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Committee (and remaining stages)1235

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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

Friday 6 September 2019

10 am

Prayers—read by the Lord Bishop of Birmingham.

European Union (Withdrawal) (No. 6) Bill Committee

Relevant document: 61st Report from the Delegated Powers Committee

10.06 am

Clause 1 agreed.

Clause 2: Report on progress of negotiations on the United Kingdom's relationship with the European Union

Amendment 1

Moved by Lord James of Blackheath

1: Clause 2, page 2, line 30, at end insert “, including what steps have been taken to ensure that United Kingdom sovereignty has been an essential principle in those negotiations and will be in any forthcoming negotiations.”

Lord James of Blackheath (Con): My Lords, a week ago, I wrote a letter to the Lord Speaker in which I suggested that in certain circumstances which might occur, such as this morning, the entire House of Lords is ineligible to sit. I do not intend to pursue this point, but I want to explain why it occurs. I think it is important to us.

If the Lisbon treaty is allowed to stand and is not wiped away at midnight on 31 October, we are all, every single man jack of us, in breach of our oath on joining this House because we have allowed the omniscience of Parliament to be reduced by the elimination of the veto which was standing in our benefit until the Lisbon treaty. That has far-reaching consequences which go way beyond us and reach into the Palace and the Crown itself. We need to be aware of those implications. If I am right on that assertion—I have taken it to the Table Office and asked it to think about it, so there must be some professional opinions around—then we would be ineligible to sit today, and it would mean that this Bill cannot pass the House. I am not pursuing that.

What I am going to say is that I think the basis on which we are going forward from here is wrong because we have a situation in which we are facing a choice between remain, the no-go solution and, as came very much into focus in the latter stages of yesterday, the possible resurrection of the May deal. The May deal and remain both carry the same consequence that they would still leave us in breach of our oath. We need to have our oaths restored to us, which would happen at midnight on 31 October if the Lisbon treaty was wiped away.

The first person we need to be concerned about in that respect is Her Majesty because we have the power of government placed in our hands by the coronation oath which she swore never to diminish, but we have diminished it for her. In those circumstances, do the British public realise they are being asked to consider a situation which might create a position in which Her Majesty would consider it was essential for her to abdicate? If that occurred, would it ever be possible to resurrect the monarch because nobody else could swear the same coronation oath? Let us be realistic about this. My whole criticism of the situation of opposition to no-go at the moment is that we simply have not informed the British public of what is at stake. It goes way beyond this.

We have this wonderful paper called Yellowhammer, which tells us all the dreadful things that will happen if we do go no-go. My secretary has an alternative list that I have compiled called the Black Vulture, which is my list of the things that people do not know about which will happen if we do not go no deal. The first is the hazard it creates for the Crown. The second is: will somebody please tell us the truth about the European defence union? This is by far the biggest issue facing the British public and they know nothing about it officially. Can we please have a proper account of what it entails? Is it really true that the Government have entered into private agreements with the European Community that they will, on completion of remain or whatever it is to be, transfer to the European Union in Brussels the entire control of our entire fighting forces, including all their equipment? [*Laughter.*] Noble Lords may jest, but it has been done and they should check it out. It is too important to ignore. We must know the truth of this. We must have it clear for the whole public to know. I believe it is true, and I think we should be told. I understand that it is intended that the oath of every serving member of our forces will be cancelled and they will be required to undertake a new oath of loyalty to Brussels. I understand that in recent months, we have had a series of people sent from our Armed Forces to create and install the command and control centres to be used for the control of our troops once we have ceased to have any control over their use, application or deployment. It goes beyond this. They are to take control of our intelligence services, the whole core of Five Eyes. They will have MI6 and the Cheltenham monitoring centre, and we will be completely excluded from it under the new arrangements and have no access either to the—

Lord Blunkett (Lab): I wonder whether the noble Lord would be prepared to give way just for one moment. I appeal to him to conclude, because it is not in either his interests or the interests of the Committee for him to continue.

Lord James of Blackheath: I thank the noble Lord. It is, however, in the interests of the British public, who, in the end, will have to vote blind on this issue. They need to be informed but nothing has been done to bring that about. I beg to move.

Viscount Hailsham (Con): My Lords, I want to ask one short question. I refer the Committee, and in particular the Minister, to col. 1203 of yesterday's *Hansard*,

[VISCOUNT HAILSHAM]

in which my noble friend Lady McIntosh of Pickering raised a very important question. She said in the final paragraph of her comments to this House:

“Can we have confirmation today not just that the Government will apply for an extension in the terms of this Bill”— this is the salient point—

“but will vote for such an extension in the European Council?”.— [Official Report, 5/9/19; col. 1203.]

I would add the proviso: “and will not seek to oppose such an extension”. The Minister was not in his seat when that observation was made. I make absolutely no criticism but it would be very helpful to have an assurance from the Government in those terms.

