal Government—will be open to the UK? I recall from my time in the US as a student that other countries constantly complained about how they could access federal procurement but states did not think that they were bound by international agreements of that sort.

Why did New Zealand express reservations about the UK becoming a full member of the GPA? Given that Liam Fox provides constant assurances that New Zealand is willing to offer open arms to the UK through the most generous possible trade deal after Brexit, it struck me as rather odd that its Government did so. New Zealand is a massive friend to the UK, ever grateful for having been colonised by British people. One would have thought that there would be no problems what ever.

Will Irish firms be in an intermediate position in any way in terms of access to government procurement? I am conscious that the Belfast agreement and our future relationship with Ireland are not exactly foreign matters. Can the Minister say anything about our confidence in standards of enforcement in the GPA? Moving from the EU framework to the World Trade Organization GPA framework represents moving to a looser framework. It is a bit like moving from Europol to Interpol. Standards of enforcement tend to be lower; for example, I know that China is about to join the GPA but I cannot imagine the Chinese opening their domestic state procurement market as fully as we have managed with France, Italy or Spain. Is a little more assurance on that point possible or are we simply accepting that we are moving from a tighter, more effective framework to a looser and less effective one?

Lord Adonis (Lab): My Lords, I will begin by asking the noble Earl some specific questions, and then make some wider remarks. First, what status would British public procurement contracts have in the *Official Journal of the European Union*? In a no-deal scenario, is it the intention that the United Kingdom would still advertise its contracts in the *Official Journal*? Indeed, would it be legally possible for it to do so? If it does not, either because it is not legally possible or because it is a policy of the Government not to do so in a no-deal scenario, will that not in practice mean that our procurement market in the United Kingdom is a great deal less competitive after than it was before because, if people do not know about contracts and there is not a level playing field for them to apply, fewer people will apply? That is an important point. I simply do not understand the position in a no-deal scenario.

Secondly, from what the Explanatory Memorandum says, I assume that it will still be entirely open to UK companies to bid into the EU procurement market, in the same way as it is open to countries outside the EU at the moment. It is the issue about the advertising of contracts in respect of the United Kingdom that seems significant.

My third question relates to the point just raised by the noble Lord, Lord Wallace, of the slightly conditional language used by the noble Earl in his opening remarks about whether we will or will not be a member of the GPA by 29 March. I took him to say that we might be, but he could not give a guarantee. Having looked at the statements made by the WTO and Julian Braithwaite, the United Kingdom's representative there, my understanding is that our application has been accepted in principle but that there are a number of issues still being worked through. Perhaps the noble Earl could update us. That seems a point of some importance for people in these markets to understand—whether we definitely will or may not be an independent signatory to the GPA by the end of March—not least because of the remarks made by the noble Earl himself in his introduction, where he said, I think, that having that independent membership would give us,

"continued guaranteed … rights and remedies".

I assume the reverse is also true: if we are not an independent member at the end of March, then for the period when we are not we will not have guaranteed rights and remedies, and this could leave British companies seriously vulnerable in enforcing their rights.

My fourth question relates to paragraph 7.39 of the Explanatory Memorandum and what the regime will be in respect of state aid. A number of questions arise from the paragraph, so I will quote it:

"In respect of abnormally low tenders submitted by bidders who may have been in receipt of state subsidies, the intention",

of the Government,

"is to treat non-UK economic operators on a level playing field. Further, although a new UK State aid regime is envisaged in which the function for enforcement is to be conferred on the Competition and Markets Authority, in the area of public procurement, it would be inappropriate for economic operators established in the UK to be required to demonstrate that aid provided by the UK Government was compatible with the UK's State aid regime in contrast to economic operators not established in the UK".

Is my understanding of this correct, namely that whereas we intend to apply state aid rules to European bidders for our contracts, we are not intending with these regulations to insist on those same state aid rules being applied in respect of UK bidders for European contracts? The obvious point which arises if that is the case is that it will not be accepted at face value by our European partners, who will of course presumably continue to insist on the application of their state aid rules, which are the same as now. They will not change those rules. I therefore do not understand the actual effect, because the implication in paragraph 7.39 is that the UK could start, for example, flouting existing state aid rules to support UK bidders for EU contracts. As I understand it, that would be legal under the regime envisaged. What is the point of allowing that if those same rules are going to be applied by the EU in the first place? Let us think about real-life situations. It is not in the interest of the United Kingdom that we be regarded as an unreliable bidder in respect of state aid for EU contracts. If a belief gains ground that

[Lord Adonis]
because these rules do not apply we are content for UK companies which are in receipt of state aid to bid, that will in quite short order lead to significant tension between us and the European Commission. Would a better arrangement not be to say that if we are so keen on state aid rules being applied in respect of EU bidders for UK contracts, the right, reasonable and collegiate thing for us to do would be to insist that those same rules applied in UK domestic law to UK bidders for European contracts? Is the noble Earl with me on those points? They are technical but extremely important for bidders for these contracts.

More broadly, we are again in a slightly surreal Alice in Wonderland situation. We are told—it comes up again in the impact assessment and the statement on consultation—that these changes are technical. Indeed, they are technical in the sense that they replace an existing procurement regime which operates within the European Union market with one that operates within the UK, only with minimal changes. That is certainly correct, and for that reason there is no impact assessment and there has been no consultation. However, at another level they are anything but technical; this relates to a point that my noble friend Lady Hayter made. The act of leaving the EU with no deal means that we are at one stroke potentially rupturing our entire access to these markets and the entire access arrangements of EU bidders to our market. As the noble Earl does not appear even to guarantee that we will be a member of the GPA—subject to what he says in his response—we cannot even be sure that we are able properly to enforce existing contracts which United Kingdom operators have entered into, because the ability to enforce those contracts depends upon our membership of the GPA.

While the technical wording of the rules may not have changed in terms of how we intend to operate public procurement, the act of leaving the EU will fundamentally rupture the entire regime for public procurement, including potentially closing European markets to UK operators over time and closing UK markets to EU operators. This goes against the whole drift and success of EU policy over the past 20 years, which has been systematically to open public procurement markets. I see from the latest EU statement on the three directives in this area that they are estimated to be worth €1.9 trillion a year, paid by 250,000 public buyers across the EU. This is a very significant reason why we engaged in the construction of the single market, why we have played such an active role in setting up the rules and why we have been absolute hawks on issues of state aid and intervention by EU Governments—some of our fellow European Governments have not been as open to the concept of competition in public procurement markets as we have been.

As this statutory instrument goes through, it is important to note that the loss to the UK will be huge. It relates directly to paragraph 12.3 of the Explanatory Memorandum, which was quoted by the noble Lord, Lord Wallace. Those of us who are becoming familiar with these statutory instruments after dozens of them are now used to this formula. The technical changes made in this statutory instrument to make it compatible with UK law on exit are minimal. However, the actual act of leaving the EU in relation to the real-world operation of the law is massive. Paragraph 12.3 is another statement exactly in that tradition. It says:

> "An Impact Assessment has not been prepared for this instrument because the framework and principles underlying the Regulations have not been substantially amended".

Three sentences later, however, it goes on to say:

> "It will be open to UK economic operators to continue to respond to contract notices published on OJEU by member States but in a no deal scenario where the UK is not participating in the GPA, it may be that economic operators would no longer have guaranteed access to the procurement markets of GPA parties (including the EU) or the remedies provided for by them".

Those euphemistic words amount to the undermining or closing of a substantial part of the markets in which UK companies currently operate. The fact that it is caused not directly by these regulations but by the decision to leave the EU in a no-deal scenario—which underpins these regulations—will not greatly satisfy or mollify those companies whose livelihoods are trashed as a result of a no-deal Brexit.

4 pm

Earl Howe: My Lords, I thank all noble Lords who have spoken for their questions. If noble Lords will bear with me I will do my best to answer them, although not necessarily in the order in which they were asked.

The first question of the noble Baroness, Lady Hayter, was about the lack of an impact assessment. As I said in my opening remarks, this statutory instrument was designed to ensure continuation of the current system where possible. The impact of the amendments, including the replacement of the *OJEU* with the UK e-notification service, was deemed, after a de minimis impact analysis, to be below an annual cost of £5 million, which is the critical figure in this context. Consequently, in line with published guidance, a full impact assessment was not required or produced. We do not anticipate that the costs of complying with the amended regulations will be very great: in fact for all practical purposes they will be unchanged, because this amendment only fixes deficiencies and removes reciprocal rights—it does not change processes and procedures that would affect the cost of running or participating in a procurement under the regulations. That is why there was no consultation.

Lord Wallace of Saltaire: If I understand the Minister correctly, paragraph 12.3 should therefore read: "Provided that there is a withdrawal agreement, the impact will be limited, but in the event of no agreement there will be a considerable and adverse impact".

