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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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House of Lords

Wednesday 27 March 2019

3 pm

Prayers—read by the Lord Bishop of Newcastle.

Education: Alternative Providers
Question

3.07 pm

Asked by ***Lord Storey***

To ask Her Majesty's Government what plans they have to ensure that all alternative education providers are providing a quality education.

Viscount Younger of Leckie (Con): My Lords, it is vital that young people in alternative provision receive a high-quality education. We need to be just as ambitious for pupils in alternative provision as we are for those in mainstream schools. That is why my department is committed to reforming alternative provision, and published its road map for doing so last March. We have already made progress and launched a £4 million AP innovation fund, which is delivering projects to improve outcomes for children in AP.

Lord Storey (LD): I am delighted to hear what the Minister said. As he knows, these young people, who have behavioural problems, have often been suspended from school, either permanently or temporarily, and are put in alternative provision. They are the most vulnerable young people. In a full curriculum, they should receive 25 hours of lessons. However, the problem is the many unregistered providers with no safeguarding or criminal checks, and which undercut costs. Local authorities and schools are placing young people in such provision. I know of a case where people with police records are teaching those children. Little wonder they get involved in gangs and drug culture. We must do something about this, and we can, by having no unregistered provision at all.

Viscount Younger of Leckie: The noble Lord makes a very good point about the need to monitor and inspect these premises. The Ofsted team has achieved considerable success in identifying unregistered schools to stop them operating unlawfully. Between January 2016 and August 2018, 274 inspections of suspected unregistered schools took place; 63 settings were issued with a warning notice and 52 settings closed. I can say for the first time that on 24 October 2018, in the first trial of its kind, the courts found two defendants and the company guilty of operating an illegal school.

Baroness Massey of Darwen (Lab): My Lords, does the Minister accept—and agree with the noble Lord, Lord Storey—that pupils excluded from school are more likely to get involved in anti-social behaviour, including crime and drug misuse/taking? Does he agree that, where possible, pupils should remain in a school setting and that, where that is not possible, they should receive outside that setting the best pastoral care possible and a structured education?

Viscount Younger of Leckie: The noble Baroness makes a good point. Decisions to exclude pupils are taken with a great deal of care, and schools and head teachers look at this very carefully. It is important that every young person is safe and free to fulfil their potential. It should be pointed out that there is something called the VRU—I know the House loves acronyms—or Violence Reduction Unit, which has had considerable success in dramatically reducing exclusions in Glasgow. I understand that this programme is being rolled out to some other parts of Scotland, and I know we are looking at this with a great deal of care.

The Earl of Listowel (CB): My Lords, I welcome the news of the plan that Ministers mention, but does Ofsted not also severely criticise the private providers in alternative provision, finding that their quality is generally far lower than that of the pupil referral units? Is the Minister looking carefully at those? Can he confirm that Edward Timpson CBE's report on exclusion will be launched before Easter, as we expected?

Viscount Younger of Leckie: I cannot confirm that it will be produced before Easter. I know it is due to be published shortly, and I think we all want to see what he comes out with. Ofsted certainly needs to, and does, view the private providers with as much attention as the other providers.

Lord Watson of Invergowrie (Lab): My Lords, the noble Lord, Lord Storey, raised an important point about unregistered schools in the AP sector. I think the Minister—who is slightly out of his normal remit today in answering this Question—may have confused the Ofsted inspections of schools of faith character with those in alternative provision. However, I can give him a useful route map out of this problem for the Government. The Labour Government's Education and Skills Act 2008 provided for the registration and inspection by Ofsted of unregistered schools for alternative provision. Plans for that to come into practice in 2012 were put on hold by the coalition Government, and that is where they remain. With exclusions in schools having risen by more than 50% in the last five years, why are the Government still refusing to implement fully the 2008 Act and ensure that all providers of alternative provision are registered?

Viscount Younger of Leckie: I am not sure the noble Lord is right. My full understanding, having looked at the matter very recently—in the last two or three days—is that Ofsted is responsible, working with local authorities, schools and AP providers, for looking at AP settings that for a variety of reasons are unregistered. That continues to be the case.

The Lord Bishop of Newcastle: My Lords, I am grateful for the Question from the noble Lord, Lord Storey, and for the Minister's answers to previous questions. At the Aspire Academy in Hull, an alternative provision

[The Lord Bishop of Newcastle]
academy that forms part of the Sentamu Academy Learning Trust, a unique multi-professional team that includes a clinical psychologist, a psychotherapist, speech and language therapists and educational psychologists is in place to ensure that students' mental health and special educational needs are met. What steps are the Government taking to ensure that mental health care and special needs provision are part of what it means for alternative provision providers to offer a quality education?

Viscount Younger of Leckie: The right reverend Prelate makes an extremely good point. It is important that local needs are taken into account. She raised one example and I can give another: the Family School, an AP free school that opened in September 2014. Its ethos is built around supporting pupils to cultivate,

"a productive lifestyle, personal resilience and the values required to become responsible members of society".

As the right reverend Prelate will know, we have a Green Paper out on children's mental health.

Lord Sterling of Plaistow (Con): My noble friend made the observation that a given number of schools have closed down. Of particular interest is what has happened to the children who were at those schools.

Viscount Younger of Leckie: The local authorities have ultimate responsibility for ensuring that each and every one of those pupils is placed in a school that gives them equal chances to those who are in mainstream schools.

Lord Addington (LD): My Lords, does the Minister agree that every child has a fundamental right to an education? If we are not sure that an unregistered school or placement can provide that, why on earth are we sending children there?

Viscount Younger of Leckie: I am sure the noble Lord will agree that there are genuine reasons why we need alternative provision schools. He is absolutely right that it is just as important that education is given at a very high level to those in AP schools, as in mainstream schools, and that those children go on to lead happy and fulfilled lives.

National Insurance Contributions Holiday

Question

3.15 pm

Asked by ***Baroness Burt of Solihull***

To ask Her Majesty's Government whether they intend to implement their commitment in the 2017 Conservative Manifesto to give a one-year National Insurance contributions holiday to firms that employ those from disadvantaged groups; and if so, when.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, we remain committed to delivering on manifesto commitments.

Noble Lords: Oh!

Lord Bates: We will set out any changes as part of the annual fiscal event process in the context of broader government work on employment support and the wider public finances.

Baroness Burt of Solihull (LD): I am grateful for that Answer and delighted to hear that the noble Lord is "committed" to this. Small businesses very often bear the brunt of changes in our economy, so they know how to be flexible. The Federation of Small Businesses found that 95% have taken on an individual from a disadvantaged background in the past three years. With this small incentive, which is in the Minister's own party's manifesto, they would be encouraged to identify and utilise the talent that is sitting on their doorsteps. It makes good business, financial and moral sense. Will he and his party please consider carrying out that commitment and implementing their own policy?

Lord Bates: The noble Baroness has looked at the Conservative Party manifesto, and I encourage her to read it all. On page 54, where this pledge is mentioned, it is under the heading, "More people in work". Since the general election, 713,000 more people are in work—I call that quite a delivery.

Lord Davies of Oldham (Lab): My Lords, the noble Lord will have appreciated the rather derisive laughter that greeted his first comment that he was out to fulfil manifesto commitments. Since the general election the Chancellor, who the noble Lord speaks for in this House, has discussed two Budgets and two Spring Statements—the last of which was only a couple of weeks ago—with ne'er a mention of this fundamental commitment in the manifesto. The noble Lord is hoping to escape today without making any precise commitment for the future.

Lord Bates: I thought I said in my Answer that we are committed to delivering the manifesto commitments. The noble Lord talks about manifestos, but I do not want to remind him of his party's commitments on student debt, which did not seem to survive the election campaign. The reality is that we are significantly increasing employment: employment is at record levels and unemployment is at a historic low; more young people are in work; and the rate of youth unemployment has been halved. These are all steps in the right direction.

Lord Cormack (Con): Does my noble friend agree that our manifestos—this applies to all parties—are far too long? Would it not be a very good thing if, in future, they were limited to far fewer than 54 pages? Would not four suffice?

Lord Bates: I am sorry to disappoint my noble friend, but page 54 was not the end of the manifesto—you had to keep reading for a little longer. However, I totally agree with his sentiments.

Baroness Kramer (LD): My Lords, setting aside the irony that this is a unfulfilled manifesto commitment, does the Minister recognise that small businesses, which are often the best place for someone from a disadvantaged community to start work because of the support available, often find it costly to take on someone who needs that kind of additional support? For those firms, this critical amount of a one-year holiday from national insurance contributions, which might not matter to a big company, is absolutely pivotal in making it possible for them to take on this extra load. Therefore, will he push for this element of the manifesto to be carried through?

Lord Bates: The noble Baroness will recall that, when we were in coalition Government, we introduced the employment allowance, which effectively said that the first £3,000 of national insurance contributions for small businesses did not apply. We have also abolished national insurance for those on apprenticeships under the age of 25 and abolished national insurance for those under the age of 21. We are doing a significant amount in this area, but I accept that we need to do more.

Lord Anderson of Swansea (Lab): Americans have a saying that a platform is something to run on and not to stand on. Is that not relevant to this manifesto commitment?

Lord Bates: We are running very hard on this agenda. I mentioned the 713,000 more people in work, and I would have thought that that would be welcomed on all sides of this House.

Lord Bird (CB): Is it possible to include people who are banged up at the moment? If we can actually get them into work when they get out of prison, as a disadvantaged group, the knock-on effects are enormous. People who have a job when they leave tend not to reoffend.

Lord Bates: That is absolutely right, and the noble Lord has done more than probably anyone else to improve the chances of people in those circumstances. That is one reason why we announced the rough sleepers initiative and why we have this new education network, which is being trialled with governors. But we cannot get away from the stark statistic that although care leavers represent only 1% of 19 to 21 year-olds, they represent 24% of the prison population. That has to be an area that we all focus on, on a cross-party basis.

Lord Dobbs (Con): Does my noble friend accept that there are perils in store for parties that do not honour their manifesto obligations? He himself is probably far too young to remember "solemn and binding"; we all remember the terrible fate that awaited that particular pledge. But would he accept that, if both the Labour and Conservative parties failed to honour their commitments given in the last manifesto to respect and implement the will of the people—noble Lords knew I was going to get around to that—they would then run the severe danger of ending up in total parliamentary irrelevance, just like the Liberal Democrats?

Lord Bates: I was going to finish on a harmonious cross-party basis with the noble Lord, Lord Bird. However, manifesto commitments need to be honoured. The Prime Minister has been very clear about our manifesto commitment in relation to leaving the European Union. She was also incredibly clear that she wanted to create a country where everyone had the opportunity of work—that worked for everyone. That is a pledge that we all have to work towards.

UK Export Finance: Expenditure

Question

3.23 pm

Asked by ***Baroness Sheehan***

To ask Her Majesty's Government what proportion of UK Export Finance's expenditure on support for energy production was spent on (1) fossil fuels, and (2) renewables, in (a) 2015, (b) 2016, and (c) 2017.

The Minister of State, Department for International Trade (Baroness Fairhead) (Con): My Lords, UK Export Finance's support is available for UK exporters in all sectors and its provision of support is demand-led. UKEF support for energy-related exports in 2015-16 through 2017-18 respectively was as follows: 99%, 97%, and 72% to fossil fuels, and 1%, 3% and 28% to renewable energies. It supported around 0.2% of the global annual investment in oil and gas in 2016. The support has helped to sustain UK jobs in a sector that employs over 300,000 in highly skilled work and is essential to our energy security. We recognise that climate change is a key issue for the world and it remains a high issue for UKEF, but support can be provided only where there is insufficient in the private market and at the moment there is significant liquidity there.

Baroness Sheehan (LD): I thank the Minister for her reply. Will she acknowledge that there is a huge inconsistency between the Government's international climate commitments, such as the Paris agreement, the UN SDGs, the G7, the G20, the EU—the list is very long—and the general support for fossil fuel production? Does she also agree that by providing billions to the enormously wealthy oil and gas industry while giving crumbs to the renewable industry, the UK Government are backing the wrong technologies and locking developing countries into decades of fossil fuel use which we will have to abandon if we are going to treat catastrophic weather events, such as cyclone Idai, with the urgency that the thousands of schoolchildren taking to our streets are demanding?

Baroness Fairhead: I cannot agree that it is inconsistent. Even the IPCC report states that there is a climate change imperative but that fossil fuels—oil and gas—will continue to be a significant part of our energy requirement and will require continued investment. The key is to make sure that that transformation and pivot towards cleaner energy is appropriate.

Lord West of Spithead (Lab): Is it still government policy that one-third of the nation's future energy supply should be provided by nuclear? If that is the case,

[Lord West of Spithead]
how are the Government going to resolve the almost complete breakdown in the development of new civil reactors for the future?

Baroness Fairhead: I can confirm that it is. I think the civil nuclear capability target is around 20%. There are major projects, but there are also opportunities in small modular nuclear reactors. On renewables, it is important that we are building up capability in a number of renewable sectors. The challenge for this country is that we have very few prime contractors in offshore wind, although we have many in the supply train. We are trying to make sure that the supply train goes through.

Lord Krebs (CB): My Lords, the Minister referred to the latest IPCC report, published in October last year, which recommended that global carbon dioxide emissions should be reduced by 45% by 2030 and that by 2050 the world should be carbon neutral if we are to avoid dangerous climate change. Can the Minister reassure the House that the investments to which she referred in answer to the noble Baroness, Lady Sheehan, are consistent with the IPCC's recommended targets?

Baroness Fairhead: I can confirm that we reply to demand from these sectors and that we focus on renewables. We have hired renewables experts. We are trying to move towards cleaner forms of fossil fuels, for example, in the $400 million project in Ghana to reduce the dependency on oil. That is a key part of achieving those objectives.

Lord Howell of Guildford (Con): Given the unwelcome fact of the continuing preponderance of coal burning for electricity throughout Asia, with new coal plants being built all the time, should not the most useful export finance support go to encouraging clean coal technology and carbon capture and storage if we are really serious about reducing emissions rather than just feeling good?

Baroness Fairhead: I agree with my noble friend. We have taken the lead on coal-fired power stations. As the House will be aware, we have agreed, on a multilateral basis, only the most extreme exceptional circumstances for any new coal-fired power stations. We have taken the lead on that. We have asked UKEF to be part of the Steering Committee of the Equator Principles. The last time we supported a new coal-fired power station overseas was in 2002.

Lord Grantchester (Lab): My Lords, in terms of taking leadership on energy production, does the Minister agree that it is now time to recognise that underwriting exports on a return-on-capital basis is no longer sufficient and that consideration should be given to social and environmental effects and benefits?

Baroness Fairhead: My Lords, we absolutely have regard to those things. All our projects are rigorously assessed according to the common approaches of the OECD and the Equator Principles—the environmental, social and human rights aspects. We rigorously follow all the international guidelines, which include making sure that people stay safe in those nations, as well as having regard to human rights.

Lord Teverson (LD): My Lords, is it not the case that things work really well for developing countries when there is not high infrastructure investment? Moving straight to mobile phones was a good example of that. Fossil fuels generally require high levels of infrastructure and networks, whereas clean energy is distributed and works far better for developing countries and economies. Should that not be another reason for concentrating more on clean rather than fossil fuel technologies?

Baroness Fairhead: My Lords, this Government are concentrating on building growth based on clean technologies, and our support for offshore wind is one obvious example. In terms of what is appropriate for each country, it is for them to decide how they meet their Paris commitments—for example, the transformational project in Ghana, in which we were involved, reduced its dependency on oil. In this transformational part of our journey towards the climate change agenda, we need as far as possible to move to cleaner forms of energy production, and, as the noble Lord will be aware, gas is significantly cleaner than oil.

Sackler Trust: Donations

Question

3.31 pm

Asked by ***The Earl of Clancarty***

To ask Her Majesty's Government what assessment they have made of the wider implications of the decisions by the National Portrait Gallery and Tate to forgo the intended donations from the Sackler Trust.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, the DCMS-sponsored museums operate independently, at arm's length from government. Therefore, decisions on philanthropic giving and other donations are a matter for the trustees of the respective institutions. Individual sponsored museums and galleries operate their own procedures relating to propriety and ethics, fundraising and charitable objectives.

The Earl of Clancarty (CB): My Lords, first, looking forward, does the Minister not recognise that there needs to be some manner of formal public vetting of donors to our national museums and other institutions in the light of growing public awareness about where the money comes from, particularly with regard to sizeable donations? Secondly, does he not feel that it is high time that government reaffirmed a commitment to the proper public funding of our museums, so that private donations are the icing on the cake rather than something on which museums are now clearly over-dependent?

Lord Ashton of Hyde: My Lords, with regard to the second question, the Government do support museums. Public funding amounts to about a third of all museum funding, and that is very important. One of the strengths of the museum and gallery sector in this country is that it has a diversified funding stream. The Mendoza review found that the amount of public funding that museums and galleries received over a 10-year period was roughly consonant. I do not think that public vetting of donors is a good idea. I do not think that the Government should be involved in assessing the rightness or wrongness of donors and whether they are suitable. It is very important that public institutions have their own trustees who look at these things, and many of them—the large ones, especially—have ethics committees to do just that.

Lord Howarth of Newport (Lab): My Lords, although due diligence is indeed necessary, does the Minister agree that deep gratitude is owed to the philanthropists who support our cultural institutions? Does he also agree that, if fastidiousness is pursued to the ultimate, many of our cultural organisations will not be able to do the very valuable work that they do? Does he agree that, if the noble Earl's severe audit had been applied to the Medici, the Renaissance would not have occurred?

Lord Ashton of Hyde: I do not think that that was the only reason for the Renaissance, but I take the noble Lord's point. It is worth putting on record that this country has been extremely well served by philanthropists, including with respect to our great museums. I remind noble Lords that a quarter of the most visited museums in the world are in this country—and four of the top 10—at least partially because of the philanthropic gifts that the noble Lord mentioned. I am happy to put that on record.

Lord Wallace of Saltaire (LD): My Lords, does the Minister recognise that it is easier for national museums to attract these large philanthropic donors than for local and regional museums? We are well aware now that a number of local and regional museums endowed 150 or 200 years ago are now in severe difficulties as a result of cuts in government funding to local authorities. Is the DCMS actively concerned about the plight of some of our town and city museums around the country?

Lord Ashton of Hyde: As I have said a couple of times in the last two or three weeks, the museum sector is not affected by local authority cuts, to the extent that museums have found other methods of funding themselves. I think we should nail this one. The Mendoza report said that the funding for museums across the whole sector had been broadly flat. I take the noble Lord's point that it is easier for a large national portfolio organisation to attract large philanthropic donations. That is not surprising, but it is exactly why Arts Council England, which we support, has made a big effort to spread its funding outside London. Last year, 70% of Arts Council England funding was awarded outside London.

Lord Hamilton of Epsom (Con): Does my noble friend the Minister know of any plans to review the Nobel Peace Prize, which as we all know is financed by the sale of munitions and explosives?

Lord Ashton of Hyde: As my noble friend knows, DCMS's portfolio has grown dramatically in the last three years—but it does not yet include the Noble Peace Prize.

Lord Turnberg (Lab): My Lords, the drug for which the Sackler family have, quite rightly, been pursued has created enormous damage in America and elsewhere. On the face of it, they knew all about what they were doing, which is a great tragedy. But I am not quite clear—perhaps the Minister can enlighten us—whether it has been proven beyond doubt in a court of law that they did know what they were doing. The family themselves are denying it.

Lord Ashton of Hyde: My Lords, I believe that they have made an out-of-court settlement in one state in the US but that the case continues in many other states. It would not be appropriate for me to talk about a legal case that is ongoing.

Hereditary Peers By-election

Announcement

3.37 pm

The Clerk of the Parliaments announced the result of the by-election to elect a Cross-Bench hereditary Peer, in place of Viscount Slim, in accordance with Standing Order 10.

Twenty-eight Lords completed valid ballot papers. A notice detailing the results is available in the Printed Paper Office and online. The successful candidate was Lord Ravensdale.

Lord Grocott (Lab): My Lords, as if we had not had enough excitement this week, the drama of a hereditary Peers by-election simply adds to it all. I must make plain, as I always try to do on these occasions, that I make no criticism whatever of the successful candidate, who I am sure will be welcomed just as all new entrants to this House are welcomed.

It is a pity that this was not on the Order Paper today, as I thought that had been agreed. It went up on the annunciator, but we should not secrete these events—we want notice of them. It is a pity that these elections are not more like traditional by-elections, and that we do not allow the candidates—both successful and unsuccessful—to say a few words after the result is declared and thank the returning officer.

To add to the minimalist report made by the Clerk, one or two facts are worth putting on the record about this by-election. There were 14 candidates, as we have heard. It was a men-only shortlist. The electorate totalled 28—that is, two electors for each candidate. The cost of the by-election was £600 including VAT; I make that about £21 per vote cast.

This was the 37th by-election since the system was started at the time of the House of Lords Act 20 years ago. If my Bill had not been blocked by four Peers on Friday, this by-election would, thankfully, have been the last. The sooner that it is made the last one,

[Lord Grocott]
the better. I hope that the Government will take note of the overwhelming view in this House that these ridiculous by-elections should finish.

Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019

Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019

Motions to Approve

3.40 pm

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

That the draft Regulations laid before the House on 11 February be approved. *Considered in Grand Committee on 25 March.*

The Advocate-General for Scotland (Lord Keen of Elie) (Con): And now for something completely different, my Lords. I beg to move the two Motions standing in my name on the Order Paper en bloc.

Motions agreed.

Plant Health (Amendment) (England) (EU Exit) Regulations 2019

Plant Health (EU Exit) Regulations 2019

Motions to Approve

3.40 pm

Moved by ***Lord Gardiner of Kimble***

That the draft Regulations laid before the House on 19 December 2018 and 28 February be approved.

Relevant documents: 13th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B). Considered in Grand Committee on 25 March.

Motions agreed.

Food and Farming (Amendment) (EU Exit) Regulations 2019

Motion to Approve

3.41 pm

Moved by ***Baroness Vere of Norbiton***

That the draft Regulations laid before the House on 11 March be approved. *Considered in Grand Committee on 25 March.*

Motion agreed.

Architects Act 1997 (Amendment) (EU Exit) Regulations 2019

Motion to Approve

3.41 pm

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

That the draft Regulations laid before the House on 18 February be approved. *Considered in Grand Committee on 25 March.*

Motion agreed.

Heavy Duty Vehicles (Emissions and Fuel Consumption) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

3.41 pm

Moved by ***Baroness Sugg***

That the draft Regulations laid before the House on 26 February be approved. *Considered in Grand Committee on 25 March.*

Motion agreed.

National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019

Motion to Approve

3.42 pm

Moved by ***Baroness Manzoor***

That the draft Regulations laid before the House on 11 February be approved.

Relevant documents: 18th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A) and 53rd Report from the Joint Committee on Statutory Instruments (Special attention drawn to the instrument)

Baroness Manzoor (Con): My Lords, the Government are bringing forward this statutory instrument under Section 8 of the European Union (Withdrawal) Act 2018 to correct deficiencies in retained EU law relating to the cross-border healthcare directive in England and Wales and to ensure that the law is operable on exit day. The instrument relates to two other statutory instruments on reciprocal healthcare, which we debated and passed on Thursday 21 March. However, at that time we had not yet seen the 53rd report from the Joint Committee on Statutory Instruments, so held it over until that report was made available. It was published on 22 March, and I will speak to its findings in a moment.

Like the two instruments that we considered last week, this instrument provides a mechanism for ensuring that there is no interruption to healthcare arrangements

for people accessing healthcare through the cross-border healthcare directive route after exit day in those member states that agree to maintain the current arrangements in place with the UK for a transitional period lasting up to 31 December 2020.

Among other things, the cross-border healthcare directive facilitates patients' rights to travel to another EEA country and receive qualifying healthcare, and to receive reimbursement from their home healthcare system. Around 1,100 people from England and Wales access healthcare through the cross-border healthcare directive route each year.

The rights are separate from the reciprocal healthcare rights under the social security co-ordination regulations. In contrast to those regulations, which relate to state-provided healthcare only, reimbursement under the directive can be for qualifying private or public healthcare. However, prior authorisation is needed for more complex and hospital-based treatments. The reimbursement under the directive route is made directly to individuals and is limited to the amount of the NHS tariff for the equivalent treatment, with individuals making up any cost difference. Under the social security co-ordination regulations, the full cost of the treatment is met by the UK, and the treating member state seeks the reimbursement directly from the UK, normally preventing the individual being charged at all.

Through this instrument, all these arrangements and processes would remain in place on a transitional basis until 31 December 2020 with those EEA member states which agree to do so with the UK. This instrument is aimed at preventing, so far as is possible without reciprocity, the sudden loss of overseas healthcare rights for our residents in England and Wales on exit day. The arrangements would not apply to member states which do not agree to maintain reciprocity with the UK.

This instrument also protects key groups in a transitional situation on exit day, irrespective of any reciprocity being in place. This would cover those who are in the middle of treatment on exit day, those who have already had treatment, those whose treatment has begun, and those who have applied for or been given authorisation for treatment before exit day. This would apply for a year or the period of authorisation, whichever is longer. The instrument also makes miscellaneous amendments to EU references and concepts. Further, it ceases recognition of remaining EU obligations to the extent that they are inconsistent with the instrument.

It is on this point that I would like to recognise the report on this instrument from the Joint Committee on Statutory Instruments. It is important to note that the committee did not find any drafting defects or issues with vires in the instrument which require redrafting. In its report, the Joint Committee on Statutory Instruments drew the attention of both Houses to this instrument on the grounds that it required elucidation in two respects and failed to comply with proper legislative practice in one respect.

In relation to the two points on which clarification was required, we welcome the fact that the committee is content with the explanations provided by the department. The committee asked my department to explain whether,

"the day on which exit day falls",

is intended to have a different meaning from "exit day". We confirmed that a different meaning is intended. Section 20(1) of the European Union (Withdrawal) Act 2018 defines exit day. The instrument the Government laid on Monday 25 March provides that exit day, as amended, would be 11 pm on 22 May 2019, if the withdrawal agreement was approved by the House before 11 pm on 29 March 2019; otherwise, it would be 11 pm on 12 April 2019. The reference to,

"the day after the day on which exit day falls",

is intended to make it clear that the one-year period for which we will fund people in a transitional situation, such as those in the middle of treatment, will start on 13 April 2019, if exit day is 11 pm on 12 April.

The committee also asked us to explain what discretion the Secretary of State has in deciding whether to include or remove an EEA state from the list of countries we have reached agreement with. I confirm that the Secretary of State will include on the list those EEA states which agree to continue cross-border arrangements with the UK after exit day and his discretion is limited to extending the current regime, rather than creating any other regime. An EEA state may be removed from the list if we negotiate a new, longer-term arrangement with that country under the Healthcare (European Economic Area and Switzerland Arrangements) Act, which I am delighted received Royal Assent yesterday. The list will be published on GOV.UK.

On the committee's concerns about proper legislative practice, the committee understands the policy intention of Regulation 18, but thinks that this approach does not give "sufficient clarity" and that,

"proper legislative practice would be to use a more detailed description of the rights being referred to, or even some kind of list".

Although we agree with the committee that clarity in legislation is critical, in this case we do not agree that its approach would necessarily provide greater clarity than that of the department.

When we implemented the cross-border directive in 2013, it codified a body of case law on the free movement of patients, goods and services. The purpose of the provision in Regulation 18 is to create a definitive, clear legal framework for cross-border healthcare as we exit the EU. The provision deliberately mirrors Section 4 of the European Union (Withdrawal) Act which, similarly, takes a "sweeper" approach, preserving, with specific exceptions:

"Any rights, powers, liabilities, obligations, restrictions, remedies and procedures",

available in domestic law "immediately before exit day". Regulation 18 indicates to potential claimants that if they want to make a claim for cross-border healthcare which is inconsistent with this instrument, based on general EU rights and obligations retained under Section 4 of the European Union (Withdrawal) Act, they cannot. This is done in an effort to clarify our legislative intent, to avoid confusion of rights and uncertainty, and, as I have said, to create a definitive framework that cannot be subsequently subverted by arguments based on general retained EU law rights.