Earl Howe: No, my Lords. These regulations are designed to ensure that the experience of businesses using the public procurement system is virtually unchanged from today. Our aim has been to produce as smooth a transition as possible—even in the event of no deal. Of course, as the noble Lord, Lord Adonis, has pointed out, there will be changes in the wider context of bidding in the European market; I will come to that in a minute.

The noble Baroness, Lady Hayter, asked what would happen if exit day was deferred. If that were to happen, and the withdrawal Act amended, that would feed directly through into these regulations, so no specific amendment would be required for that. She also asked me about the GPA thresholds and how they will be published. To update the thresholds, the Minister for the Cabinet Office will need to exercise the new regulation-making powers conferred by this instrument. The new thresholds will, therefore, be reflected in the public procurement regulations themselves and be publicly available and notified by procurement policy notice.

The noble Baroness, and the noble Lord, Lord Wallace, asked about the GPA. As I said in my opening remarks, the UK currently participates in the GPA via its EU membership. We need to accede to the GPA in our own right to maintain legally guaranteed access to public contract opportunities that the GPA provides. The offer that we have made to GPA parties maintains our existing commitments in the UK part of the EU schedule. The European Union (Withdrawal) Act 2018 aims to ensure as much continuity as possible. It is, therefore, the UK's intention to join the GPA in its own right and, ultimately, to transpose the other international agreements between the EU and third countries. Accordingly, all suppliers should continue to be treated equally and fairly through open competition. Keeping our procurement market open to international competition clearly ensures better value for money for the taxpayer and facilitates UK suppliers being offered reciprocal rights to participate in procurements abroad.

Noble Lords asked me what would happen if our GPA accession did not take place by exit day. We have made good progress in our accession process and, as I said, we have received agreement in principle to our GPA market access offer. Despite this progress, we have taken the necessary precautions in the event that the UK's application to accede has not been fully completed by exit day. In this scenario, economic operators established in territories and states that are GPA parties would no longer have the guaranteed access and associated remedies that they currently have in relation to UK public procurements. One of the amendments in the public procurement regulations guarantees continued access, rights and remedies for suppliers from GPA countries for a time-limited period from EU exit. This approach has been taken to mitigate the risk of a short gap in GPA membership. This will facilitate UK suppliers being offered reciprocal rights to participate in procurements abroad.

The noble Lords, Lord Wallace and Lord Adonis, asked about the attitude of other countries—New Zealand and China in particular—to what we were doing in relation to the GPA and standards. New Zealand has, in fact, accepted our final market access offer. It continues to be interested in other aspects of the UK's WTO membership. China's application has been in train for many years and I am advised that it is unlikely to be completed in the near future. There will be no change to the standards that we currently operate. A draft decision inviting the UK to join has been sent to all GPA parties. It is expected that the formal invitation will be issued at a committee meeting this month. Parties were interested in how the decision described the UK's relations with the EU during the transition period.

The noble Lord, Lord Wallace, also asked about oversight carried out by the Competition and Markets Authority. This instrument does not provide for oversight by the CMA of the public procurement regime. Aggrieved suppliers will, however, continue to be afforded the remedies provided for in the regulations. In that way, contracting authorities and other entities will be held to account by the courts.

The noble Lord, Lord Adonis, asked various questions about the *Official Journal of the European Union* and the publication of contract opportunities. In a no-deal scenario, the UK is unlikely to be afforded access to the *Official Journal* for the purposes of advertising public contracts. That is simply a facet of no longer being a member of the EU, and that is why we have developed our own system to which UK bidders, EU bidders and bidders from the rest of the world will have access and in which they will be able to see UK public procurement opportunities. UK authorities may continue to advertise some types of procurement opportunity in the *Official Journal*—where the UK is participating in EU research and development projects, for example—though we anticipate that being a relatively rare event.

Lord Adonis: Is the noble Earl saying that to advertise in the *Official Journal of the European Union* you are required to be an EU member? Could he say—or follow up in writing afterwards—whether Norway and Switzerland, countries with very close economic associations, including membership of some of the economic institutions of the EU, do or do not advertise public procurement opportunities in the *Official Journal*? If it is possible to advertise in the *Official Journal* without being an EU member, it would be good to know whether the United Kingdom could continue to do so, since it would be a big advantage to be able to advertise our public procurement opportunities in that way.

Earl Howe: I take the noble Lord's point entirely. I need to seek advice on the question that he asked me about Switzerland and Norway, as I do not have that information to hand, but clearly, to the extent that we are allowed to avail ourselves of the *OJEU* in any public procurement context, it will be an advantage. However, I am advised that the new UK e-notification system which is being developed will be accessible by the same portal that suppliers use at the moment. To that extent, the process which they go through will feel quite normal. I can advise the noble Baroness, Lady Hayter, that the new system is on track to be in place by 29 March 2019.

Lord Wallace of Saltaire: My Lords, am I correct in thinking that provided we have an agreement as we leave and therefore also a transition period, during that transition period many of the same arrangements will continue? If so, it is possible that the answer to the question asked by the noble Lord, Lord Adonis, is that during the transition period we will continue to

[Lord Wallace of Saltaire]
have access. The question of what happens after 2020, 2021 or whenever it is has to be negotiated; the future relationship negotiations have not yet begun.

Earl Howe: The noble Lord is absolutely correct. Clearly if the agreement proposed by the European Commission is agreed, or something like it is agreed, the implementation period will kick in, and therefore we will be as if a full member of the European Union for purposes of public procurement. There will then be the question of what long-term arrangements are negotiated by and through the Commission.

4.15 pm

The noble Baroness, Lady Hayter, and the noble Lord, Lord Wallace, asked what would happen if the e-notification service was not ready, and what training and support was being provided. As I said, the system is on track for exit day but, if not—if something unexpected were to happen—notices will be published on existing national portals for notices, such as Contracts Finder for England and Public Contracts Scotland, until the UK e-notification service is ready. Notifications are made through the EU exit portal to businesses, but I must emphasise that we do not anticipate that there will be a gap in that context.

As far as support to suppliers goes, communications have been published in the form of a technical note and on the Brexit portal to prepare suppliers for transfer from the *Official Journal of the European Union* to the UK e-notification service.

I hope I have answered most of the questions from noble Lords to the extent—

Lord Adonis: I raised the issue of state aid.

Earl Howe: I have just alighted on my note to that effect. The noble Lord, Lord Adonis, essentially asked whether the implication of the Explanatory Memorandum is that the UK could start flouting the EU state aid regime. On leaving the EU, the UK will no longer be bound by the Treaty on the Functioning of the European Union, so economic operators will not be subject to the EU's state aid regime any more than a third-country supplier receiving state subsidies would be. The UK has developed its own state aid regime, but it is important to remember that this instrument does not disapply the state aid rules. Rather, contracting authorities will simply no longer be required to look behind an abnormally low tender to investigate whether a bidder was in receipt of unlawful state subsidies. That is because the UK will no longer be a participant in or bound by the EU's single market and competition rules.

Baroness Hayter of Kentish Town: I asked a question about whether the description of social law includes consumer law. I am happy for the Minister to write to me if he needs to check that.

There was one question I omitted to ask. It is not particularly relevant or specific to these regulations, but the Minister may know the answer anyway. It is: assuming this goes through, is approved by the House, therefore becomes law and then we get a deal, what happens? Do all these statutory instruments get repealed? What would be the status of all these no-deal statutory instruments should we get a deal?

Earl Howe: This statutory instrument is expressly designed for the contingency of no deal. Therefore, it will not come into force if Parliament agrees that the deal on the table, whatever that looks like, is acceptable.

Lord Wallace of Saltaire: In that case, the impact assessment for no deal should have been part of the statutory instrument. I read it as being partly about no deal and partly about the withdrawal agreement, because if we leave with a deal before we have completed joining the GPA the consequences could be quite substantially adverse.

Earl Howe: The two situations would indeed be very different. The Government hope that Parliament will agree a deal, which will make for a much smoother transition in the implementation period for businesses, private citizens and everybody else than if there is no deal. However, as has been said many times in the Chamber, it behoves a prudent Government to prepare for these contingencies. Unlike the statutory instrument we will debate next, this one is purely designed to address the contingency of no deal.

Motion agreed.

Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2019

Considered in Grand Committee

4.20 pm

Moved by ***Earl Howe***

That the Grand Committee do consider the Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2019.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, a responsible Government plan for all eventualities. It is essential that, as part of our preparations to leave the EU, we make sure that our legislation governing defence and security procurement functions properly beyond exit day in a no-deal scenario. It is the first duty of the Government to keep their citizens safe and the country secure. As part of that, the Government need to be able to procure the critical equipment and capabilities they need smoothly and with confidence. In the event of no deal, these amending regulations will provide procurers and suppliers with legal continuity and certainty, giving them the stability they need to conduct business after 29 March.