To draw up an exhaustive list of the rights and obligations preserved by Section 4 of the withdrawal Act that could be relevant in a cross-border healthcare

[Baroness Manzoor]
context would be near-impossible. This is because of the general purposive approach adopted in European case law on this subject. Relevant provisions of European law could include Article 18 on non-discrimination, Articles 20 and 21 on EU citizenship, and Article 56 on free movement of services, of the Treaty on the Functioning of the European Union. However, depending on the facts of individual cases, we cannot rule out that other provisions of that EU law, such as Article 45 of the Treaty on the Functioning of the European Union, on free movement of workers, could also be relevant. In our view, it is far better and safer, therefore, to adopt the approach of a general and comprehensive exclusion, rather than a list approach.

I note that a number of other EU exit instruments contain provisions adopting the same approach as that set out in Regulation 18, such as our other reciprocal healthcare regulations—the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019 and the Health Services (Cross-Border Health Care and Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019—which the committee scrutinised and cleared without comment.

This approach avoids confusion and will ensure that the courts, the authorities and—most importantly—patients are clear regarding our legislative intent and the scope of our cross-border healthcare provision after EU exit. As we said to the committee in our memorandum, we will ensure that this is clearly explained in the guidance to the public that we will publish on this instrument if there is a no deal.

Noting the committee's preference for a detailed description of the rights being referred to, this would include clear, practical information on how to access reimbursement and the circumstances under which people may be eligible. As we assured the committee, that material will be published on the website of the department and, where appropriate, the websites of bodies such as the NHS Commissioning Board. In addition, the national contact points which may be appointed under the National Health Service (Cross-Border Healthcare) Regulations 2013 that are continued on a transitional basis under Regulations 15 to 17 would be able to provide information in accordance with those regulations.

I reassure noble Lords that we have been working closely with our colleagues in the devolved Administrations, who have provided consent for this instrument. I note the amendment to the Motion on this instrument tabled by the noble Baroness, Lady Thornton. I hope that my explanations, which I have spent some time on, offer some reassurance that this legislation complies with proper legislative practice and does not lead to a lack of clarity concerning the specific rights. This is important. The provisions in this instrument deliberately mirror Section 4 of the European Union (Withdrawal) Act.

We have done so in an effort to clarify our legislative intent, to avoid confusion of rights and uncertainty and—as I have said—to create a definitive framework, which cannot be subsequently subverted by arguments based on general retained EU law rights. This approach avoids confusion and will ensure that the courts, the authorities and—most importantly—patients are clear regarding our legislative intent and the scope of our cross-border healthcare provision after EU exit. I beg to move.

Amendment to the Motion

Moved by ***Baroness Thornton***

To move, as an amendment to the above motion, at the end insert "but this House regrets that Her Majesty's Government's failure to ensure that the legislation complies with proper legislative practice has led to the lack of clarity concerning the specific rights that will cease to be available in domestic law, as reported by the Joint Committee on Statutory Instruments on 22 March."

Baroness Thornton (Lab): I thank the noble Baroness for her detailed explanation, in which she named the new Act, which has now received Royal Assent. I thank her and her colleagues for, very sensibly, accepting the amendments which were agreed in this House, and thank all other noble Lords who participated. I think we did our job quite well there.

I am very grateful that consideration of this SI was postponed to allow consideration of the Joint Committee's report, published on Friday. That consideration has prompted me to table the amendment regretting the SI, on the grounds highlighted in its report, and give the Minister the opportunity to explain to the House how she and the Government intend to remedy the issues. She has gone some way towards doing that, for which I am very grateful. Reading through the *Official Report* of the proceedings in the Commons on Monday, I must say that her honourable friend the Minister did not do so with such admirable clarity. This led my honourable friend, Barry Sheerman MP, to say:

"It is horrific news for our constituents—for people who live in Huddersfield and Dewsbury",

which is the part of the world I come from,

"and all the constituents we represent. It is, in stark terms, the end of the assurance that people can travel around Europe—we all had our little card and we knew that we did not have to go out and get private health insurance; we would be covered. We had that peace of mind. What the Minister is saying today, in plain language, is that that peace of mind will end. He has just read that out. It will end unless by luck, some wing and a prayer policy that arrives from this incompetent Government actually delivers something that they cannot promise and cannot deliver".—[*Official Report*, Commons, 25/3/19; col. 8]

My honourable friend Paula Sherriff MP expressed the serious and deep anxieties that many Members in both Houses have felt about this whole period of legislation and orders leading up to Brexit day, which is now of course not this week. This issue of people's healthcare, as we have said several times in your Lordships' House, is of immediate and personal importance to hundreds of thousands of our fellow citizens, so it is very important that we get it right. In this period, we have seen some power grabs and new policies being pushed into some of these instruments, despite the Government saying that would not happen. I fear that the lack of time to scrutinise sufficiently means that we will be discovering things that got away from us, and their implications, in the months and years to come.

4 pm

As the Minister has explained, this directive concerns cross-border healthcare and allows EU and EEA citizens to purchase healthcare treatments in other EU and EEA countries, and to apply for reimbursement of their costs from their home nation. Before I turn to the concerns of the Joint Committee, can I have some clarification about that reimbursement? The Minister said that it would be advertised but the problem we will face is that if we crash out with no deal, we do not know how long it will take for the healthcare provisions to kick in. That is the period in which people may seek and need reimbursement because they may have to pay for ongoing healthcare. My question is: how will people be reimbursed if they have to pay before the new reciprocal arrangements kick in?

There was a Ministerial Statement from the Secretary of State last Tuesday to that effect. Can the noble Baroness explain how it will work? How will people know whether they are eligible to be reimbursed and how will they find out about the scheme? Posting it on websites may work; on the other hand, it may not work for some pensioners in Spain who depend on free oxygen supplies and so on. Whether or not they are going to get their oxygen supplies delivered that week will be an immediate issue for them, upon which their life and welfare will depend. These are the hard examples for which the Government have to have answers, I fear, in this process. People will need guidance to avert harm.

I turn to the concerns expressed by the Joint Committee, in what feels slightly like a not very good school report. It is as if the department was being reported for requiring elucidation and for failing to comply with proper legislative practices, but these things are actually very important. The Minister attempted to explain to us the issue about the date and the difference between the day on which exit day falls and the meaning of exit day. I have to tell your Lordships that I have read the committee's report and the appendix and explanation that the department had given. I also listened carefully to what the Minister said and I still really do not understand what on earth she was talking about.

It is tempting to read some of this into the record. The report says:

"Section 20(1) of the European Union (Withdrawal) Act 2018 defines exit day as 29 March 2019 at 11pm and section 20(2) states that any reference to a time after exit day is a reference to a time after 11pm on 29 March 2019. Regulation 15(6) is intended to describe a period of time that will end at the end of a day and the reference to 'the day after the day on which exit day falls' is intended to preclude any argument that the period of a year is to start at 11pm on 30 March 2019".

It is a mystery, and I am not surprised that the committee asked for elucidation or that it is difficult for the noble Baroness to give it to us; perhaps some wiser heads in the House will be able to do that.

The second issue—the noble Baroness referred to it—is reimbursement, and she explained how that will work. The third issue is failing to comply with proper legislative practice. The regulation provides that:

"Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which continue to be recognised and available in domestic law (a) by virtue of section 4 of the European Union (Withdrawal) Act 2018 … cease to be recognised and available in domestic law so far as they are inconsistent with, or are otherwise capable of affecting the interpretation, application or operation of, provision made by these Regulations".

I did actually understand that bit, but I would like to know why, when the committee asked for examples the department was not able to give any. Even if it resisted giving a list—I can appreciate why it might do that—giving examples of what is meant by this is really important. It is not surprising that we are suspicious about it because we have now had before us a series of instruments and legislation by which the Government have sought to take powers that were not appropriate. These are serious matters and require explanation and mitigation.

I wondered whether the Government would consider withdrawing the SI and having another go, in light of recent developments and the extension of the time until Brexit day. The Government should consider that, because this is such an important issue. It is important that people understand it and that it works properly, so I look forward to the Minister's explanation, which I hope will cast even more light than she has shed so far.

Finally, we need to ask what the implications are for this SI of the reduced scope of what was the Healthcare (International Arrangements) Bill. Given that that is on the statute book and has been prayed in aid several times in the Government's answers to questions asked by the statutory instruments committee, is this SI fully compliant now, or does it need to be looked at again? I beg to move.

Baroness Jolly (LD): My Lords, I think there is agreement across the House that provision of healthcare for British nationals travelling, living and working abroad must be a priority for the Government. I apologise to noble Lords for having missed the first outing of this SI, before it was rumbled, and I thank my noble friend Lord Rennard for stepping into the breach on that occasion. This SI aims to preserve current arrangements for reciprocal healthcare with the EU until 31 December 2020—we will come to the dates later. Success appears to rely on the Government's ability to agree this approach with individual EU member states. However, Minister Stephen Hammond seemed to suggest last week that several of these agreements have yet to be finalised. This represents an unacceptable level of uncertainty. As was noted by the Minister last week, at least 180,000 British nationals living abroad currently access their healthcare through EU systems. Many more visitors use the EHIC scheme when they are in need.

My first question is whether, since last week's debate, any further progress has been made with EU member states regarding continuing current healthcare arrangements under a no-deal scenario? I know we are less clear than we were last week— although I am not sure how clear we were last week—about the end game of all this, but how is it being communicated to people? Which are the priority states and who determines the negotiation order? Is it alphabetical, by popularity with holidaymakers, or by the number of British residents living in those states?

This SI also makes reference to what was previously known as the Healthcare (International Arrangements) Bill. Through the diligence and hard work of noble

[Baroness Jolly]

Lords, some present today, necessary amendments—which I too am delighted the Government have accepted—have made this Bill more acceptable.

More generally, it worries me that we have seen plenty of substandard legislation brought to this House recently; the Government appear almost totally unprepared for a no-deal scenario. We are here today because this SI failed the scrutiny of the Joint Committee on Statutory Instruments. The committee drew the attention of both Houses to problems with this SI, on the grounds that it requires elucidation in two respects and fails to comply with proper legislative practice in one. I thank the Minister for her comments just now reacting to these concerns, but will emphasise a few points and ask her a few questions.

Given that there has already been some uncertainty about the extent of powers afforded to the Secretary of State under what was originally known as the Healthcare (International Arrangements) Bill, it is worrying to see similar uncertainty in this SI regarding Regulation 16.

The committee highlighted that greater clarity was needed under Regulation 18 to comply with proper legislative practice. In the SI as it stands, there remain areas of ambiguity over how this regulation interacts with other areas of legislation. For those trying to determine their health rights in the future, this ambiguity is potentially damaging and certainly confusing.

I thank the noble Baroness, Lady Thornton, for highlighting last week the difficulties of finding information about post-Brexit healthcare abroad on the Government's web pages. In light of this, in addition to further clarity in the legislative text, will the Government confirm that they will additionally produce explanatory material that will be user-friendly? That final word is important; the material must be for the average families who holiday once or twice a year and use their EHICs for that, because clearly that will no longer be possible and they need to understand what the options are and what the alternatives should be. I note that the Minister said that the Government would do something like this; this would fulfil exactly what she suggested.

Does the Minister agree that the use of a narrative impact assessment, and hence the decision not fully to quantify or monetise the relative costs and benefits of the options under consideration, has made it harder for Parliament to offer this legislation proper scrutiny? Also, the impact assessment used for this SI, and the others considered last week, referred repeatedly and explicitly to the,

"Cost Recovery Regulations (EU Exit) SI".

Can the Minister confirm which of the SIs this in fact referred to? It appears to be a mistake.

Can the Government explain why they believed that a public consultation was not necessary for these SIs? My noble friend Lord Rennard noted last week that the reaction to them from expat groups abroad has been one of unhappiness and confusion, particularly regarding the 12-month guarantee for treatments agreed or begun before or on exit day. I am particularly concerned about those elderly people who will not be fit to travel back to the UK for treatment should they require it after we have left. I take it from the Minister's remarks just now that this matter has now been clarified and resolved.

Given the uncertainty of the Brexit timetable, how do the Government intend quickly and effectively to alert travellers and expats to their healthcare coverage status in the event that we exit without a deal? In particular, how will they keep citizens updated on which countries have agreed to continue current reciprocal healthcare arrangements until 31 December next year? Dates are confusing to us all; will the date of 31 December 2020, outlined in this SI as the day on which transitional continuation of current arrangements with other member states will cease, be revised given that we will no longer exit on 29 March?

Lord Lansley (Con): My Lords, I did not have an opportunity to contribute to this statutory instrument earlier last week on the related SIs, for which I apologise, but I certainly contributed to the discussion on the then Healthcare (International Arrangements) Bill. This instrument relates directly to that. I am quite pleased to follow the noble Baroness, Lady Jolly, who asked some good questions. I shall not repeat what she said but I just say that, good questions though they are, none of this adds up to a criticism of the statutory instrument and its drafting, as such. Rather, these are matters of elucidation and practice in bringing the instrument in, so an amendment expressing regret would be slightly excessive under the circumstances.

4.15 pm

However, it is important for us to be clear about what we are trying to achieve with the SI. First, on the inconsistency between these regulations and directly effective treaty rights, a useful question was asked by the Joint Committee and it received an important answer. Effectively, this concerns any route by which people might try to sustain, using the continuation of directly effective treaty rights after withdrawal, things such as their ability to access services in other member states. Obviously, this relates to cross-border healthcare services, not the reciprocal agreements or cross-border healthcare arrangements. Many Members of your Lordships' House will recall the debate about the cross-border healthcare directive. Effectively, this means that we are extinguishing the cross-border healthcare directive in the circumstances where we leave without an agreement. The Government's intention is to do that; it is not to allow any vestige of it to remain.

The point made by the JCSI is that people need to know when their rights disappear, and should not be left in a situation where they think those rights have gone but might be retained by some other route. To that extent, the clarity given by the answer is helpful but it is important for people to understand that there used to be such a thing as cross-border healthcare services, whereby people could access a service in another member state for planned treatment, and that right will go. We need to know that that has happened.

The other point, which I think the noble Baroness made, concerns the lack of quantification in the impact assessments. The narrative is useful but it was not impossible to attach some numbers—even indicative ones—in relation to one or two member states where

we know that such an agreement exists. For example, the noble Baroness, Lady Thornton, talked about Spain. We now know that there is an agreement with Spain for the continuation of cross-border healthcare arrangements and it would, even in the latter days, have been possible to look at that. Spain is not unimportant; there are a large number of British pensioners there. So it might have been possible to look at that, for example, and ask: what is the quantification of the extent to which we are providing this service to support pensioners' healthcare arrangements in Spain? In the process, we could have provided a bit of reassurance that oxygen supplies to pensioners in Spain should not stop. These things should be retained and supported through the regulations, rather than disappear. That would have been quite helpful.

My final point is that the two things being together could lead to confusion. The regulations are designed to reassure pensioners and those accessing cross-border healthcare arrangements at the point at which we leave—if we leave without an agreement—that support will continue. They are not designed to give people new access to healthcare arrangements; they are designed to reassure those with existing arrangements. We cannot possibly tell people what situation they are in until we know at what point we will leave and under what circumstances. It continues to be our wish to leave with a transitional or implementation period, as set out in the withdrawal agreement. If that is the case, telling people all the things that would be implied by leaving without a deal would be unhelpful. So let us not do that, but let us be absolutely certain that, if need be, we are in a position to tell them and provide reassurance very quickly about the continuation of healthcare arrangements for those who presently access them.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I take one minute to congratulate and thank my noble friend Lady Thornton and the noble Baroness, Lady Jolly, and others, first for their foresight that the original Bill went much further than a consolidation Bill and tried to bring in some very unacceptable things; secondly, their diligence in pursuing amendments; and, thirdly, their ability to get the Government to accept those amendments. I am very pleased that the Government are not opposing the amendments passed by this House. As well as pointing to the diligence of the opposition spokespersons on this, it shows that this House occasionally is of some use. It has some really useful functions in scrutinising legislation from elsewhere and making what was an unfortunately far too wide Bill into something that is relatively sensible.

Baroness Manzoor: My Lords, may I be so bold as to entirely agree with the noble Lord, Lord Foulkes? The House always plays a very important part in scrutiny and deliberation, and I am always in awe of the skill, expertise and experience right across the House that enables us to scrutinise legislation in the way it should be done. I am delighted that, as a result of that scrutiny, we have been able to take the healthcare Bill forward in the way that the House envisaged and that is has now received Royal Assent.

I take this opportunity to thank all noble Lords who took part in that debate; I did of course do so at Third Reading, and now it is an Act. There are too many people to mention, some of whom are not in their place, but I put on record my thanks and appreciation. I also take this opportunity to thank all noble Lords who have taken part in this debate today—the noble Baronesses, Lady Thornton and Lady Jolly, my noble friend Lord Lansley and the noble Lord, Lord Foulkes—for their valuable contributions.

I want to reassure the noble Baroness, Lady Thornton, and entirely agree with my noble friend Lord Lansley that the effect of the regulations is to ensure continuity of cross-border healthcare arrangements, where appropriate, for UK citizens, while removing them in the longer term if we exit the EU. This instrument, together with the Healthcare (European Economic Area and Switzerland Arrangements) Act, will give us the best possible chance to ensure that there is no loss of cross-border healthcare arrangements for UK citizens in the EU and EEA. This is critical, and I welcome the support from across the House, because noble Lords recognise its importance.

I am pleased also that the explanations I have offered today about the scrutiny committee's report have been accepted. I reassure the noble Baroness, Lady Thornton, and others that this legislation complies with proper legislative practice and does not lead to lack of clarity concerning specific rights.

A number of questions were raised by noble Lords. I must admit to the noble Baronesses, Lady Thornton and Lady Jolly, that I had to think and think again when I read the notes on making exit day clear. I reassure them that in the guidance that we will issue on the instrument, we will provide clear, practical information for patients so that they can understand their rights. That is fundamental, because, if we do not do that, there is no point in moving forward. It is important to safeguard those rights, but it is just as important that patients understand their rights.

Meanwhile, I restate the fact that we provided the clarity sought by the committee and it accepted it. The instrument was not reported for defective drafting. I want to reassure the noble Baronesses, Lady Jolly and Lady Thornton, and my noble friend Lord Lansley on the issue of improving communications on this issue; they are very important, as I said. We issued advice via GOV.UK and NHS.UK to UK nationals living in the UK, UK residents travelling to the EU and EU nationals living in the UK so that they can easily see what we advocate.

I assure noble Lords that the Government listened to the concerns raised by the noble Baronesses, Lady Thornton and Lady Jolly; indeed, we had this discussion last week. Information on each country can be found in the living in country guides on GOV.UK and by researching healthcare abroad on NHS.UK. That advice sets out how local healthcare systems work in each country, people's options in accessing healthcare under local laws in the member states they live in and what people can do to prepare if we do not have bilateral agreements in place. As I said, we are totally committed to ensuring that important information on healthcare is easily accessible. We will continue to provide up-to-date information to individuals as soon as it becomes available.

The noble Baroness, Lady Thornton, asked why reimbursement cannot continue. There is no process for reimbursing individuals living abroad and it would

[Baroness Manzoor]
not be feasible to establish one for the hundreds of thousands of UK expats based throughout 30 member states. However, it is true that in limited cases, and following EU regulations, DHSC or the NHS reimburses healthcare charges for UK residents visiting the EU or EEA. That happens when individuals are charged for healthcare that should have been covered by a reciprocal agreement or such an agreement should have paid for equivalent private healthcare. There are a few thousand such cases each year; payments are generally of low value and made in arrears, usually several months after the person paid up front. The application process normally involves the presentation of invoices and validation with the member state that healthcare was provided. This scheme is manageable because the vast majority of healthcare use is dealt with through the EHIC scheme or travel insurance. However, it would not be feasible to continue it and scale up the current process for the hundreds of thousands of UK nationals who fall ill when visiting the EU.

Lord Lansley: To jump back, my noble friend's point that the Government already provide information suggests, as I hope would be the case, that if needs be, the Government can publish the list referred to in regulation 16(4). Do the Government propose to publish such a list in the next few days?

Baroness Manzoor: Such guidance, or any list, is subject to our exit should there be no deal. Therefore, it depends on what happens in Parliament over the next week or two, so I cannot give my noble friend a definitive answer.

Lord Lansley: I suppose I am asking whether the Government would be ready to publish such a list on 12 April, were it necessary to do so.

Baroness Manzoor: As I understand it, it is not the Government's intention to publish a list. The approach would be holistic, as I said in my opening remarks.

Lord Lansley: I am sorry; I hope my noble friend will forgive me. Regulation 16(4) states:

"The Secretary of State must maintain a list".

From that list flows the structure of access to healthcare arrangements between the United Kingdom and other member states where continuity healthcare arrangements subsist. If you do not have a list, you do not know where it applies.

Baroness Manzoor: I am happy to write to my noble friend on that matter, but of course it would depend on the reciprocal arrangements with those different countries. We are still in discussions with some of them.

I have inspiration: we will publish the list of countries. Any bilateral arrangements or agreements will come from negotiations and, as I said, we are part of negotiations.

4.30 pm

The basis of the noble Lord's question was the safety net in this SI. I clarify again that in most cases people will have straightforward and affordable options for accessing healthcare services, whether through local entitlement routes or travel insurance. However, we are exploring whether there is a further need to fund healthcare for limited numbers of people in exceptional cases if there would otherwise be a serious risk to their health. As things become clearer over the next few weeks, we will make the situation much clearer.

The noble Baroness, Lady Thornton, raised the issue of this SI working alongside the Healthcare (European Economic Area and Switzerland Arrangements) Act. I reassure her that this instrument is needed because it is a mechanism for ensuring that there is no interruption to healthcare arrangements for UK-insured persons after exit day in those member states that agree to maintain the current arrangements with the UK for a transitional period. The healthcare Act allows us to respond to all possible scenarios and complements the approach we are taking with this SI. The Act will ensure that the UK can implement a longer-term relationship with the EU or individual member states. It also provides broader powers to give effect to healthcare arrangements that are bespoke or different in any way to the current arrangements provided by the EU regulations.

Along with the noble Baroness, Lady Jolly, the noble Baroness, Lady Thornton, asked for an example of a right or obligation being discontinued in Regulation 18. Regulation 18 disapplies the rights saved by Section 4 of the withdrawal Act where they are inconsistent with the instrument. Regulation 18 ensures that those free movement provisions cannot be relied on to resurrect the cross-border healthcare provisions being discontinued by the instrument in the longer term. But there could be other treaty provisions potentially relevant to cross-border healthcare, such as Article 45 of the Treaty on the Functioning of the European Union, on the free movement of workers. As I said in my opening remarks, to draw up an exhaustive list would be near impossible, as different provisions of EU law may be relevant depending on the facts of each case.

The noble Baroness, Lady Jolly, raised the issue of signing agreements and which member states are ready. We have made a generous offer to all member states to maintain reciprocal healthcare arrangements bilaterally under no deal, so that no one faces sudden changes to how they access healthcare. We are prioritising countries with the highest pensioner populations. Spain has issued a royal decree that sets out its plan to provide healthcare both to British nationals residing in Spain and to those who are temporarily displaced. Other countries that have brought forward their own no-deal legislation include France, Germany, Belgium, Portugal, Greece, Slovakia, Latvia, Bulgaria, Hungary and Slovenia. This legislation will of course be subject to parliamentary processes in each of those countries. The Government will implement a bilateral continuation of the current arrangements through the reciprocal healthcare Act and this statutory instrument. Where any bilateral agreements with member states differ from the current arrangements, we will use the powers in the Act to provide for this.

Issues were raised around how we carried out the impact assessment. I reassure noble Lords that there is no significant impact on business, charities, voluntary bodies or the public sector. The instrument provides a

mechanism for the continuation of reciprocal and cross-border healthcare arrangements with EEA states, and will, as far as appropriate, maintain the status quo during the period until 31 December 2020.

The noble Baroness, Lady Jolly, asked about the cost recovery SI. It is not a mistake in the impact assessment; that SI is subject to the negative procedure. She also asked whether the date of 31 December 2020 will be revisited. We feel it remains appropriate at this time.

I want to conclude on one important point concerning the safety net and why it is important to have this SI, as was touched on by the noble Baronesses, Lady Thornton and Lady Jolly, my noble friend Lord Lansley, and the noble Lord, Lord Foulkes. The Government have already taken steps to inform individuals of their rights in both a deal and a no-deal scenario. This SI explains how the UK is working to maintain reciprocal healthcare arrangements, but this will depend on decisions by member states. It sets out the options by which people might have to access healthcare under local laws in the member state they live in, if bilateral agreements are in place, and what people can do to prepare. As a matter of course, we will continue to provide up-to-date information to individuals as soon as it becomes available.

I hope I have sufficiently reassured noble Lords on this very important SI, and explained that we as a Government take seriously communicating effectively with patients about their rights to healthcare. With that, I commend the regulations to the House.

Baroness Thornton: I thank the noble Baroness for that extensive explanation, her answers to questions, and the detail and attention she has given this statutory instrument.

I was struck by a couple of things the noble Baroness said. The fact that all those countries have had to pass no-deal legislation is perhaps not the best way to make friends and influence people as we move forward in our new relationships. That is just a comment on the uncertain world we are now entering.

Dozens of the SIs before us have not been criticised by the Joint Committee on Statutory Instruments, but this one was. That is why it merited particular attention in your Lordships' House. A regret amendment will not stop its progress; it is actually just that: it regrets that the Government needed that criticism and attention from the statutory instrument committee.

I thank the noble Baroness, Lady Jolly, and the noble Lord, Lord Lansley, who asked some extremely pertinent questions. Indeed, through his persistence, the noble Lord got the right answer to the question—I was sitting here waiting to hear the Minister say that, yes, the list would have to be issued on that date. I agree with the noble Lord that the need for speed if we crash out will be absolutely paramount. I thank my noble friend Lord Foulkes for his commendation and for the support he has given during the course of the recent Act.

I thank the Minister for her reassurance and of course I accept that we need this statutory instrument on the statute book. It underlines the fact that we are going yet one more step further down the road of uncertainty. The people who need our National Health Service have been badly served by the Brexiteers in this whole argument. That lie on the side of the bus was such a big lie—and here we are discussing the welfare of millions of our fellow citizens. We should really not be here having to do that based on those lies. However, I beg leave to withdraw the amendment.

Amendment to the Motion withdrawn.

Motion agreed.

Arrangement of Business

Announcement

4.41 pm

Baroness Goldie (Con): My Lords, at its meeting this afternoon, the Joint Committee on Statutory Instruments considered the European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) Regulations 2019, which is our next item of business. To assist the debate, an extract of its report is being made available now in the Printed Paper Office. I suggest that the House do now adjourn during pleasure for 30 minutes so that all noble Lords participating in the debate have the opportunity to take note of what the committee had to say. I therefore beg to move that the House do adjourn during pleasure until 5.11 pm.

Lord Pannick (CB): Can the noble Baroness confirm that the Joint Committee's assessment of the statutory instrument consists of one line?

Baroness Goldie: I would like to answer that factually to the noble Lord, but I have not had a chance to peruse the report in detail. A bit of paper was waved before me, but as to its contents I cannot comment further. I have put the Motion to the House.

Baroness Meacher (CB): I am a member of the Joint Committee on Statutory Instruments, and coming from our meeting this afternoon, I can say very clearly what is the conclusion of the Joint Committee and I do not think that noble Lords need half an hour to read it. The committee agreed that the statutory instrument ensures that the position in international law is exactly replicated in UK law in accordance with the European Communities Act 1972. The Joint Committee on Statutory Instruments considered the SI at our meeting today and found no reason to doubt the vires of the instrument. I understand that that is all the committee will be communicating to the House.