Clearly, the amendments to the legislation reflect the UK's new status outside the EU in a no-deal scenario. However, the framework and principles underlying the defence and security procurement regime remain otherwise unchanged. This is in accordance with the powers given to amend retained EU law in the European Union (Withdrawal) Act 2018. That Act does not allow major policy changes or the introduction

of new legal frameworks beyond those that fix deficiencies to ensure the law continues to function properly or remove any reciprocal obligations that are no longer appropriate from exit day.

Brexit will offer us real opportunities, including reform of our defence and security procurement regulations. In the near term however, these amending regulations ensure that the UK's defence and security procurements continue to function smoothly in a no-deal scenario, but with that all-important autonomy from the European Union. To protect the UK's essential security interests, the amending regulations will maintain the effect of Article 346 of the Treaty on the Functioning of the European Union by writing its substance into the existing regulations. The regulations already make it clear that they can be trumped by Article 346. Article 346 enables us to disapply the defence and security procurement rules when necessary to protect essential national security interests.

Through the amendments, control over our procurement is returned to the United Kingdom. For example, the Secretary of State for Defence will take the power previously held by the European Commission to modernise, although not broaden, the 1958 list of warlike stores that falls under Article 346 (1)(b). All notices for defence and security procurement opportunities will in future be published on a new UK e-notification system. Business continuity, meanwhile, is assured through the transitional provisions; there will be no defence procurement cliff edge.

Competition remains the cornerstone of defence procurement policy to ensure we equip our Armed Forces with the right capabilities at the right price. Currently, we allow bids from suppliers outside the EU, although the existing regulations provide only the legal right of market access required by EU law for suppliers based in the EU. Any restrictions on bidding, for example, on national security grounds, are made clear from the outset of any procurement.

The amending regulations provide a legal right of market access for suppliers based in the UK and Gibraltar which currently enjoy rights under the EU defence and security directive. After exit day, we will still allow bids from suppliers in the EU on the same basis as we do now for suppliers currently outside the EU. This reflects the UK's new status as a third country outside the EU.

Although the amending regulations are mainly about EU exit in a no-deal scenario, they also make some updates and corrections to the Defence and Security Public Contracts Regulations 2011. They will come into force before exit day regardless of whether there is no deal.

To sum up briefly, it is through these amending regulations that the Government will ensure that UK defence and security procurement continues to function properly and appropriately, with solid legal foundations underpinning it. It is this instrument that will give procurers and suppliers the confidence and continuity in procurement they need in a no-deal scenario. I commend these regulations to the Committee. I beg to move.

Baroness Smith of Newnham (LD): My Lords, this is the first statutory instrument related to Brexit that I have had the joy, or misfortune, to be involved with. In that sense I am quite glad that it has two purposes, one of which is valid regardless of whether there is a no-deal Brexit. However, one does wonder, given that the relevant legislation was repealed in 2011, why it has taken Her Majesty's Government quite so long to bring this to our attention in the SI.

On the other aspect of the SI, many of the questions I have noted are very similar to the questions raised by noble Lords on the previous SI. According to the statutory instrument, Regulations 3 and 4 come into effect on exit day. Will the Minister explain what would happen in a transition period? Exit day would still presumably be 29 March, but at that point we would stop using the *Official Journal* to advertise things. Will we be in a situation where, somehow, the statutory instrument does not come into effect? Is it like the previous SI and will come into effect not on exit day, but only after some transitional period? Otherwise there would seem to be a bit of a gap. The UK would not quite be at a cliff edge, but the situation would be somewhat unclear because we would not have the situation I envisaged would be the case during the transition period.

I will ask various questions that go beyond the nitty-gritty of the regulations. Will the Minister explain what Her Majesty's Government envisage by the statutory instrument in terms of access to UK markets? There is already a whole set of questions about overspends and the Public Accounts Committee has asked questions about defence procurement. If we are in a new world where EU defence contractors are treated like third-country defence contractors, have the Government modelled the impact this is likely to have on defence procurement? Will it mean that the UK will spend more on defence procurement than was the case when it was a member of the European Union? Similarly, what work have Her Majesty's Government done on evaluating the impact on our arms export industry of not being part of the single market? If we are treating the EU 27 as third countries, presumably they will not exercise the reciprocity of access to their defence industry and defence exports that we have enjoyed. There are some wider questions on the impact the Government think we will see from Brexit if we are not part of the single market for defence exports.

I have various technical questions. Like other noble Lords, I have spent quite a long time reading the Explanatory Memorandum. I am intrigued to note that the Minister can confirm that it meets the required standard. What counts as the required standard, and what can we expect to see in an EM? Are there things that we might find even more useful for understanding what is going on? The memorandum is certainly rather easier to follow than the SI as it is drafted.

4.30 pm

On page 3 of the Explanatory Memorandum there is a discussion about a current derogation from the Treaty on the Functioning of the European Union:

"It is necessary to ensure that contracting authorities can continue to disapply the 2011 Regulations where required".

[Baroness Smith of Newnham]
If we are leaving the European Union and therefore withdrawing from that treaty, how do we effectively apply the derogation from a treaty to which we are no longer a member? I am somewhat confused. The noble Lord, Lord Adonis, mentioned Alice in Wonderland. Applying something that looks like a derogation to a treaty to which we are no longer a signatory seems somewhat peculiar, but maybe I am missing something.

I note the references to Gibraltar, which is clearly of significance to our Armed Forces. I have a wider question: how do the Government envisage ensuring that the duty owed to economic operators in Gibraltar can be met in the absence of a deal? There is discussion of this in the Explanatory Memorandum, but there is very little to say how it would be seen in practice. As with the previous SI, what about state aid? Do Her Majesty's Government envisage giving subsidies to the defence industry? Is that one of the expectations of Brexit? What are we to understand by that aspect of the Explanatory Memorandum when talking about state aid?

Lord Adonis (Lab): My Lords, the noble Baroness has asked a number of pertinent questions. I hesitate to intervene in this area, because this is the first time I have ever made any remarks in the House on defence issues. I have always regarded the defence of the realm as so capably safeguarded by other noble Lords, not least the noble Earl himself—and, indeed, his family historically—that I never thought I needed to intervene in such affairs. I have two questions, which will reveal my ignorance but seem to be important in the context of us leaving the European Union in a no-deal scenario. The noble Earl said that once we have left in a no-deal scenario, we will allow bids in the defence sector from inside the EU on the same basis as we currently allow them from outside it. What is that basis? Is it codified? Looking at it from a great distance, I have always thought that we are extremely selective in the countries and suppliers outside the EU from which we are prepared to entertain bids for defence contracts. For example, I do not believe that at the moment we entertain bids from Chinese companies—and some other countries—for extremely good reasons. What is the noble Earl saying? Is there a document to which he can point me, and those who will be reading these proceedings, showing the basis for bids being entertained? The noble Earl may correct me, but if the basis on which we allow bids from outside the EU at the moment is essentially arbitrary, will that be the same basis on which we allow bids from existing EU states after Brexit?

I know that the noble Earl was simply reading his brief, but in his positive-sounding remarks at the outset he said that there would be real opportunities in procurement from leaving the EU, which I took to mean also in a no-deal scenario. It is not immediately obvious what those real opportunities are. Will he tell the Grand Committee something about them, as there are many disadvantages in leaving the EU? Readers of our proceedings will be delighted to know that there are some opportunities and would be grateful for any optimism that the noble Earl can provide for the world after 29 March if we leave without a deal.

Lord Tunnicliffe (Lab): My Lords, I thank the noble Lord for introducing this statutory instrument. On the other hand, that is not really true: the facts of life are that I would rather not spend my weekend studying SIs for a scenario that is deeply absurd and the Government should have ruled out many months ago. It is, however, forced upon us.

Initially, I tried to read the Explanatory Memorandum while applying the test that I have been using so far—that there is no new policy except what is necessary to smooth the transition. That is essentially the test of the withdrawal Act. He has already said, however, that this SI goes beyond what is allowed in the withdrawal Act. I noticed that the SI also prays in aid the infamous—as I would call it—European Communities Act 1972, which must have the grandest powers of any piece of primary legislation. Since, therefore, this is quite important—that the Government are seeking to mix the two—I would be grateful if he could give a little more detail on where the 1972 Act has been used and where he is praying in aid the 2018 withdrawal Act.

I found the Explanatory Memorandum difficult to understand because it requires considerable previous knowledge. I can find only one area of concern. In general, the references to the requirement for a new organisation—for new parts of government to take over what is happening in the EU—all seem to make sense.

Essentially, I think the Minister has said that this SI leaves the situation unchanged. Does that mean that the requirement to put defence procurement up for both domestic and international tender is unchanged, except where derogated under provisions similar to Article 346, which I assume is written into the regulations? Does the derogation for national security reasons remain unchanged? Has it been decided that it should not be enhanced, as many of us would argue it should, to include wider, more long-term considerations, such as the preservation of UK sovereign capability by favouring UK firms in some circumstances? This measure seems to create a situation where the rest of the world can bid for UK contracts except where derogated. Does that mean that UK firms will be able to bid for foreign contracts, particularly opportunities in the EEA?