Lord Pannick: I apologise to the Joint Committee: I should have said one paragraph.

Baroness Hayter of Kentish Town (Lab): In fact, the extract that has been given to us does not include the paragraph. What has been made available in the Printed Paper Office simply states that the Draft European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) Regulations 2019 is an instrument,

"to which the Committee does not draw the special attention of both Houses".

Baroness Goldie: Well, I am very grateful that so many noble Lords have had the advantage of what I have not had the advantage of, which is seeing what this bit of paper says. But I detect from noble Lords that there is an awareness of what it says and it seems to be brief. For the benefit of those who have not managed to get to the Printed Paper Office—and that includes myself—and have not attended the Chamber this afternoon, would it be acceptable if we adjourn during pleasure for 10 minutes? Let us say that we reconvene at 4.53 pm.

4.43 pm

Sitting suspended.

European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) Regulations 2019

Motion to Approve

4.53 pm

Moved by ***Lord Callanan***

That the draft Regulations laid before the House on 25 March be approved.

Relevant documents: 54th Report from the Joint Committee on Statutory Instruments, 46th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, first, I express my gratitude to the House for agreeing to suspend Standing Order 72 so that we can debate this statutory instrument today. I am also thankful to the Secondary Legislation Scrutiny Committee for its report, produced yesterday. In addition, I express special thanks to the other excellent committee, the JCSI, which met only this afternoon but has very helpfully released its view on the instrument and has not found any reason to draw it to the special attention of the House.

There was an important discussion yesterday about why the Government had asked the House to agree to take the debate without having a guaranteed report from the JCSI. Taking that decision was, in my view, the right thing to do and we should all be grateful to the JCSI for being prepared to do its work so quickly and thoroughly. I am sure that that has been of great assistance to the House.

Lord Forsyth of Drumlean (Con): I am most grateful to my noble friend but, given that this has happened, surely it was not necessary to suspend our Standing Order.

Lord Callanan: Maybe not, but we did not know when the committee would be considering the report. It made special arrangements to sit—but I take my noble friend's point.

Although the Motion approved by the other place on 14 March to seek an extension is not legally binding, the Government made it clear in that debate that we would seek an extension if that was what the House voted for. The other place then voted to approve a Motion to seek to extend the Article 50 period. An extension has therefore been agreed with the EU and the Government are now committed to implementing that extension in domestic law.

This is a vitally important instrument with a simple but crucial purpose. It will make sure that our domestic statute book reflects the extension of Article 50 that was agreed with the EU on Friday 22 March. As the House will be aware, the decision adopted by the European Council and agreed to by the UK provides for two possible durations. Should the other place approve the negotiated withdrawal agreement this week, the extension will last until 22 May. If it does not approve the withdrawal agreement this week, the extension will last until 12 April.

These regulations, laid under the European Union (Withdrawal) Act 2018, therefore cater for an extension in either scenario by redefining exit day to ensure that the day and time specified in that definition is 11 pm on 22 May or 11 pm on 12 April, depending on whether the other place approves the withdrawal agreement.

I note of course that the noble Baroness, Lady Hayter, has tabled an amendment to today's Motion which I am sure she will speak to in a moment. As ever, my noble and learned friend Lord Keen stands ready to respond to that in his closing speech.

I take this opportunity to respond directly to a question put yesterday to my noble friend the Leader of the House by the noble Lord, Lord Pannick. I assure the House that the Government have considered carefully the vires under Section 20(4) of the 2018 Act and are satisfied that they have the power to make these regulations under that section. Section 20(4) provides that regulations may be made to,

"amend the definition of 'exit day' … to ensure that the day and time specified in the definition are the day and time that the Treaties are to cease to apply to the United Kingdom".

That power applies only where the day and time specified in the definition of exit day differ from that when the treaties will cease to apply.

Following agreement with the European Council last Friday, the day and time that the treaties cease to apply do now differ from that contained in the definition of exit day. However, the European Council decision identified two possible dates when the EU treaties will cease to apply. Consequently, the amendment to exit day reflects those two dates, applying the same condition, and, in doing so, ensures that the day and time specified in the definition are the day and time that the treaties cease to apply to the United Kingdom. Only one day and time will apply at any given time.

It would be contrary to a natural reading of the words in subsection (4) to suggest that the power may not be exercised in this way to reflect the conditionality in the extension agreed with the EU. I would also draw attention to paragraph 21 of Schedule 7 to the Act, which puts beyond doubt that the powers in the Act may be used to deal with supplementary matters.

The effects of the instrument will apply across the domestic statute book, so it is important that I set out the details of what it will do and why. Currently, major changes to the domestic statute book reflecting our

exit from the EU are due to take effect on exit day, which is defined in the European Union (Withdrawal) Act 2018 as 11 pm on 29 March 2019, despite the extension terms that have now been agreed at the international level. These changes apply across a huge number of policy areas, from emissions trading to Europol. All the changes are designed so that our statute book works when we leave the EU. However, because in many cases they amend EU regulations they are inconsistent with the situation in which we remain a member of the EU for a couple more weeks or months.

5 pm

All the changes are due to take place on exit day, and this definition has effect across the statute book by Schedule 1 to the Interpretation Act 1978, Schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010 and Section 44A of the Interpretation Act (Northern Ireland) 1954, with which I am sure all noble Lords are familiar. Now that an extension to Article 50 has been agreed in EU and international law, we need to amend the date to reflect the new point at which the EU treaties will cease to apply to the UK, and to ensure the correct functioning of our domestic statute book. The instrument has therefore been laid under the European Union (Withdrawal) Act to do just that.

It is critical that the House approves the instrument for the simple reason that the extension of Article 50 has been agreed with the EU and is therefore legally binding in EU and international law. Owing to the agreement between the UK and the EU to extend Article 50, the UK will remain a member state of the EU until at least 11 pm on 12 April as a matter of EU and international law. If this instrument did not pass, that would lead to confusion across our statute book from 29 March—this Friday. A large volume of EU exit legislation preparing the statute book for the moment when EU law ceases to apply is due to enter into force automatically on exit day. Without this instrument being put in place, there would be a clash in our domestic law whereby contradictory provisions applied to both EU rules and new UK rules simultaneously, and in some cases new UK rules would replace EU rules prematurely.

We estimate that tens of thousands of amendments to our domestic legislation will be made in the light of EU exit. These include: changes that relate to the sharing of information; reporting requirements placed on businesses and public institutions; and the role of the European Commission in issuing licences and certificates. For example, let us take the statutory instrument relating to the rights of lawyers to practise in the UK, which may be of some interest to noble Lords. If these regulations come into force on 29 March, EU lawyers who are not "registered European lawyers" immediately before exit day are at risk of committing a criminal offence if they continue to provide particular legal services in the UK. Other examples include UK operators being unable to comply with the EU Emissions Trading Scheme and having to surrender their emissions allowances early, and the risk that firms stop trading to avoid legal breaches, given their uncertainty about when new customs, excise and VAT regimes will kick in. There are other examples from across the statute book, but what is clear is that without this instrument there will be significant confusion and uncertainty for businesses and individuals on Friday 29 March.

Lord Wigley (PC): Can the Minister confirm that, in the event of the vote in the other place on Monday leading to proposals for a different form of agreement, there is nothing in this order preventing another order from coming forward to further amend the date of exit if any changes that arise from the debate in the other place have to be negotiated with the EU?

Lord Callanan: No, there is nothing in this instrument that would conflict with that. What they are debating in the other place are effectively changes to the political declaration, not to the legally binding withdrawal agreement.

To avoid a conflict between UK and EU law, it is therefore essential that the instrument being debated today is made before 11 pm on 29 March so that it may come into force ahead of that time. This will align exit day with the new date and time on which the EU treaties cease to apply to the UK in EU and international law.

I am acutely aware of the huge amount of work undertaken by Members of both Houses to scrutinise the nearly 550 statutory instruments brought forward to prepare for exit. If this instrument did not pass, that work would be put under threat. I therefore hope that this House can agree on the necessity of this instrument and approve it so that, with the approval of the other place also, it can come into force and avoid serious confusion and uncertainty for businesses and individuals. I beg to move.

While I am on my feet, I want to take the opportunity to correct something that I said during exchanges with the noble Baroness, Lady Quin, at Oral Questions yesterday. The noble Baroness was in fact not a member of the Blair Government during the time of the Iraq war demonstrations, and indeed did not vote in favour of the Government's decision to go to war. I have of course apologised to the noble Baroness, and I would like to take this opportunity to correct the record.

Amendment to the Motion

Moved by ***Baroness Hayter of Kentish Town***

At the end insert "but this House, whilst recognising the necessity of the Regulations, regrets the manner in which Her Majesty's Government have conducted withdrawal negotiations with the European Union which has resulted in widespread uncertainty as to when the United Kingdom will leave and about the status of European Union citizens, as well as undermining business confidence; and calls on Her Majesty's Government to pursue without hesitation any course of action in relation to those negotiations which is approved by a resolution of the House of Commons."

Baroness Hayter of Kentish Town (Lab): My Lords, Members of this and the other House have spoken of their shame or embarrassment about how the Prime

[Baroness Hayter of Kentish Town]

Minister and the negotiators she appointed, Messieurs Davis, Raab and Barclay, have handled our dealings with the EU. Today's statutory instrument is a manifestation of their failure. The Prime Minister has failed to unite her Cabinet, her Government, her party or the Commons, let alone the country. It starts with red lines and a failure to reach out to the 48%. It ends with a lonely, tax-funded, failed plea to the public and the humiliation of eating hundreds of her words. Those words, "We are leaving on 28 March", have been repeated endlessly by Mrs May and here by the noble Lord, Lord Callanan, for whom some of us —almost—feel sorry, for having to digest the words he parroted so many times.

The noble Lord's embarrassment, which he carries with a good grace, is as nothing to the uncertainty now facing our ports, businesses, holidaymakers, citizens living across the EU, farmers, importers, manufacturers, traders and hospitals, and EU citizens here. Today, they see us changing our law, not simply to remove Friday's date from the statute book but to insert two new dates. It still is not clear when we are due to leave the EU. It is almost beyond parody. I now wonder what phrase the Minister will use to replace the old mantra. Will it be, "We will leave on a date yet to be confirmed," or "We will leave, don't know when, don't know how"? Perhaps we will meet again some sunny day.

Today's change via this SI is, of course, necessary, but it would have been unnecessary had the Government heeded the advice of your Lordships' House. In May last year, the amendment proposed and so convincingly argued by the noble Duke, the Duke of Wellington, replaced 29 March with the words,

"such day as a Minister of the Crown may by regulations appoint".

My colleagues behind me have begged me not to use the words "I told you so" today, but I cannot resist. In May, I warned the Minister that,

"the negotiations … will be affected by the timetable",

and that, given that,

"the negotiations could go on a bit later than everyone wants",

having a particular date fixed in an Act of Parliament, passed in mid-2018, would be,

"a very unhelpful position for our negotiators to be in".

I predicted—I promise these are my words in *Hansard*—that,

"the withdrawal agreement could contain a leaving date of a week or two … after the two-year period, which would allow the last-minute arrangements to be made",

and continued,

"if that suits all the parties and if our Government would like to sign up to it, it would seem silly not to be able to do that",—[*Official Report*, 8/5/18; cols. 37-38.]

without amending the Act.

Of course, it was not just me. Our own EU Committee said:

"The rigidity of the … deadline of 29 March 2019 … makes a no deal outcome more likely … enshrining the same deadline in domestic law would not … be in the national interest".

Your Lordships agreed. By 311 votes to 233, we passed the amendment tabled by the noble Duke, the Duke of Wellington, by a tidy majority of 78. We are here today because the Government did not listen.

Unfortunately, we now face the same again, which is why the last part of our amendment calls on the Government to pursue any course of action in those negotiations sanctioned by a resolution of the Commons. We stress this because Ministers and Mrs May keep telling us that they will not be bound by today's votes in the elected House, which might be a bit of a problem for them anyway, if Robert Peston is correct. He reports that the Cabinet Secretary and the Attorney-General informed Cabinet that if, at the end of the Letwin process, MPs passed a Motion mandating the Prime Minister to pursue a new route through the Brexit mess, whether a referendum, a customs union or another option, then the Prime Minister and the Government would be in breach of the Ministerial Code and the law if they failed to follow MPs' instructions. The impression created by the Prime Minister that she could ignore the results of the indicative vote process is not true if those Ministers who briefed out of the Cabinet are to be believed. Perhaps it is because those briefings are right that the Government down the other end have just tried, shamefully, to end the indicative vote process, although they lost that vote. It is that reluctance to heed the views of MPs that makes the last part of our amendment so important, even if, as I said, it might be unnecessary should the law indeed require the Government to follow the outcome.

Lord Pannick (CB): Could the noble Baroness say what law is applicable here? I understand the political argument, but what law would compel the Prime Minister to comply with the House of Commons' view?

Baroness Hayter of Kentish Town: Indeed, I am as questioning on that. That apparently, from very good leaks, was what the Attorney-General said to the Cabinet. Unfortunately, I do not have access to it. It may not be the case, but that is what was being briefed—I do not think that the Attorney-General will be speaking utter nonsense, which is what I think I heard from the other side of the House. It is what Robert Peston says.

Noble Lords: Oh!

Baroness Hayter of Kentish Town: As I just said, that is what he was told by Ministers present in the Cabinet. I was not there; he was not there. I am reporting—

Lord Forsyth of Drumlean: Would that be one of the Ministers who had broken the Ministerial Code by defying a three-line Whip?

Baroness Hayter of Kentish Town: Sadly, Robert Peston is such a good journalist that he does not name his sources. I would love to know just as much as others.

Lord Cormack (Con): Is not the lesson that the Cabinet should cease to talk about Cabinet meetings to anybody outside of Cabinet?

Baroness Hayter of Kentish Town: I certainly share that view, although just occasionally it is very useful. The real point is, of course, the political one: the Government briefing that they will not go along with the MPs' choices and then, just now, trying to defeat

the Business Motion so that the indicative votes do not have to take place seems to suggest they do not want to heed what elected Members say. It is for that reason that the last part of the amendment has become more significant than when we originally drafted it.

I hope the House will support the amendment and regret the shambles that got us here from not listening to the noble Duke, therefore causing some of this uncertainty for business and citizens. Of course, we agree that the instrument is necessary to ensure we have clarity on our statute book. As the Law Society of Scotland says, it is,

"essential to ensure consistency in the operation of UK law with that of EU law".

Without it,

"there would be great uncertainty and confusion in the operation of UK law".

We agree with the instrument, but we do not agree with the method that got us here. I beg to move.

5.15 pm

The Duke of Wellington (Con): My Lords, I cannot resist rising to support this statutory instrument. As the noble Baroness, Lady Hayter, has already mentioned, last May a very sensible cross-party amendment was carried convincingly by this House, tabled by myself, the noble Baroness, and the noble Lords, Lord Newby and Lord Hannay. Therefore it had complete cross-party support. It was very unfortunate that the Government did not accept it. It was carried here but rejected in the other place.

At the time, the Government stated that they had no intention, under any circumstances, of seeking an extension. However, when first tabled in the other place, the original Bill—subsequently an Act—did not include a date. I fear that the date was only inserted at the behest of the European Research Group. We in this House argued that there was no point in putting in a date when it might have to be changed in circumstances which none of us could, at that moment, foresee. Now that the Government have agreed an extension with the European Union, clearly this statutory instrument must be passed. The Minister has already explained the legal chaos which would be created, now that it is agreed with the European Union, if the exit date were not to be changed in our domestic Act of Parliament. I hope the Minister will accept that point when he winds up.

Although the noble Baroness, Lady Hayter, was a co-signatory with me, I very much regret that I am unable to support her amendment to the Motion. We all have our views about the way the negotiations have been handled and the excessive delays which have occurred, but at this point, we really need resolution, and we must pass the statutory instrument. I hope the House of Commons will, in the next few days, reach an agreed position. If I was there, I would still support the Prime Minister's deal. Should that not carry, I hope some alternative proposal comes forward. At this moment, we must have clarity for our citizens and our businesses, and, in my opinion, we must support this statutory instrument.

Baroness Ludford (LD): My Lords, we on these Benches support this statutory instrument as a necessary measure to prevent confusion and uncertainty, although, as the noble Baroness, Lady Hayter, and noble Duke, the Duke of Wellington, have said, if the Government had listened to this House when it advised against putting in a fixed date, life would have been considerably easier. Both 29 March and the constant reiteration of the commitment to no extension were ideological fixations. Now, two of those are down out of three. I am looking forward to a Government U-turn on a people's vote. That would make the trio.

We are sympathetic to the sentiments in the amendment in the name of the noble Baroness, Lady Hayter. I cannot improve upon what she said about the unfortunate way in which the negotiations have been conducted. This is not the place to go on at length about that, but the mess we are now in was predictable and, indeed, predicted. We agree that it would be very odd if the Government said that while they felt instructed by the people, they defied the will of the House of Commons, and indeed, as we have had cause to say before, they refuse to get an update on the will of the people from 2016—which, of course, amounted to only 37% of the people. All the indications are that views have evolved.

The Government have allowed themselves multiple bites at the cherry, as MPs have, but will not allow the people even one chance to rethink. That is very arrogant. We on these Benches would of course want to add to the amendment of the noble Baroness, Lady Hayter, by ensuring that whatever version of Brexit comes out as the top preference of MPs should then be put back to the people, for them to have the final say on whether they support it or wish to opt to remain.

The noble Lord, Lord Forsyth, who is having some fun today, expressed himself astonished yesterday that,

"the Prime Minister can go to a meeting in Brussels and, suddenly, what is in statute is completely irrelevant".—[*Official Report*, 26/3/19; col. 1719.]

It is not quite like that. MPs voted for an extension to Article 50 and, for once, the Prime Minister did what the House of Commons told her to. She requested an extension, which became the European Council decision of 22 March. Since we are therefore still in the EU until at least 12 April, EU law is supreme over domestic law. That is how it works. I felt an intervention coming somehow.

Lord Forsyth of Drumlean: The point I was making was that the Prime Minister went to Brussels and made a request, which was refused. She was offered two dates and signed away the effect of the legislation without coming back to Parliament and asking it to express a view. I am sure the noble Baroness agrees that that is an extraordinary constitutional position.

Baroness Ludford: I think the noble Lord's quarrel is with the Prime Minister.

Lord Forsyth of Drumlean: Yes.

Baroness Ludford: It is that, rather than with anything I have said.

I noted that while on Monday there was an insistence from the government Benches that this decision by the European Council represented international law, at least by yesterday things had moved on somewhat when the noble Baroness the Leader of the House

[Baroness Ludford]
referred to EU and international law. I am, however, puzzled by her insistence that the European Council decision and the UK's agreement to it constitutes a binding agreement in EU and international law. It seems to me that that decision is simply a binding legal act under EU law, to which the UK is now and at least until 12 April subject. It just seems to be difficult for the Government to straightforwardly acknowledge this, presumably for political reasons.

I am sure that the noble Lord, Lord Pannick, will speak to the issue that he raised yesterday about the legality of the two alternative exit dates and I will leave that to him. From these Benches, we can accept the convenience of needing only one statutory instrument, and not potentially two, to cover both the scenarios envisaged in the European Council decision.

Finally, I want to ask about the position on the European Communities Act. I cannot remember whether I asked this yesterday or the day before. The Explanatory Memorandum to the present regulations says:

"'Exit day' is the day by reference to which provisions of the 2018 Act, including the repeal of the European Communities Act 1972 … take effect or come into force",

but that is not my understanding. The European Union (Withdrawal) Act says that the repeal of the European Communities Act takes effect on exit day. My understanding is that an SI is needed to bring that into force; indeed, the briefing from the Library says:

"This provision of the EUWA"—

namely, the repeal of the European Communities Act—

"has not yet been brought into force".

So even beyond exit day, unless there is an SI to bring into force the repeal of the ECA, the ECA will continue. Can someone explain how that interacts with these regulations? Even if you change exit day, do you still need an SI to bring in the repeal of the European Communities Act? I look forward to the clarification which I am sure the noble and learned Lord, Lord Keen of Elie, who is looking impatient, will be able to give me.

Lord Pannick: My Lords, I support the Motion in the name of the noble Lord, Lord Callanan, and I thank him for addressing the legal question I raised yesterday. I am satisfied that these regulations are valid; the legal issue is whether exit day is specified in the statutory instrument when it refers to two possible dates. I agree that that is so: it is specified, and for this reason. It seems to me that the purpose of the power to amend the date of our exit, as expressly stated in Section 20(4)(a) of the 2018 Act, is to ensure that domestic law on exit day is consistent with our treaty obligations. This SI accurately implements in domestic law the current treaty obligations in the light of the extension of the Article 50 period. Unhappily, that still involves more than one possibility as to the future, and the SI accurately reflects the reality under EU law.

There is a risk that a court might take a different view on the validity of the SI; I would not expect it to do so. I am, however, surprised that Ministers did not adopt the simpler, risk-free option of specifying 12 April as exit day, since they have ample powers further to amend exit day if appropriate. That is especially so when there is a third possibility recognised under the EU decision to which the SI refers. The EU decision says that if the withdrawal agreement is not approved by the House of Commons by this Friday, the Article 50 period is extended until 12 April. It adds:

"In that event, the United Kingdom will indicate a way forward before 12 April 2019 for consideration by the European Council".

If that occurs, and if agreement is then reached on the way forward, it may involve an exit day different from either 12 April or 22 May: that, of course, would require another SI.

I understand that the noble and learned Lord, the Advocate-General for Scotland, will be replying to this debate for the Government. I have a question for him which builds on the question put at the end of her speech by the noble Baroness, Lady Ludford. As a matter of domestic law, exit day is highly significant under the 2018 Act for various purposes, but one of the central functions of exit day is given accurately in paragraph 6.5 of the Explanatory Memorandum:

"Section 1 of the 2018 Act repeals the European Communities Act 1972 on 'exit day', whilst the saving and incorporation of EU law into domestic law (known as "retained EU law") … take effect on and after 'exit day'".

Various provisions of the 2018 Act were brought into force under Section 25 of that Act when it was passed. Those provisions include Section 20, which defines exit day and confers the power exercised in this statutory instrument to amend exit day. Also commenced and brought into force when the 2018 Act was passed were Sections 8 to 11 and other provisions which confer powers on Ministers to make regulations such as those we have been scrutinising in recent weeks. There have also been more recent commencement regulations, such as SI 808/2018, which provide for the bringing into force of other provisions of the 2018 Act.

5.30 pm

What have not been brought into effect are the substantive provisions in Sections 1 to 7 of the 2018 Act, as mentioned by the noble Baroness, Lady Ludford. They have not been commenced—they are not yet part of our law and will not have effect on exit day. This may be surprising to some noble Lords, and indeed to people outside this House, but it is not yet part of our law that the European Communities Act 1972 is repealed on exit day. It will not be part of our law until Section 1 of the 2018 Act is brought into force.

Could the noble and learned Lord say whether this analysis is correct? I am optimistic that it is, because the Explanatory Memorandum says in Paragraph 6.5:

"These sections of the 2018 Act have yet to be commenced".

Am I right in thinking that the Government have not yet brought Sections 1 to 7 of the 2018 Act into effect because, if the House of Commons were to approve the Prime Minister's deal or if there were to be some other deal, the Government intend the anticipated European Union (Withdrawal Implementation) Bill to amend Sections 1 to 7 of the 2018 Act so as to provide for EU law to have some continuing legal status during the transitional period? I emphasise that I would welcome that, but it would be helpful to have some clarity on this question.

Lord Robathan (Con): My Lords, the noble Baroness, Lady Hayter, will be horrified to discover that I agree with a great deal of what she has said. I will not support her amendment because I do not agree with the last clause, but no one in this House could think that things are going well. Perhaps somebody does, but I do not think so. We have a Government who, frankly, are in chaos—I say so to my Front Bench—a Parliament in disarray and, regrettably, a Prime Minister who appears to have lost the support of her Cabinet, her party, the Commons and, I fear, the people. For me this is a very sad day, because I had always hoped to support a Conservative Government.

This SI, as we know, enacts something that has been imposed upon us by the European Commission, Herr Juncker and Monsieur Barnier. I would think everyone feels some sadness over this, whatever position they take; Parliament passed the Withdrawal Act—it was fiercely contested, but agreed—and now it is dismissed by the Council by diktat. I find that worrying, and it should be understood that that is why people like me wish to see the supremacy of UK law restored.

This legislation seems to me somewhat dishonest. Let me explain why. I have not counted, but the Prime Minister is alleged to have said in Parliament 108 times that we are leaving on 29 March. That is this Friday. One has to ask—again, this is not a matter for joy on any side of the House—whether anyone will trust anything she says again. Frankly, that extrapolates very quickly into trust in politicians being at the all-time lowest I have seen in my lifetime. Those who support this SI should know that people will see it as evidence that you cannot trust Parliament, you cannot trust politicians and you cannot trust the Prime Minister—and I find that very worrying. I could trust Tony Blair.

Many in this House may imagine—some smugly, perhaps—that this will lead to our cancelling Brexit and staying in the EU. Again, I say that this will undermine the trust of the British people. Those who think that must understand the damage being done to our political system and to trust in Parliament. We have gone beyond a simple matter of disagreeing, frayed tempers and civil discussion while we disagree into hate speak. Vitriol has been released into the body politic. We no longer disagree civilly; people argue in such a way that I think some have been driven mad on both sides. It is not civil disagreement when someone smashes an egg on Jeremy Corbyn's head; it is going much too far, as the magistrate found. I understand that Michael Gove's wife was told by someone at the weekend that they hoped her husband would drop dead within 100 yards. This is lunatic. Where are we going? And I fear it may get worse.

Parliament made a promise. I believe that referendums are a terrible idea but Parliament promised that it would enact the decision of the British people. I am glad to say that I was not here to vote for the referendum Act in 2015, but I was able to support leave in 2016, although I still thought the referendum a bad idea. We, collectively, as a Parliament—as a political class, if you like—made a promise to accept the decision of the British people. Now, today, we are backsliding. I fear we shall not be forgiven by a great many people outside here and I fear for the future—I really do.

I have no idea what will happen and I shall not predict. It is very unwise if one does. We should not imagine or pretend, however, that Parliament or the Government come out of this well. I fear it will be a long time before that trust between Parliament and the people, and trust in the Government, is restored—if indeed it ever is. If noble Members do not believe me, they should go down the Corridor and speak to MPs—Labour, Conservative and Lib Dem—and hear what their constituents are saying. They are losing faith, if I may put it that way.

I agree with so much that the noble Baroness, Lady Hayter, said that I hope, for once, we can come together on this, although not on her amendment. I will oppose it but I will not support the government SI, should it go to a Division. It breaks faith with the British electorate and those who believed what the Prime Minister has said more than 100 times.

Lord Hannay of Chiswick (CB): My Lords, I was a signatory to the amendment to the then European Union (Withdrawal) Bill 2018 that would have avoided the Government being in this predicament today, but I will not go on at any great length about that. The noble Baroness, Lady Hayter, and the noble Duke, the Duke of Wellington, have explained the history very well. It is perfectly clear that we—and, above all, the Government and the Minister—would be in a better place today if that amendment had not been overturned in the Commons. But it was and now we are busy repeating the exercise. I take some comfort, however, from the noble Lord, Lord Callanan, having confirmed that there is nothing in the statutory instrument that prevents our doing the whole thing again if 11, 12 or 22 May turn out to be the unicorns that 29 March turned out to be. It is a very odd and unsatisfactory way of proceeding but I would support the statutory instrument.

On the rather bizarre discussion that went on in the other place about whether domestic law was overruled by international law, I entirely concur with the point made by the noble Baroness, Lady Ludford: it is not international law that is overruling, it is European Union law, because we are still a member of the European Union, and the statutory instrument is prolonging that. I say only that the Minister and anyone else who wishes that we had left on 29 March had better get used to this, because if the Prime Minister's deal goes through—not all that likely, perhaps, but possible—rulings of the European Court of Justice will be directly applicable in this country until December 2020. They will overrule domestic law. So we had better get used to it, and we had better get used to describing it properly as it is: part of our treaty obligations as a member of the European Union.