Finally, can the Minister indicate what will happen to these regulations in the event of a deal? Do they die in total or in parts? How will the deaths be managed?

Earl Howe: My Lords, once again I thank the noble Lords who have contributed to this debate for their questions, which I will do my best to answer. The noble Baroness, Lady Smith, and the noble Lord, Lord Tunnicliffe, both asked a similar question about the coming into force of these regulations and the circumstances in which they might not come into force. These amending regulations apply only in a no-deal scenario, other than the changes being made under Section 2(2) of the European Communities Act.

The noble Baroness, Lady Smith, was slightly unclear as to how we could avail ourselves of powers under that Act if we are not a member of the community. The answer is that we are still a member of the European Union and we can avail ourselves of the

powers under the 1972 Act until such time as we cease to be members. The very minor adjustments we are making will come into force regardless of whether there is a deal or no deal. If the withdrawal agreement enters into force, the UK, with certain specific caveats, will be treated as an EU member state for the duration of the implementation period. Therefore, the current DSPCRs will continue to apply for that period, albeit with the updates and corrections made in Regulation 2.

The noble Baroness and the noble Lord asked about those changes. They are very minor. They are, in the main, changes required to resolve outdated references and to correct an omission arising from an amendment to the European Economic Area agreement. There is an amendment to the definition of "member state" to add Norway and Iceland, ensuring that economic operators from those two EEA states are covered. Again, that amendment is required regardless of whether the exit-related changes come into force. There are various other minor changes that I can read out, but I think it would be tedious if I were to do so.

The noble Baroness and the noble Lord, Lord Adonis, asked about the effect of the coming into force of these regulations on UK companies and what the benefits to UK industry are likely to be. The main benefit for both UK and Gibraltarian suppliers will be stability and continuity of working regulations, which are well established, understood and practiced. Importantly, UK and Gibraltarian suppliers will continue to enjoy legal rights to participate in UK defence and security procurements. Other non-UK economic operators, save for those in Gibraltar, will not have these rights under the amending regulations. I make it clear that that is not to say that only UK or Gibraltarian suppliers can bid for defence and security procurements. As noble Lords will know, the UK has a long-standing practice of allowing overseas suppliers to participate in defence and security procurements where there is no need for restrictions on who can bid in some way—for example, on national security grounds.

The noble Lord, Lord Tunnicliffe, asked whether UK companies would be disadvantaged regarding their access to the EU market. As a matter of EU law, EU member states will no longer be legally obliged to open their defence and security procurements to UK suppliers, as the EU defence and security directive will no longer apply to the UK after exit day. However, it has to be said that our UK suppliers are recognised as world class. They offer extraordinary experience and expertise in defence. Individual EU member states therefore may choose to give UK suppliers access to their competitions to maximise the effectiveness of their procurements in the same way as the UK does. There is a strong case in terms not only of value for money but of other considerations, such as interoperability and cutting-edge capability.

Lord Tunnicliffe: I feel that I have lost my place. Is the Minister saying that non-derogated invitations to tender will be restricted to the UK suppliers and Gibraltar, or will they be available to worldwide competition, with certain exceptions?

4.45 pm

Earl Howe: It will depend on the procurement. If it is determined that the procurement rate relates to an issue necessitating the protection of UK sovereign capability, as in the case of the construction of warships, we would restrict the tendering process to UK-based suppliers. However, the generality of defence procurement is opened up to the widest market possible, although, as was pointed out, we make clear in certain procurements that we will not entertain bids from certain countries. Each procurement has its operational basis made clear at the outset.

The noble Baroness, Lady Smith, asked whether we will give state aid to suppliers. We have no intention of providing state aid to UK suppliers, which is incompatible with our state aid regime. I am sure she will not be surprised to hear that. Having said that, it is important to understand that there are ways we can alert our home-based industry to forthcoming procurements to enable them to prepare their bids in good time and understand our needs. That process is already under way; we are clear that the entire procurement process needs to be smoother than it perhaps has been. That is not the same as state aid, however.

The noble Baroness also asked whether the Government have modelled the impact of the change on UK defence exports. As I said, defence suppliers will lose their legal rights to participate in procurement in the EU 27, but the quality of our companies should ensure that many EU member states will still wish to entertain bids from our defence industry. As the noble Baroness knows, the UK defence industry participates in co-operative defence projects, such as Eurofighter; that will not change either.

Lord Tunnicliffe: I am sorry to ask the same question over and again, but it is important: putting the derogated areas covered presently by Article 346 to one side, do the regulations—noble Lords must realise that I cannot read them; it took all my time to read the Explanatory Memorandum and try to understand it—require the UK to put non-derogated opportunities to international tender, or is that a matter for the United Kingdom Government's discretion on a project-by-project basis?

Earl Howe: It is important to understand that competition remains at the heart of our approach to defence procurement. Currently, we routinely allow bids from suppliers outside the EU, although the current legislation provides a legal right of access only for suppliers based in EU member states. Where we restrict who can bid in some way—for example, on national security grounds, as I have mentioned—we would make that clear at the outset in the advert or in any pre-procurement documentation.

That position will not change after exit day. Suppliers in the EU and elsewhere will still be free to bid for procurements where no limitations are specified. What is changing is that bidders from the remaining EU member states will not have a legal right to bid for defence contracts; this is the same position as for suppliers currently based outside the EU. I hope that answers the noble Lord's question.

Lord Adonis: If the noble Earl will forgive me, I think I follow what he is saying, but I invite him to say whether I have understood him correctly. Because we will no longer be part of the EU procurement regime, we will have no statutory obligation to make these contracts available to bidders from the EU, but we intend to continue to invite applications from those countries. Is he saying that, in practice, for suppliers from the EU—leaving aside those from outside the EU about which we have security concerns—there will be no change in the bidding regime as a result of a no-deal Brexit? If that is not correct, and there will be a change, could he tell the Grand Committee what that change would be?

Earl Howe: For UK Government defence procurements, the process from the point of view of an EU supplier will be no different. What it will experience is the need to bear in mind two separate portals or bidding channels; one is the UK e-notification system, which I mentioned earlier, and the other is *OJEU*. It will need to keep an eye on both if it wishes to participate in the Europe-wide market; in using that phrase, I include the UK as still being a European country, even if not a member of the EU.

Lord Tunnicliffe: The noble Earl says there will be no changes. I understand that at the moment, in non-derogated areas, EU suppliers have a right to bid and we have an obligation to take their bids seriously. I think that under the new situation they do not have this right and that whether they are allowed to bid will be a matter of policy. That policy could change year by year or Government by Government.

Earl Howe: That is technically right. It is our policy to maintain access for EU member states—and indeed, non-EU states—in many, if not most, instances of procurement. A good example might be the fleet solid support ships. We invited tenders from all over the world to build those ships and that should provide the best value for money. We all hope that UK suppliers will feel confident in bidding for that contract, but we wish to benefit the taxpayer as well as the Royal Navy and the process will be an open one.

To answer one point which the noble Lord, Lord Adonis, alluded to, there will of course be opportunities to reform the defence procurement rules after we leave the EU. The current rules are generally seen as out of date, compared to the PCR 2015. We have the opportunity to take a fresh look at what is needed for defence procurement—

Lord Adonis: What is the PCR?

Earl Howe: They are the Public Contracts Regulations 2015. This will involve public consultation to ensure that we strike the best balance between value for money and protecting national security. However, I emphasise that that is a long-term project and does not relate to the regulations before us today.

The noble Baroness, Lady Smith, asked about exit day in the event of a deal. As with the non-defence procurement that we debated earlier, any amendment to exit day as a result of a deal will track through from the EU withdrawal Act to these regulations. Therefore, the no-deal element of the amendments will not come into force.

I hope I have explained clearly the effect of Article 346 and why we have replicated it in the regulations but, just to make doubly clear, it is to ensure we can continue to disapply the procurement rules when required to protect our national security interests. For example, if we did not do so we would be required to advertise our sensitive procurements as a matter of domestic law. In so far as I have not answered noble Lords' questions I will certainly do so in writing, as for the previous debate, but I hope that my responses have clarified any points of uncertainty.

Motion agreed.

Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019

Considered in Grand Committee

4.56 pm

Moved by ***Lord Young of Cookham***

That the Grand Committee do consider the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019

Lord Young of Cookham (Con): My Lords, as this instrument has been grouped, I will speak also to the Long-term Investment Funds (Amendment) (EU Exit) Regulations 2019. The Treasury has been undertaking a programme of legislation to ensure that if the UK leaves the EU without a deal or an implementation period, there continues to be a functioning legislative and regulatory regime for financial services in the UK. The Treasury is laying SIs under the European Union (Withdrawal) Act to deliver this, and a number of debates on these SIs have already been undertaken here and in another place. The SIs being debated today are part of this programme and have been debated and approved in the other place.

These SIs will fix deficiencies in UK law on investment funds to ensure they continue to operate effectively post exit. The approach taken in this legislation aligns with that of other SIs being laid under the EU withdrawal Act, providing continuity by maintaining existing legislation at the point of exit but amending where necessary to ensure that it works effectively in a no-deal context.

Turning to the substance of these instruments, noble Lords may remember previous debates relating to alternative investment funds and their subcategories on 16 January. Those instruments, along with these being debated today, will ensure there is a functioning legislative and regulatory system for investment funds in the UK. The first instrument focuses specifically on the regulation of Undertakings for Collective Investments in Transferable Securities, commonly known as UCITS, which are funds aimed at retail investors. The second instrument relates to long-term investment funds, a

further subcategory of alternative investment funds that promote long-term investment, such as in infrastructure and small and medium-sized enterprises. In a no-deal scenario, the UK would be outside the EEA and the EU's legal, supervisory and financial regulatory framework. Retained EU and domestic law relating to the regulation of UCITS and long-term investment funds needs to be updated to reflect this.

I will begin with the collective investment schemes regulations. First, this instrument removes references to the Union and to EU legislation that will no longer have legal effect, replacing them where appropriate with references to the UK and UK legislation. It removes obligations to co-operate with EU authorities and defunct references to the EEA passporting system. However, as set out in FSMA and other legislation, it maintains the ability for co-operation between authorities which may be in the interests of both the UK and the EEA.

5 pm

Secondly, this instrument maintains a standalone UK regime for UCITS. This includes ensuring that UK funds use firms for depository and management services that are incorporated in the UK, and re-labels UCITS in the UK as "UK UCITS".

Thirdly, like many other instruments this instrument includes a temporary regime for funds. It will allow an EEA UCITS that is currently marketed into the UK under an EEA passport, and subsequent new sub-funds of an existing umbrella fund, to be marketed to UK investors in a similar manner to before. This regime will last for up to three years, although, if judged necessary, the Treasury may lay a statutory instrument to extend the temporary period for up to 12 months at a time, following an assessment by the FCA and a Written Ministerial Statement to both Houses. In order for funds to continue to be marketed into the UK after the temporary permissions regime, they will be directed to gain permissions as with any other third-country fund. The process for gaining this permission is outlined in Section 272 of the Financial Services and Markets Act 2000. The Government have committed to reviewing this process and will bring forward any necessary legislation in due course.

This instrument will transfer powers from the EEA bodies, such as the European Securities and Markets Authority ESMA to UK bodies such as the Financial Conducts Authority, the FCA. For example, the power to make binding technical standards will be transferred to the FCA. This is considered appropriate, because the FCA, as the UK's national competent authority within the EEA, is already responsible for supervising investment funds.

Finally, this instrument makes an amendment to a similar instrument, the 2018 regulations on alternative investment fund managers. This will bring forward the commencement date relating to the temporary marketing permissions regime for alternative investment funds, which will allow the FCA notification window to operate as intended.

I move on—if my voice permits—to the long-term investment funds regulations. These funds are a further sub-category of alternative investment funds. The take-up across the EEA has been low, with no such funds set up in the UK by the end of 2018, according to the FCA. However, in line with the Government's approach to European legislation, this regulation ensures a functioning framework for long-term investment funds. This instrument maintains the existing investment rules for long-term funds. It addresses deficiencies, for example by removing references to European institutions and replacing them with UK bodies. It will also create the UK-only label "long-term investment funds".

As always, the Treasury has been working very closely with the Financial Conduct Authority in drafting this instrument. It has also engaged the financial services industry, including TheCityUK and the Investment Association, on this SI and will continue to do so. In particular, I note that the funds industry has reacted positively to the Treasury's preparations. In December, the chief executive of the Investment Association, which is the main industry body for investment funds, noted:

> "In a possible no deal Brexit, HM Treasury's commitment to remain open to international funds ensures that the UK will remain a world leading asset management centre and that UK savers will continue to have access to a full range of investment opportunities".

In November and December the Treasury published these instruments in draft form, alongside Explanatory Notes to maximise transparency to Parliament and industry. The impact assessment for the collective investment schemes regulations has also been published recently.

The Government believe that the proposed legislation is necessary to ensure that there is a functioning investment funds framework in the UK, and that the legislation will continue to function appropriately if the UK leaves the EU without a deal or an implementation period. I hope that noble Lords will join me in supporting these regulations. I beg to move.

Baroness Kramer (LD): My Lords, we have allowed my noble friend Lady Bowles to go off to her committee today so I am afraid that there is somebody on these Benches with a far less-detailed knowledge of the intricacies of the relevant pieces of legislation. That may be of some relief but she will be back on future occasions so the respite is only temporary.

We have no objection to these two SIs, although I would like to probe around them a little. Clearly the UK Government should make this move because, frankly, EEA UCITS with a presence here in London suddenly fleeing because of a lack of temporary permissions would be a hole beneath the waterline for the future of fund management in London. The measure is absolutely necessary. The vast majority of those funds have said that if they had to go back and apply again as third countries for third-country permissions to keep their existing funds in place, they would prefer to exit. That is the situation with which we are dealing so the Government's move is appropriate.

However, noble Lords will be aware that a great deal of money has already fled London. Two or three weeks ago, EY provided a report setting the number of assets to have left the City, primarily funds, at around £800 billion. With the latest Barclays announcement, that takes the number to about £1 trillion, which is a reasonable amount of assets under management to

[Baroness Kramer]
have left because of Brexit. So that everybody understands, I say that this is not about people being disloyal or unpatriotic. One of the companies involved, Somerset Capital Management—co-founded by Jacob Rees-Mogg—domiciled two recently launched funds in Dublin, apparently because of the demands of various clients. Clearly, a great deal of the movement out of London has been client-led.

That is a problem because conglomeration is a very powerful factor in driving this industry forward. Losing something like £1 trillion of funds under management and finding that many players are playing double-handed, with a presence in both London and somewhere else—typically in Dublin but perhaps in other places in the EU 27—puts into doubt a future never before doubted: that London would dominate in this area. Did I understand correctly from the Minister—and do I understand correctly from reading the instrument—that the transitional arrangements described are simply to provide continuity for existing London-domiciled EEA UCITS? Has there been any assessment of the likelihood of new funds to open choosing London for their headquarters? Has there been any assessment of whether the limited reach of the regulations means that, if we leave on 29 March, funds to open later in the year are far less likely to be London-domiciled because they will have to apply through a third-country process? I would be interested to understand that.

In a sense, that leads me on to the impact statement, which is peculiar. The Minister is absolutely right that the statement is recent: I think it went online on Friday and was printed only today. The costs are defined in the summary as "Unknown: likely significant". But the description which follows that brief table says that the only really quantifiable costs on businesses are,

"marginal compared to the … costs arising from the UK leaving the EU"—

thank goodness, as this is one tiny area—and that they,

"mainly consist of familiarisation costs".

Has there been any attempt in that estimate of significance to estimate the changing pattern of investment for new funds that will follow, because of the limited nature of this new SI? From a cost perspective, I do not know whether that has been included in the numbers.

The benefits are described as "significant" but, again, we have no numbers around any of that. I suppose that one person's significant differs from another's but it seems that it is significant compared to having nothing to protect us from a cliff edge. I can certainly understand that that is significant but it seems peculiar, frankly, to suggest it as a benefit. The status quo is clearly the benefit; there are no costs and there is no reduction in the future location of funds in the UK. A benefit that basically avoids the damage of a cliff edge seems a terribly odd description.

Finally, I saw the humour on the Minister's face, and I share it, at the second SI, which deals with long-term investment funds. Since, as I understand it, this is a continuity and rollover SI and there are no funds, can he help me with the logic of why we are bothering with it? I do not mind it being on the statute book but it seems slightly redundant to provide for the continuity of nothing. I thought that the Minister might help me in this context with these issues, but we will of course oppose neither instrument.

Lord Young of Cookham: I think I can help the noble Baroness on that. There are no UK-based funds of this nature but there are some based in the EU—about five—that market into the UK. Those are the ones that will be able to apply for a temporary passport.

Baroness Kramer: I find that very helpful and I thank the Minister for saying that.

Lord Tunnicliffe (Lab): I thank the Minister for introducing this statutory instrument but I repeat my concern that we are considering such instruments at all. I and my party feel that the Government should have given a commitment that we would not have a no-deal exit; day by day, there is growing evidence that such an exit will be disastrous for our country. I will say no more on that but try to process these SIs on their merits against—how shall I put it?—the strict limitation that we are assuming a no-deal situation and recognising that things have to be done to achieve that.

The Treasury, I assume to be consistent, has reproduced the same eight paragraphs in all the Explanatory Memorandums. Paragraph 7.4, which I will repeat, says:

"These SIs are not intended to make policy changes, other than to reflect the UK's new position outside the EU, and to smooth the transition to this situation".