The amendment in the name of the noble Baroness, Lady Hayter, is a masterly understatement of the damage that has been done. There is no reference to the large sums of public money which have been spent preparing for the eventuality that no deal was better than a bad deal, which has proved to be just about the most useless piece of negotiating capital that has ever been used—a real piece of damp spaghetti. That is sad. I therefore support her amendment.

Lord Forsyth of Drumlean: I cannot resist responding to the most extraordinary speech that I have heard since the noble Lord, Lord Kerr, said that the British people would come to heel on this matter. The noble Lord, Lord Hannay, said, "You had better get used to having your laws made by people who are not accountable". As we know, the change in the date was made over dinner by people who are not accountable. The noble Lord, Lord Pannick, said with zeal: "If only they'd listened to me and our advice here". The Act was passed by an overwhelming majority in the House of Commons, the elected House.

Turning to the noble Duke, the Duke of Wellington, I could not help but think, seeing the mess we are in today because Parliament is stuffed full of people who have deliberately set about trying to frustrate the result of that referendum, of what his very great ancestor said—that nothing except a battle lost can be half as melancholy as a battle won. There are no victors here, and the losers are the millions of people in our country who took the Prime Minister at her word when she said that we would leave the European Union on 29 March, as she told the House of Commons on more than 108 occasions.

I thank my noble friends on the Front Bench for having had the courtesy to listen to someone who has not, so far—I do not believe he will—entered this debate to say, "I told you so". That is my noble friend Lord True, who yesterday pointed out to the Government that they should not subvert our due process by suspending Standing Orders to bring this statutory instrument before the House. The Government are to be thanked and congratulated on the fact that they did today what yesterday they said was impossible: they got the Joint Committee to look at the SI, and the Joint Committee miraculously found a printer who was able to print the results of its deliberations, and the House has been suspended so that we can see what the committee had to say on this important matter. It had nothing to say at all.

It had nothing to say at all because this is a stitch up—a fait accompli. The Prime Minister went to Brussels and signed up to this extraordinary proposition —I agree with many of the points made by the noble Lord, Lord Pannick—with these two dates, where people who are not accountable to our voters imposed conditions.

5.45 pm

Baroness Ludford: Does the noble Lord accept that the Prime Minister went to Brussels because the House of Commons, which is accountable to the people, voted for an extension?

Lord Forsyth of Drumlean: Indeed, it suggested to, or instructed, my noble friend the Prime Minister to go to Brussels and ask for an extension, but we got two dates and diktat about what we had to do about them. That is a completely different proposition. I do not suppose that we will get another coalition Government but I must say something to the Opposition Front Benches, which may take pleasure in what is happening in the other place. A group of Conservative MPs has, extraordinarily, handed power to Jeremy Corbyn and the Scottish nationalists and worked with the Speaker of the House of Commons, in breach of convention. Today, at the other end of the building, the Executive is the House of Commons. Indeed, such is its enthusiasm for this new state of affairs that it has extended this situation until Monday—and there is nothing to stop it doing so until Tuesday or Wednesday. Moreover, it is reported that that same Speaker—again, against convention—is preventing the Prime Minister bringing her deal before the House of Commons again because it has been considered before, yet the Cooper-Boles amendment gets presented again and again. I rest my case: we find ourselves in an unpleasant place, which has come about because of a conspiracy by remainers.

Lord Warner (CB): My Lords—

Lord Cormack: My Lords—

Lord Forsyth of Drumlean: I will give way in a second. There has been a conspiracy where Members of both Houses have sought from the beginning to frustrate what 17.4 million people voted for. I agree entirely with my noble friend Lord Robathan that this has done huge damage to Parliament and people's trust in politics. In this unelected House, some Members glory in the fact that they have been able to undermine what a huge majority in the House of Commons voted for in asking us to accept our fate of being told what to do for the next two years against what people voted for in a democratic vote.

Lord Warner: Can the noble Lord explain to the House why, after she was requested to seek an extension, the Prime Minister decided of her own motion on the date of 30 June without, as far as I can see, any consultation with the EU? On the question of why the EU did or did not agree with her, it was because it was not prepared for that and so chose an alternative date to the one she offered. I thought that the noble Lord would be rather pleased with a shorter timetable than the one the Prime Minister asked for.

Lord Forsyth of Drumlean: I am unable to assist the noble Lord. I have no idea why the Prime Minister has done a whole load of things throughout this process. It has brought us to a very poor position.

Lord Cormack: My noble friend is waxing eloquent about conspiracies. What about the conspiracy of the ERG, which sought to take over the Conservative Party in another place?

A noble Lord: That is not true.

Lord Cormack: Oh yes it is. My noble friend has supported the ERG throughout, as far as I understand it. He has always ignored those of us who have totally accepted the result of the referendum. If he had read a single one of my speeches in these debates, he would know that we want a seemly Brexit that recognises the interests of the 16 million people concerned about a decision they thought was mistaken. Where is my noble friend's allegiance to democracy in all that?

Lord Forsyth of Drumlean: My noble friend described members of the ERG as being involved in a conspiracy because they sought to ensure what every single

Conservative Member of Parliament stood on—a manifesto that said we would leave the single market and the customs union. I describe that as an act of integrity—of keeping their word to the people who elected them. For my noble friend to suggest that he has always been in favour of this and has been working assiduously to deliver what they stood for election on is beyond parody.

Lord Framlingham (Con): My Lords, I am normally quite an optimistic man, but now I am really very close—at least in parliamentary terms—to despair. I despair for the Commons, I despair for your Lordships' House and the way we have behaved over the past two years, and I despair for the British people who are being so appallingly governed. As an ex-Deputy Speaker, I am really saddened by the way our long-understood and cherished parliamentary rules are being thrown aside by people who should know better in their reckless campaign to stop us leaving the EU. As my noble friend Lord True explained to the House yesterday, it is vital that we differentiate clearly between the issues that may divide us—however important—and the structures and mechanisms that allow us to decide these matters in an orderly way. In stormy seas, it is important to cling to the structures that have served us so well in the past. Without a firm and settled framework in which to work, we will descend into chaos—indeed, perhaps we already have.

This leads me on to the pantomime taking place in the Commons today: a circus, with the Speaker as ringmaster and the Prime Minister and Government as mere onlookers. What nonsense: indicative votes. All these suggestions and countersuggestions—second referendums, Norway, customs unions, hard Brexit, soft Brexit—have only one thing in common: they are all designed to prevent us leaving the European Union. That is what it is all about; it is a very simple matter. There is a pretence of accepting the referendum result, and I have heard it again in the Chamber today. How many people start their remarks by saying, "I completely accept the referendum result", and then go on in their speech to indicate quite clearly that they have not, do not and never will? They call it improving the Bill or a better deal for the country. The truth is that they want to stop us leaving and to stop happening what the majority of the people in this country voted for and still want.

We have been told times without number by the Prime Minister that we leave on 29 March. I need not remind noble Lords that that is the day after tomorrow. If only we had had the honesty and courage to keep our word, get on with it as the country is urging us to do and remove the uncertainty, as people are crying out for: no more haggling deals; start trade talks; keep our money. What about all those companies that have planned for 29 March and are now told it is not happening—all those companies and people who believed the Prime Minister and planned to leave on that date? I do not believe that the Prime Minister should have agreed to extend the departure date in the way she has. This statutory instrument and the need for it are highly questionable. Although I would not want to damage British business or all the institutions, I find it absolutely intolerable that we have been put in this position by a Prime Minister who simply could not or would not keep her word.

Lord Hamilton of Epsom (Con): My Lords, like my noble friend Lord Robathan, I was rather enthusiastic about the amendment of the noble Baroness, Lady Hayter. It starts rather well, going on about how the Prime Minister has conducted the negotiations very badly, and regrets,

"the manner in which Her Majesty's Government have conducted withdrawal negotiations with the European Union which has resulted in widespread uncertainty as to when the United Kingdom will leave".

"Hear, hear", to that, I say. I would have been happy to support that. But the amendment goes on, of course, to say that we should support all the machinations in the other place, where Executive powers have now been transferred to the House of Commons and away from the Government.

If that is what the noble Baroness wants, quite clearly the Labour Party is resigned to remaining in Opposition in perpetuity. As we do not have a written constitution, this will become enshrined in the way we do our business, and the Government will not be able to govern in the future—and that will apply to any future Labour Government as well.

The real problem is that these negotiations could not have been conducted worse, if anybody had tried. One of the problems—here I speak in support of my right honourable friend the Prime Minister—is that people have constantly wanted to rule out no deal. No deal is not half as bad as everybody likes to make it out to be; indeed, as the preparations have been done for no deal, most businesses now are prepared for it. For some reason, all this hysteria has been built up about no deal. The result is that, by mandating the Prime Minister to rule out no deal, we have completely undermined her negotiations with the EU. It would have been totally different had she actually been able to say, "If you can't give me concessions, we will end up with no deal". That has not happened. As a result, the EU has said, "We have given you an agreement and we have no wish to renegotiate it". There is no downturn potential whatever for the EU from facing her down, which is what has happened constantly.

As my noble friends have said, the result is that the Prime Minister has been in a position where she has told us—108 times—that we will leave on 29 March. Gullible, stupid people like me believed her, and where are we now? We are talking about extensions to 12 April, and perhaps beyond. So it is not surprising that people are becoming very disillusioned with this Government and with her. It is undermining the whole position of government in this country. The Opposition have a serious responsibility for making a very bad situation worse.

It is all very well Members on the opposite Benches laughing. The noble Lord, Lord Adonis, actually wants us to stay in the European Union—

A noble Lord: At least he is honest.

Lord Hamilton of Epsom: Yes, he has been honest enough to say that. But who are we, as an appointed House, to tell the British people that they got the referendum result completely wrong and that it should be reversed? We have had this argument so often before. Where does it leave Parliament if Parliament cannot deliver on a referendum? A referendum is a delegation by Parliament to the people to make a decision.

[Lord Hamilton of Epsom]
If Parliament does not carry out the decision, where does it leave us? It is a disturbing issue, and not one that all these remainers, particularly in your Lordships' House, are really prepared to address. But what happens if we end up back in the EU, which the people have told us we should be leaving? People do not like to think about this very much, but it has enormous ramifications for democracy in this country.

We are now in a very difficult position, seeing endless extensions of the date on which we might leave. I am very sad that 29 March has now gone out of the window. Many of my friends who think, like I do, that it is critical that we get out, will be mindful of the powers given to the Prime Minister under the EU withdrawal Act so that she can at any time go back to Europe to ask for extensions, presumably for years if necessary. We have to think about that very closely before we decide how we will vote on the absolutely dreadful agreement that she has reached with the EU. It may be the least bad of all the bad options in front of us.

Viscount Waverley (CB): For the record, the noble Lord may not be aware of breaking news. The Prime Minister has agreed to resign before the next phase of Brexit, in reality—I was going to say appropriately—because she will not stand in the way of a desire for a new approach in a bid to get Tories' deal through.

6 pm

Lord Hamilton of Epsom: I am extremely grateful to the noble Viscount forgiving us that information and I am delighted to hear it. If we have a new leader, we may well see very different results in our negotiations with the EU.

Viscount Ridley (Con): My Lords, perhaps it is inappropriate to continue, therefore, with the speech that I was going to make, but I will start anyway. Earlier this afternoon, I was having tea with my son and past the window went a tugboat which was going against the tide. It was really struggling. I know how it felt. But I cheered myself up with the thought that the tide turns. The water goes down stream in the end—the tug was going up stream, I should explain.

Perhaps I can cheer up my noble friend Lord Framlingham by emphasising that 17.4 million people voted to leave the European Union and this genie is not going back in the bottle. If we fail on this occasion, there will be another chance to get it right. After the second Punic War, which imposed the Carthaginian peace that Mr Boris Johnson likes to talk about, there was a third Punic war. That did not end well either, but perhaps this one will end better—for the Carthaginians, that is.

As noble friends have said, the Prime Minister said 108 times that she would leave on 29 March, come what may. She said 50 times that we would not extend and she said 32 times that no deal was better than a bad deal. The noble Baroness, Lady Hayter, talked about the need to heed the will of Parliament. But surely we also need to heed the will of the people. There was a time when people on both sides of this debate, shortly after the referendum, emphasised that that is what they wanted to do. Hilary Benn said:

"You vote to leave? We're out. That's it. We're going".

George Osborne said:

"There's no second vote. This is the crucial decision of our lifetimes. Do we stay in the EU, a reformed EU or do we leave?"

Yvette Cooper said, "I don't think you should be trying to unravel a decision the public has made", and so on and so on.

The noble Baroness, Lady Ludford, speaks of her hope that there will now be a U-turn on the second referendum issue as well as all these other issues. She is hoping for a Government who will do that. Maybe she should heed the will of MPs on this because the Wollaston amendment on a second referendum was turned down a few weeks ago by 334 votes to 85. But now they want a second vote on the second referendum and scheming is going on by Keir Starmer, Dominic Grieve and co to try to avoid an embarrassing defeat of that second vote on the second referendum. I understand that the Beckett/Kyle amendment, which is the result of this scheming, is a strange beast that tries to avoid getting blamed for this second referendum being turned down in Parliament.

Some of us wanted to abide by the result of the first referendum. Some of us are not convinced that there is any need to delay. Some of us are convinced that we were ready to leave. We may never get the chance to know just how wrong the scaremongering about no deal was. But we have known for three years that we were supposed to leave on 29 March. If we were not ready, then some people were preventing us from being ready. We have known for two years that the European Union was interested only in driving a very hard bargain and therefore we should have kept no deal firmly on the table.

Like my noble friend Lord Robathan, I deeply regret having to see this change enacted. I will not support the Government in making this change, but I cannot support the amendment of the noble Baroness, Lady Hayter.