It is against that test that I spent my time studying the Explanatory Memorandum. It seems to do all the right things: it creates a new name; it says that passporting dies; and it goes on to offer a temporary permission regime. This regime may last for up to three years, or three years and 12 months, or three years and 24 months, or perhaps for ever. One has to view the SI in the light of that regime.

5.15 pm

The SI goes on to make perfectly reasonable rules about information sharing, which is not mandatory but discretionary to make sure there is a function transfer. This SI suffers from what I would loosely call asymmetry. As I understand the situation under the temporary permission regime, EEA UCITS can be marketed in the UK but there is no reciprocity. UK UCITS have no right to be marketed in the EEA. The justification for that is that if this temporary permission regime were not there the disruption would be negative for customers and for participants in the market. Will the Minister affirm that there is consideration on both sides and that that is why we have chosen not to seek reciprocity in this SI?

In this SI and in all the SIs coming forward we need to discuss what happens if we have a deal. When and how does this SI get repealed?

The Long-term Investments Funds (Amendment) (EU Exit) Regulations seem even less controversial. There seem to be no particular problems or transition problems and they do not create asymmetry.

What comes across with all the SIs is the increased workload for the SCA and other regulatory bodies, the Treasury, the Bank of England and the PRA. Whenever we ask this question, we are assured that these institutions have plans in hand to cope with it. Will the Minister give that assurance again? I understand that these institutions work on a cash-neutral basis—that is, they charge for their services so the industry pays their costs—but there are only so many competent people. Whatever the funding situation, are the Government sure that they have sufficient resource of quality people to allow these agencies and institutions to discharge their duties?

Lord Young of Cookham: I am grateful to all noble Lords who have taken part in this debate for their broad support for the statutory instrument before us. The noble Baroness, Lady Kramer, implied that she was not well informed on financial matters, but we all know that not to be the case. I agree with what she said about the TPRs. These are sensible measures, not least for seeking to keep the City of London's pre-eminent position in financial markets at the forefront of our priorities.

The noble Baroness mentioned the migration of funds. I, too, saw the EY report. The £800 billion figure was an estimation of firms' stated intentions rather than of actual assets transferred. The report states that the estimate is a "modest" sum when compared to the total assets of the UK banking sector, which stand at almost £8 trillion. None the less, it underlines the case for taking forward measures such as this to prevent any unnecessary migration of funds out of the UK. She also asked whether new funds could be established. The answer is that where there is an umbrella fund with lots of sub-funds, an existing umbrella fund with a sub-fund approved under the TPR can then get another sub-fund approved subsequently because it shares the same governance structure as the original one, so it has already been validated. Otherwise, a brand new one would have to start from scratch, in the way that the noble Baroness implied.

The noble Baroness asked about the impact assessment, She is quite right that it was published recently. These impact assessments focus narrowly on the changes that these SIs make and how businesses will need to respond. They do not deal with the broader economic impact of leaving the EU. The whole point of these SIs is to try, wherever possible, to maintain stability and continuity and minimise the amount of turbulence for firms involved. An impact assessment for the EU withdrawal Act deals with the impact of the parent Act; the Government have also published analysis of the potential economic impact of a range of scenarios, including no deal. These SIs mitigate the impact of leaving the EU without a deal. As the noble Baroness said, if they were not in place, there would be substantially more disruption and turbulence for the industry as a whole.

I think I have dealt with temporary marketing permissions. New EEA UCITS that are not sub-funds with temporary permissions, as I have just described, will have to use the third-country regime to market into the UK after exit day. The instrument does not change the process for authorising UK UCITS; that remains the same. There should be minimal change for the domestic industry.

The noble Lord, Lord Tunnicliffe, reiterated his opposition to no deal, which I understand and which he has made absolutely clear on earlier occasions. The best way to avoid no deal is to agree a deal; as I think he knows, the Prime Minister wants to meet others to identify what would be required to secure the backing of the House.

I think I answered the question from the noble Baroness, Lady Kramer, about removing LTIFs, in that some market and want to go on doing so. It will allow for EEA funds that market into the UK before exit day to continue to do so through the temporary marketing permission regime. The noble Lord, Lord Tunnicliffe, is right that it can be renewed at the end of three years. The TMPR can be extended only by the Treasury, pursuant to an FCA assessment on the effect of extending, or not extending, on financial markets, funds in the TMPR and the FCA's objectives. It must also go through the House.

I was asked, if reciprocity is so important that they can continue marketing into this country, what about the reverse? The answer is that we can legislate only in relation to EEA funds and managers that passport into the UK. We cannot, through our own unilateral action, oblige them to do the same to us. That is why we are seeking to agree a deep and special partnership with the EU, as well as an implementation period—important for both of us—so we can have this reciprocity.

Baroness Kramer: On reciprocity, we know that some temporary permissions are now being provided by the EU. For example, the London Clearing House has been given 12 months. Does the Minister anticipate temporary permissions in this area? Some guidance would be extremely helpful for the industry.

Lord Young of Cookham: The noble Baroness makes a valid point. The answer may become available before I sit down. I agree that it would be of great value to firms based in this country if they could continue marketing into the EU in the event of no deal. I have just been handed the answer to an earlier question, which I have already replied to off the cuff. There may be some more in-flight refuelling.

On the response of industry to what we are doing, I draw the Committee's attention to the remarks of Richard Withers, the head of government relations for Vanguard in Europe—one of the world's largest asset management firms. He said that the collective investment scheme regulation that the Committee is debating now is a well-considered and well-drafted piece of secondary legislation, which removes possible disruptions to the UK public's long-term investment and pension savings activity while also ensuring that the UK remains an attractive and pre-eminent target market into which global fund management companies distribute their products.

On the last point, it looks as if I may not be able to give a response to the very good question aimed at what representations are now being made by the Government or City institutions to encourage the EU

[Lord Young of Cookham]
and the relevant authorities there to do to us what we are in the process of doing to them. If I have not got the information by the time we reach the end of the next statutory instrument, I will write to the noble Baroness, Lady Kramer. I beg to move.

Motion agreed.

Long-term Investment Funds (Amendment) (EU Exit) Regulations 2019

Considered in Grand Committee

5.25 pm

Moved by ***Lord Young of Cookham***

That the Grand Committee do consider the Long-term Investment Funds (Amendment) (EU Exit) Regulations 2019

Motion agreed.

Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018

Considered in Grand Committee

5.25 pm

Moved by ***Lord Young of Cookham***

That the Grand Committee do consider the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018.

Lord Young of Cookham (Con): My Lords, as this instrument has been grouped, I will speak also to the Financial Markets and Insolvency Amendment and Transitional Provision (EU Exit) Regulations 2019.

As with the instruments we have just debated, these two instruments are also part of the same legislative programme to ensure that if the UK leaves the EU without a deal or an implementation period there continues to be a functioning legislative and regulatory regime for financial services in the UK.

Turning to the substance of the over-the-counter derivatives, central counterparties and trade repositories SI, many noble Lords will be familiar with the European market infrastructure regulation known as EMIR, which the EU implemented in 2012. It is Europe's implementation of the G20 Pittsburgh commitment in 2009 to regulate over-the-counter derivative markets in the aftermath of the financial crisis, reduce risk and increase transparency in derivative markets. It should be noted that EMIR, and the financial markets and insolvency SI which we will come on to in a moment, concern activities that mainly take place on financial markets. EMIR imposes requirements on firms that enter into any form of derivative contract and establish common organisational, conduct-of-business and prudential standards for trade repositories and central counterparties. Central counterparties, for example, stand between counterparties in financial contracts, becoming the buyer to every seller and the seller to every buyer. They guarantee the terms of a trade, even if one party defaults on the agreement, thereby reducing counterparty risk.

This SI addresses deficiencies within EMIR and related UK legislation to ensure that after the UK has left the EU an effective legal supervisory and regulatory framework for over-the-counter derivatives, central counterparties and trade repositories remains. This instrument is the last of three key SIs that fix deficiencies in EMIR, and it follows two SIs which have already been debated in your Lordships' House and which have subsequently been made: the central counterparties SI and the trade repositories SI.

Firstly, the SI continues key requirements of EMIR that include the clearing obligation, which requires firms to clear certain types of derivative contracts at a CCP, the reporting obligation, which requires firms and CCPs to report derivative trades to a registered or recognised trade repository, and margin requirements, which compel firms to put forward money to cover the costs associated with trades. In order to have a framework in place to facilitate these requirements the relevant functions are transferred from the European Commission to the Treasury, and from the European Securities and Markets Authority—ESMA—to the UK regulators, namely the Financial Conduct Authority or FCA, the Prudential Regulatory Authority, known as the PRA, and the Bank of England.

Secondly, the power of granting equivalence decisions for non-UK trade repositories is transferred from the European Commission to the Treasury and functions for recognising non-UK trade repositories are transferred from ESMA to the FCA. The SI also transfers powers from the Commission to the Treasury with regard to equivalence decisions on over-the-counter derivative requirements and whether non-UK markets are recognised for the purpose of trading exchange-traded derivatives.