Lord Adonis (Lab): The resignation of any Prime Minister is an extremely sombre moment, and I think it will not be lost on the House that this is the second Prime Minister in a row who has—

Baroness Noakes (Con): The Prime Minister has not actually resigned. She has merely indicated that she will not lead the second stage of the negotiations.

Lord Adonis: I am aware of the fact that she has not literally gone today, but she is going very shortly.

Lord Hamilton of Epsom: I am glad the noble Lord accepts that she will be going shortly. This will be the second Prime Minister that the EU has got rid of. Does he think it will make it a hat-trick?

A noble Lord: You guys did it. It was your party.

Lord Adonis: The comments we have heard from noble Lords on the Conservative Benches over the past half-hour demonstrate the reason why that once great party is in the position it is in at the moment. It has not come to terms with the basic problem, which is Brexit itself. Brexit has now destroyed two Prime Ministers

in a row. It has virtually destroyed this Government. It has proved to be a totally unviable policy. The best advice I can offer, with great humility, to the next Prime Minister is: do not proceed with Brexit or it will destroy you too, because the recriminations have started. They always start in situations such as this. We have had speeches about betrayal and claims that somehow Brexit, which was begun by this Government, was somehow inflicted upon us by the European Union. This is all delusional. Until we cease the delusions, we will not be able to get things right for the country.

What is the right way of describing what has happened? It was not possible to negotiate a Brexit deal that met the promises that were made in the referendum campaign three years ago. That was not because of the actions of people like me—it turns out that the noble Lord thinks we are somehow responsible for the fact that Brexit did not work—but because of the nature of the Brexit proposition. It was not possible to leave the club and keep all the benefits. That was the fundamental delusion and the lie that was told to the British people.

The great unravelling is starting. I suspect that the recriminations we have heard this afternoon will be just the beginning of what will happen for a long period. It is extremely sad for the country—I understand that—but the conclusion which I draw, and which I believe the House will draw in time, is that the best way of dealing with this is not to proceed with Brexit but to be honest with the country that this is not a project that could be taken forward with advantage.

Lord Robathan: My Lords—

Lord Adonis: The noble Lord has made a speech. Will he at least allow me to finish my remarks? Then, I will happily give way to him.

The right thing for Parliament to do in this situation is to put its wisdom at the disposal of the nation, which is our job, and, now we can see the fruits of Brexit and the situation we are now in as a country, put it back to the people in a referendum giving them the option to remain. This is not a complicated situation; this is a simple situation. I am well aware that the recriminations will carry on for a long period. Indeed, I think that will inevitably be the case because the damage that has been inflicted on the country by this process is very great. Our job now is to seek to move forward, and in the crisis situation we now confront, where the second Prime Minister in a row has been brought down by a policy which has simply proved impossible to implement, the right thing for us to do is to call a halt to this national nightmare, hold another referendum and give the British people the opportunity to put a stop to Brexit.

Lord Robathan: Before the noble Lord sits down, I believe I am right in saying that he was elected to Oxford city council or district council at one stage. I fought many elections, as did many noble Lords. We were held accountable by our electors for what we had said. It does not matter what side one is on, one is held accountable for that which one has said. What is happening now is that what people said in the referendum campaign and since, and what was promised, is being stood on its head.

Lord Cormack: My Lords, I do hope that we can lower the temperature a bit. Although I happen to believe that our duty is to save Brexit and to try to unite the country, I am one of those who deeply regretted the result of the referendum, and I have always made that plain. Along with colleagues, I tried to make the Bill better last year by supporting the amendment proposed by my noble friend the Duke of Wellington. However, I accept that we are indeed—in those infamous words—where we are, and I believe that it would be wrong to have a second referendum. We have to try to make Brexit work, difficult as I know it will be. I am utterly convinced that no deal would be a disaster for the country, and I have made that plain time and time again.

I am one of those in my party—and there are a number in the other place—who have said repeatedly that, although the deal is not perfect, you cannot retain all the benefits of membership when you leave an institution, and the Prime Minister's deal is as good as we are likely to get. I very much hope, even now, that it will prevail and that we can move on to the next phase. We are not even at the end of the beginning; we are at the beginning of the beginning. A great deal has to follow on, and I would like us to get on with it.

The Prime Minister has shown enormous resilience and great courage. I believe that her judgment has frequently been wrong, but she has exercised her patriotism in a perfectly reasonable way. She will now step down, as we heard from the noble Viscount, Lord Waverley, a few moments ago, and that is the right decision. It is now incumbent on the other place to try to choose someone who will be able to infuse some of the spirit of a Government of national unity.

The future is not in strident, right-wing Toryism. I joined the party 63 years ago—the year of Suez. I have never, until the last year, felt ashamed, but the party has split in a fractious and factious way that has not served the interests of the country. I hope that all my colleagues who accept that Brexit has to come to pass will now reach out and that there will be an attempt across the Floor—because we know that the Labour Party is also split on this issue—to find some common factors and come together. The strife that has existed since referendum day has not served any useful purpose.

I have always been something of a student of the English Civil War, and I have begun to understand it over the last two years. The time has now come for peaceful progress. I trust that what has happened in another place today will lead to the acceptance of the Prime Minister's deal and we can then go forward.

Lord Warner: I thought that we were discussing the statutory instrument, but this is rapidly turning into an angst and confessional session for the Conservative Party. I wonder whether we might move rather more promptly to the Front Bench to reply on behalf of the Government.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I am greatly impressed and relieved that so many Members of this House have expressed an interest in the European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) Regulations 2019. It appears to have taken us rather more than an hour to arrive at the conclusion that we are all in favour of the

[Lord Keen of Elie]
instrument and that we understand its purpose and the requirement to ensure that the domestic statute book is not left in disarray—because we are not anarchists and we do not wish to invite anarchy upon our heads.

I will say little about the instrument itself, but I will address some of the points that have been raised by noble Lords—albeit that I do not intend to be drawn into issues about conspiracy theories or about the shape of any party, because it is a case of country, then party, rather than party, then country. Furthermore, I simply wish to draw together the contributions that have been made.

6.15 pm

The noble Baroness, Lady Hayter, talked about her amendment and that of the noble Duke, the Duke of Wellington, on the exit date. She suggested that the Government did not listen. The Government did listen, but we did not agree. The position is simply this: a mechanism was introduced into the Bill at Section 20(4) so that the issue of the exit date could be easily addressed and reviewed by way of an instrument such as that which we have before us today.

There is then the matter of the noble Baroness's amendment. The noble Baroness has been guided here by that legal oracle Robert Peston. I would suggest that this is an unsafe route to follow, and indeed that she might reconsider her position. But let us look at the terms of the amendment itself which,

"calls on Her Majesty's Government to pursue, without hesitation, any course of action in relation to those negotiations which is approved by a resolution of the House of Commons".

How reckless would that be?

I notice that the first Motion selected for voting this evening in the House of Commons is that of the honourable Member John Baron, to leave the European Union without a deal on 12 April. I wonder whether we are supposed to embrace that in the event that it passes the Commons. I wonder where this is supposed to be going. Clearly, no Executive can simply accept such indicative votes not knowing what their consequences will be. We have a responsibility as a Government and as a Parliament to ensure that we take those steps that we consider to be in the public interest at the end of the day. The noble Baroness wishes to intervene.

Baroness Hayter of Kentish Town: I just wondered whether the noble and learned Lord was speaking on behalf of the Government, who were threatening that we should be leaving the day after tomorrow with no deal.

Lord Keen of Elie: When I am at the Dispatch Box, I always speak on behalf of the Government; that at least is my understanding. I am addressing not the matter of the policy of the Government, but the matter of the amendment and where it would lead us. On that, my respectful view is that it would be a wholly reckless course of action for this House to adopt. I invite noble Lords to consider very carefully the precise terms in which it has been expressed.

The noble Baroness, Lady Ludford, raised a number of issues about the position of the ECA and the matter of its repeal, in the context of the statutory instrument. Indeed, this touched upon points then made by the noble Lord, Lord Pannick: that the 2018 Act had been enacted but a number of provisions had not yet been commenced, having been deferred from Royal Assent. I accept that his analysis of the commencement provisions is, as I understand it, entirely accurate. In particular, there has been no commencement provision in respect of Sections 1 to 7, albeit that there has been commencement provision in respect of a number of other parts of the Act.

I confess that this can lead one into difficulty; certainly, it led me into difficulty on an earlier occasion in this House when I observed, in response to a question from the noble Lord, Lord Anderson of Ipswich, that the provisions with regard to European elections were repealed because that is expressly provided for in the 2018 Act—without appreciating that those provisions had not been commenced. I have some sympathy for the need for a detailed analysis of what has been commenced and what has not. That said, I want to be clear that the reason for not commencing Sections 1 to 7 is that as a general rule such commencement provisions are brought in only as and when the relevant statutory provisions are going to be required, and it is not for the reason suggested by the noble Lord. Nevertheless, I acknowledge that any withdrawal agreement Bill may amend the withdrawal Act provisions with regard to retained EU law to reflect what is or may be agreed in a withdrawal agreement. Therefore the withdrawal agreement Bill may well address a number of features of the existing 2018 Act.

A number of noble Lords, including my noble friend Lord Robathan, alluded to the Prime Minister having expressed the opinion on a number of occasions that we would leave the EU on 29 March 2019. However, as I believe Keynes once observed, "When the facts change, I review my opinion. What do you do?" In light of the facts having changed, it is hardly surprising that that opinion has changed.

A number of noble Lords, including the noble Baroness, Lady Ludford, asked whether the European Council determination was a matter of EU law. It is a decision under EU law but, obviously, one that is recognised at the level of international law. It is therefore a matter of EU law, as an expression of determination that is recognised by Article 188 of the Treaty on the Functioning of the European Union as binding upon any member to which it is directed, but is also a decision of determination that would be recognised at the level of international law. That is why, although we have agreed these dates at the level of international law, having regard to the duality principle we have to ensure that they are also recognised and implemented at the level of domestic law.

There were a great number of other observations but perhaps I can touch upon just two. First, my noble friend Lord Forsyth suggested that this Government had achieved the impossible, and I am obliged to him for his suggestion that we are capable in that regard. Nevertheless I would have to draw back a little from that proposition, which he mentioned in the context of the functioning of the Joint Committee. The point that I simply make is that it is not for the Executive to direct these committees on how they function and

discharge their functions. As it transpired, that committee very helpfully, readily and appropriately brought its proceedings forward, but it was not for the Executive to try to bind it to do so.

Lord Forsyth of Drumlean: If my noble and learned friend checks *Hansard*, he will find that I said the Government had achieved the impossible by finding a printer who was able to print the result. His boss, the Leader of the House, told us that that was one of the things that it would not be possible for this Government to achieve.

Lord Keen of Elie: Again, I am very pleased at my noble friend's acknowledgement that we have achieved something that was otherwise regarded as impossible. It is encouraging that we have such support, at least from our own Benches. [*Laughter.*] Those opposite are the Opposition, not the enemy. We must do something about knife crime.

Secondly, the noble Lord, Lord Adonis, repeated, as he has done often before, his uncompromising advice on what we got wrong and how to put it right—but on this occasion he did it, as he said, with humility, so some things are beginning to change. The other observations that were made in this invigorating debate really had nothing to do with the instrument or with the Motion that has been tabled. I therefore shall not pursue them at this time of the evening.

I finish by begging to move that the instrument should be approved and again encouraging noble Lords to look carefully at the precise terms of the Motion that is to be moved by the noble Baroness, Lady Hayter of Kentish Town. We cannot have a situation in which the Executive are purportedly bound to any Motion that has not yet passed in the Commons. That way lies chaos, which is the one thing we do not need at this point in time. I am obliged to noble Lords.

Baroness Hayter of Kentish Town: That is not fair. How can I follow that? I will say two things to the noble and learned Lord, Lord Keen. He mentioned Robert Peston; of course, when I first came here, his father Lord Peston was sitting behind me. I think he would have enjoyed today's proceedings, maybe for all the wrong reasons.

I should also say to the noble and learned Lord that using the example of the Baron amendment, which called for a no-deal exit, does not come across well from a Government who have been threatening that we would leave with no deal the day after tomorrow. New paragraph (b) in Regulation 2(2) of the statutory instrument still says that we could leave without a deal at 11 pm on 12 April. That was probably the wrong example to use.

We had some interesting interventions on my amendment from the noble Duke, the Duke of Wellington, and the noble Baroness, Lady Ludford, who reminded us that this was an ideological choice at the beginning. The noble Lord, Lord Hannay, reminded us about the cost of all this, as did the noble Lords, Lord Hamilton and Lord Robathan. From the feed coming through, I understand that the Prime Minister's resignation will be dependent on getting the deal through, in which case the Conservative Party leadership contest will start on 22 May. I am already hearing about all sorts of cabals going on, but that is not for us.

There were interventions on the SI itself, rather than my amendment, from the noble Lords, Lord Forsyth, Lord Pannick, Lord Warner and Lord Cormack, the noble Viscounts, Lord Ridley and Lord Waverley, and my noble friend Lord Adonis. The noble Lord, Lord Framlingham, also spoke. He told us that he is normally an optimist, but is now nearing despair. In an earlier debate—I think it was when we were doing the Bill—we had Hope, Pannick and Judge. As the hope is rather fading, we are closer to the panic than we were at that stage.

I think my amendment has provided an opportunity for the House to express its concern about the chaotic way we got here and where the blame lies. Even if there was not complete agreement on the last bit of the amendment, I think it served its purpose in allowing the House to express its views, without having to divide. I beg leave to withdraw the amendment.

Amendment to the Motion withdrawn.

Motion agreed.

Baroness Goldie (Con): My Lords, the House of Commons is still considering this instrument. In view of the urgency of both Houses' decisions today, it may be appropriate and for the convenience of the House if we adjourn during pleasure until the result of the other place's consideration is clear. I therefore beg to move that the House adjourn during pleasure until 9.30 pm. I assure the House that we will not conduct further substantive business when we resume.

6.28 pm

Sitting suspended.

Offensive Weapons Bill

Returned from the Commons

The Bill was returned from the Commons with amendments.

House adjourned at 9.30 pm.