Thirdly, a temporary intragroup exemption regime provides continuity by ensuring that exemptions from EMIR requirements for intragroup transactions will continue after exit day. The regime will last three years from exit day to allow time for consideration of an equivalence decision by the Treasury and for the FCA to determine a permanent exemption. This period can be extended by the Treasury if necessary. Under the MiFID II legislation, there is an exemption from clearing and margining for certain energy derivative contracts, and this exemption is maintained by this instrument. Finally, EU processes which will become redundant are removed and replaced with equivalent UK processes.

I turn now to the financial markets and insolvency SI. This instrument, broadly speaking, concerns insolvency-related protections that are provided to systems and central banks under the EU settlement finality directive, or SFD. Systems are financial market infrastructure, such as central counterparties, central security depositories and payment systems, which provide essential services and functions relied upon by the financial services sector.

Currently, if an EEA-based system is designated under the SFD and receives funds or securities from a system user—for example, a UK bank—those funds or securities cannot be clawed back in the event of the

UK bank being subject to insolvency proceedings. Importantly, this framework also benefits system users, who could receive services on less favourable terms, or not at all, if the EEA system were not protected from UK insolvency law. In certain cases, membership of a system is contingent on these protections. Designation is therefore important as it facilitates the smooth functioning of, and confidence in, financial markets.

In order to become a designated system, a system must be approved by its designating authority—the Bank of England, in the case of the UK. The Bank then informs ESMA, which places it on the EU register of designated systems. The SFD provides similar protections to central bank functions across the EEA. Collateral received by an EEA central bank in accordance with its functions, such as emergency lending, cannot be clawed back if the relevant counterparty to the central bank is subject to insolvency proceedings.

The relevant EU laws—the SFD and the financial collateral arrangements directive—are implemented in the UK via the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, the Companies Act 1989, the Financial Collateral Arrangements (No. 2) Regulations 2003 and the Banking Act 2009. Should the UK leave the EU without a deal or an implementation period, there will be no framework for the UK to recognise systems designated in EU member states, which in turn may risk continuity of services from those designated systems for UK firms.

This SI therefore establishes two main measures to mitigate these risks and ensure that settlement finality protections continue to operate effectively following the UK's withdrawal. First, this SI establishes a UK framework for designating any non-UK system, while maintaining existing designations for systems that were designated by the Bank of England before exit day. To do this, the Bank of England's powers to designate, and charge fees to, UK systems will be expanded to non-EEA systems, such that they can be designated under UK law. Moreover, the Bank will be able to grant protections to non-UK central banks, including EEA central banks, which already receive protections under the SFD. This will help maintain the effect of the current framework, providing continuity to UK firms accessing systems and central banks, while assisting UK firms in accessing the global market.

Secondly, the SI establishes a temporary designation regime. This provides temporary designation for a period of three years to existing designated EEA systems that intend to be designated under the UK's framework. The purpose of temporary designation is to allow time for designation applications to be processed by the Bank of England while ensuring continuity of access for UK firms to relevant EEA systems immediately after exit day. The SI also gives the Treasury the power to extend this regime should more time be required to consider these applications.

The Treasury has been working very closely with the regulators in the drafting of the instruments. It has also engaged the financial services industry on these SIs and will continue to do so going forward. The Treasury published these instruments in draft alongside Explanatory Notes to maximise transparency to Parliament, industry and the public. That took place on 22 October and 31 October 2018 respectively for the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 and the Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019. Furthermore, the Treasury published the impact assessment that accompanies these SIs, providing further transparency regarding the reasons behind, and foreseen impacts of, these proposals.

The Government believe that the proposed legislation is necessary to ensure the smooth functioning of financial markets in the UK if the UK leaves the EU without a deal or an implementation period. I hope that noble Lords will join me in supporting the regulations. I beg to move.

Lord Sharkey (LD): My Lords, as the Minister noted, the first SI—dealing with OTC derivatives, CCPs and trade repositories—was published in draft on 22 October last year. The second, dealing with financial markets and insolvency, was published in draft on 31 October last year. The impact assessments for these SIs are contained in a consolidated batch of nine HMT impact assessments, which themselves rely occasionally on references to IAs for other SIs. That batch was published on 29 January, three months after the publication of the drafts and two working days before we were scheduled to debate them. Even one working day beforehand, last Friday morning, the IAs were not available in the Printed Paper Office. Can the Minister explain the very late appearance of the SIs and why the PPO did not have copies by Friday? Can he reconcile this late publication of IAs with giving Parliament proper time for scrutiny? Can he assure the Committee that future Treasury IAs will be published in good time and lodged with the PPO?

The consolidated IAs contain a headline assessment of cost and benefits. As to costs, there are three headings: "Total Transition", "Average Annual" and "Total Cost". In each case, the IA estimates the costs as "Unknown: likely significant". This is unsatisfactory and raises the question of whether HMT understands the role that IAs play in parliamentary scrutiny. It is of no help that the consolidated IA reckons the benefits to be "significant" but declines to attempt to quantify them. In the remaining 52 pages of the impact assessment there is no real detailed examination or quantification of likely costs and benefits, apart from a reading time-based estimate and a passing reference to the trade repositories SI where costs are estimated, apparently, at £500,000 per TR. I say "apparently" because there is a typo in the cost reference for these TRs, so it is not clear whether the figure is meant to be £50,000 or £500,000. Perhaps the Minister can clear that up. I think that it would help the Committee in its scrutiny of future Treasury SIs if consolidation was avoided and we returned to individual impact assessments in proper form for each SI.

Turning to each SI, I found it quite hard in parts to follow the EM for the OTC derivatives, CCPs and TRs SI. I would be grateful for some clarification from the Minister. In paragraph 6.1, the EM notes that the SI revokes two pieces of delegated legislation. Will the Minister expand on what these are and why they are

[Lord Sharkey]

being revoked? The EM does not say why—or if it does, I could not find it. In paragraph 7.7, the EM explains that:

"As a general principle, the UK would need to default to treating EU Member States largely as it does other third countries, although there are cases where a different approach would be needed including to provide for a smooth transition to the new circumstances".

The EM does not explain what these cases may be or what the different approach might be. Will the Minister tell the Committee what these cases are, or may be, and what different approaches will be needed, and why?

Paragraph 7.12 of the EM states:

"Where the Commission has taken equivalence decisions for third countries before exit day, these will be incorporated into UK law and will continue to apply to the UK's regulatory and supervisory relationship with those third countries—with the exception of those taken under Article 25 EMIR as set out in the CCP Regulations".

Will the Minister explain what these exceptions are and why they exist?

In paragraph 7.16, the EM notes that the SI introduces a power that allows the FCA to suspend the reporting obligation for up to one year, with the agreement of HM Treasury, where there is no registered UK TR available. Surely the Treasury must know how likely this is and who it will affect. Again, the EM and the impact assessment do not help—or at least did not help me. Will the Minister say how likely this suspension is, who it will affect and what its consequences and impact might be?

I turn briefly to the second instrument, the financial markets and insolvency regulations, which is, by comparison, a model of clarity and straightforwardness. My only question relates to paragraph 1.76 of the impact assessment, which explains that the relevant EEA systems will be required to notify the Bank of England, before exit day, to enter the regime. What happens if they do not? What risks does this generate, and what procedures are in place to mitigate them?

I realise that I have asked quite a few quite detailed questions, and if the Minister prefers to respond in writing I would be happy, as long as we have the answers before the SIs reach the Chamber. I emphasise that I feel strongly that the consolidation of IAs makes proper parliamentary scrutiny significantly more difficult, and the very late production of IAs, as in this case, really does not help.

Lord Tunnicliffe (Lab): My Lords, there is much that I would support in the intervention by the noble Lord, Lord Sharkey. I particularly like the way he sneaked in the fact that he got to page 41 of the IA.

The first instrument is on an area that I knew little about before I read it. With that limitation, it seems generally to make sense. It is clear about the transfer of functions, who will be responsible for equivalence decisions and information exchange—data comes over with a discretionary relationship. It is clear that the object of the exercise—at least this is how I read the Explanatory Memorandum—is to retain the discipline of EMIR. In view of its importance, I was surprised that a UK name for EMIR was not created, as was done in a previous SI, so that we would all know what we were talking about, given that the E in EMIR stands for European.

Going a little way into the detail, as the noble Lord pointed out, paragraph 7.16 allows a reporting obligation to be suspended for one year. From what I understand of the overall regime that this is part of, its very essence is open reporting of transactions. That is what the G20 came up with to create this regime. Will the Minister give us some feel for what risks are being taken by Part 2 of the instrument, which creates an opportunity for reporting to be suspended for up to one year? It also has what seems a fairly reasonable exemption for intragroup activity. It is a classic three years, plus however often the Treasury wants to extend it. It also has an exemption for energy derivative contracts up to 3 January 2021, but I could not see where that date came from; perhaps it is something to do with an international agreement.

5.45 pm

In paragraph 7.22, the instrument introduces or changes some criminal offences. I looked back at the document that enables this, the European Union (Withdrawal) Act 2018. I assume this is being done under Section 8, under which most of this is being done. Section 8(7) states,

"regulations under subsection (1) may not … create a relevant criminal offence".

I would therefore like some assurance from the Minister that the changes outlined in paragraph 7.22 are legally correct.

The essence of the financial markets and insolvency regulations is to prevent clawback in insolvency situations, which is presently automatic for non-UK EEA members. This will fall away on exit day, but this SI gives the Bank of England power to designate, and there is a temporary designation regime with the traditional format of three years and 12 months. However, does this create an asymmetric situation? Do UK firms participating in EEA countries receive the same protection?

Baroness Kramer (LD): This is quite an important question. At the moment, LCH is the dominant clearing house globally and it is certainly the dominant player for any euro-denominated transactions. There is a shift under way to take some of this activity to Paris. The real question for a lot of the UK players is whether they have to relocate part of their operation to Paris to be able to play in both parts of what will become a much more fragmented European clearing system. That matters a lot for terms of compression and deciding what levels of margin companies have to keep. The reciprocal play matters. Today, the Bank of England and ESMA signed an MoU on how they will regulate these central counterparties. I do not know whether, or to what extent, that is the context. Am I being clear? No, I am being confusing.

Lord Tunnicliffe: No, that is very good. It might turn my casual question into quite a substantial one.

I notice that all the Treasury SIs that the Committee has discussed say that there will be no consolidation and no guidance. I do not know how we can carry on

like this. I have found it absolutely impossible to understand the overall scene that these SIs relate to. The scrutiny that one is able to give is therefore entirely dependent on the Explanatory Memorandums. As a generality, these assume quite significant previous knowledge and it is an uphill battle to get a feel for these SIs and to give them the appropriate scrutiny.

Lord Young of Cookham: My Lords, I am grateful to all noble Lords who have taken part. I detected no objection to the basic premises on which these SIs are based. I will sweep up some of the points raised in earlier debates that are also relevant to this one.

The noble Lord, Lord Tunnicliffe, asked about the FCA's resources to cope with the new responsibilities being imposed on it. We are confident that the FCA is making adequate preparation and is effectively resourced ahead of March this year. In its 2018-19 business plan, a significant proportion of its resources are already focused on the forthcoming exit, including arrangements to implement any necessary changes. It has increased its staff numbers in response to increases in the scope of its regulatory activity, including EU withdrawal. It will publish its 2019-20 plan this spring, setting out its planned work for the coming year. As I said in response to an earlier SI, the chief executive of the FCA, Andrew Bailey, has said he expects to hold FCA fees steady for a year or two, assuming there is an implementation period. If there is not, it can increase its fees should it need to do so in the event of no deal.

The noble Lord, Lord Sharkey, asked about the impact assessment being published late. This issue was raised in another place and was dealt with by my ministerial colleague John Glen. We do recognise the importance of making impact assessments available for parliamentary scrutiny. We find ourselves in a unique situation. While we have tried to ensure that these impact assessments are published before debates, this has not always been possible. We acknowledge that some firms will incur costs as a result of these SIs but, as the noble Baroness, Lady Kramer, said in an earlier debate, the situation for these businesses would be much worse in the absence of this legislation. As a whole, these SIs will reduce costs to business in a no-deal scenario as without them the legislation would be defective. In response to the points raised by both noble Lords and the noble Baroness, we have agreed to undertake further analysis of these SIs in the event that we leave the EU without a deal and they come into effect.

The noble Lord, Lord Sharkey, asked whether we could have independent assessments for SIs. I understand that, but there are some complex interdependencies between some of the SIs. Also, the work that the regulators are undertaking cannot always be neatly pigeonholed between the SIs. Given that, it has not been possible to fully quantify the impact of the individual SIs at this stage. However, this is something that Miles Celic, the chief executive of TheCityUK, noted in a letter to the RPC in November. As I said a moment ago, we are committed to undertaking further analysis of the impact of these instruments at an appropriate point, should they come into effect, either in the event of leaving without a deal—

Lord Tunnicliffe: We hear that explanation and I have great sympathy for the civil servants involved with this task. However, will the Minister at least have the grace to admit that it was entirely in the Government's hands to decide when to start this process? If they had started it earlier we would not be in this mess now. We have had impact assessment after impact assessment delivered after we have approved the instrument. That is not satisfactory and I doubt whether the Treasury will be able to catch up.

Lord Young of Cookham: I plead guilty as charged. As I said a moment ago, we recognise the importance of parliamentary scrutiny. We will try to do better and make sure that the relevant impact assessments are available in time.

Lord Sharkey: I asked about the absence of the impact assessments from the Printed Paper Office. That is the route by which most of our colleagues get the information. They were transmitted electronically to some noble Lords on 29 January, but they were not available in printed form until this morning. That seems a very odd lapse.

Lord Young of Cookham: Again, I take that seriously. Would the noble Lord allow me to make some inquiries within the machinery of government in this House to find out what exactly went wrong there? I understand that they were delivered to the Printed Paper Office on Friday.

Baroness Kramer: Having gone to the Printed Paper Office myself well into the afternoon, I know that if the Printed Paper Office had received them, it was not aware it had, so there is something there that needs investigation.

Lord Young of Cookham: We need a post-mortem on this, which I will authorise.

In response to the question put by the noble Lord, Lord Sharkey, regarding the numbers on the impact assessment, and how they relate to trade repositories, I say that there are eight trade repositories operating in the EEA that are in scope of familiarisation costs. The impact assessment confirmed that we anticipate that the IT costs for those TRs will be approximately £10,000 to £15,000 per TR—although this cost is also dependent on the size of the TR—and, for firms that will need to update their systems, £5,000 per firm. Costs to the FCA associated with supervising the trade repositories, as well as new IT systems to connect to trade repositories, would be approximately £500,000 per trade repository, although this cost is also dependent on their size. The impact assessment also acknowledged that there may be other costs associated with trade repositories connecting to the Bank of England.

I think it was the noble Lord, Lord Tunnicliffe, and it may have also been the noble Lord, Lord Sharkey, who asked about the FCA's power to suspend the need to report if there were no trade repositories. That is most unlikely. There are a number of trade repositories in the UK and there are arrangements in the legislation to passport them so they carry on. There are also

[Lord Young of Cookham]
arrangements for relatively speedily authorising any new TRs. It was slightly odd that a city such as the City of London did not have any TRs, so we think it most unlikely that the FCA will utilise its power to suspend reporting obligations against that background.

In the earlier debate, the noble Baroness, Lady Kramer, asked me whether the EU was considering reciprocity to UK funds in a no-deal scenario. The EU has not done the same for UK funds passporting into the EU, but many UK asset management firms operate EU fund ranges, and they have welcomed the creation of the temporary marketing permission regime, which enables them to market them into the UK.

I was asked what happens to an EEA system that does not notify the Bank of England of entering the TDR. Such a system will not enter the temporary designation regime and it will therefore not have recognition for UK insolvency law purposes. A notification is not an onerous requirement; the Bank of England provided details of this last autumn. The noble Lord, Lord Tunnicliffe, pointed out that under Section 8 we cannot create any new criminal offences, or, I think, create new taxes or new public authorities, and I am confident that nothing in the SIs goes against that restraint.

Lord Tunnicliffe: The appropriate paragraph does say that you are substituting one set of criminal offences with another. I can find it and read it if you like; it is a real question. I think the answer is in the word "relevant".

Lord Young of Cookham: The noble Lord asked a good question: is the creation of a criminal offence consistent with the withdrawal Act? Section 8 outlaws the creation of a relevant criminal offence. This is defined in Section 20 of the Act as an offence with a possible prison term of more than two years. The criminal offence in this SI is not caught by that definition, so it is permitted.

Following an intervention from the noble Baroness, Lady Kramer, I was asked about unilaterally recognising EEA systems as central banks with no EU-wide reciprocal action. Extending settlement finality protections unilaterally reduces the risk that UK firms will be refused access to EEA financial market infrastructures, known as systems, and central banks once the UK leaves the EU. It also reduces the legal uncertainty and settlement risk these systems and central banks would face regarding UK law without such protections, so it ensures that the UK remains an attractive place to do business in a global context and supports broader financial stability.

I am conscious that I might not have answered all the penetrating questions from the noble Lord, Lord Sharkey, or some others that have been raised. If I have not, I will write to noble Lords, I hope with an authoritative reply.

Motion agreed.

Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019

Considered in Grand Committee

6 pm

Moved by ***Lord Young of Cookham***

That the Grand Committee do consider the Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019.

Motion agreed.

Committee adjourned at 6.01 pm.

Volume 795
No. 248

Monday
4 February 2019

CONTENTS

Monday 4 February 2019