Baroness Hayter of Kentish Town (Lab): My Lords, I thank the noble Lord, Lord James of Blackheath, for raising what are obviously much wider issues than are contained in his amendment. The amendment itself is probably not necessary and therefore we will not support it.

I want to make one point about today. From today there are 55 days until Brexit. Anyone who has gone to the Hampstead Theatre recently will have seen the play “55 Days”. I remind noble Lords that it relates to the 55 days between the creation of the Rump Parliament and the execution of the King. I do not think that we are quite in that territory yet but I urge all noble Lords to remember that a clock is ticking. We should get on with the Bill as rapidly as we can today, but I do not think that the amendment would add to it in any way whatever and therefore I hope that the Committee will not support it.

10.15 am

Lord Adonis (Lab): My Lords, it is not clear which Minister on the Front Bench is responsible for the Bill. Is no Minister taking any interest in these affairs at all? The Minister for Exiting the European Union is notable by his absence in the Chamber now, as indeed he was for a large part of the debate yesterday.

The Earl of Courtown (Con): My Lords, the Minister for Exiting the European Union is at an important meeting at the moment but will be joining us.

Lord Rooker (Lab): The reality is that this is private Member’s business and the Government Front Bench is on strike again, as I said at the end of yesterday’s sitting. It is as simple as that. That is what it is all about.

The noble Lord, Lord James of Blackheath, made a very important speech, which we listened to with care and attention. He raised a lot of serious and important points, but I turn to the nub of his amendment, which is what we are here to deal with. I think we can be guaranteed that almost any potential Prime Minister will seek to ensure that the sovereignty of the UK is preserved, as it has been all along. Therefore, the noble Lord’s amendment would not really add to the Bill and, with respect, I ask him to withdraw it.

Baroness McIntosh of Pickering (Con): Perhaps the noble Lord will permit me to speak, because my noble friend Lord Hailsham brought up a very pertinent point that I raised at the end of what I realise was quite a

long speech yesterday. If our Front Bench is not to reply, I cannot comment, but I find it very unsatisfactory that we could be in a position where my own Government apply for an extension and then, in the course of that process, vote against it. I would like a categorical assurance from our Front Bench today that that will not happen.

Noble Lords: Answer!

Lord Ashton of Hyde (Con): My Lords, I understand that this matter has followed what has been a sometimes difficult and prolonged debate. I agreed with the Leader of the Opposition and the Leader of the Liberal Democrat party that we would make sure that the Bill was passed by the end of today and sent back to the Commons. As my noble friend indicated, the Government are not in favour of the Bill but we made those undertakings. We will complete them but we are not responsible for the Bill.

The Lord Speaker (Lord Fowler): The mover of the amendment has the right to reply at this stage.

Lord James of Blackheath: I thank the noble Lord. I tabled my amendment because, in everything that has been said so learnedly on this matter, nobody has covered the subject of sovereignty, which is really at the core of the original intention to take back control. Therefore, I am concerned that the public might be asked to give an opinion on this—

Lord Forsyth of Drumlean (Con): We had a very long period of what some people have called filibustering. It resulted in a deal between the Front Benches in which the Opposition Leader gave an undertaking not to use the guillotine or this procedure again. We respected that. We agreed that the Bill would be given safe passage with speed through the House. Does my noble friend not think that it might be more sensible to withdraw his amendment and allow us to proceed with what both sides of the House have agreed to do?

Lord James of Blackheath: I entirely recognise that fact. My concern, which I am sure the noble Lord will share, is for the understanding of the British public when they have to accept whatever is the final decision. I do not believe they have enough knowledge of the reality of what stands behind the agreements between which they have to choose. That is why I worded the amendment as I did, as the only way to bring this into the discussion today. I thank noble Lords for their comments. I will beg leave to withdraw my amendment but at the same time I make an urgent plea to all who are concerned about this to get the public better informed. They are not well informed.

Amendment 1 withdrawn.

Clause 2 agreed.

Clause 3: Duties in connection with Article 50 extension

Amendment 2

Moved by Baroness Deech

2: Clause 3, page 3, line 6, at end insert “unless the offer is anything other than an unconditional extension of time, in which case the procedure set out in subsections (2) and (3) applies.”

Baroness Deech (CB): My Lords, this is a straightforward technical amendment to plug a gap which I noticed as soon as the Bill was published; indeed, I referred to it in my speech on it. As we know, the Bill mandates the Prime Minister to seek an extension to the withdrawal date provided for in Article 50 in the form of the letter in the Schedule. It goes beyond the earlier withdrawal Bill, known as the Cooper-Letwin Bill, of April. That Bill required the Prime Minister of the day to seek, but not necessarily to achieve, an agreement about extension. Mrs May could have picked up the phone, asked Monsieur Barnier for an extension and then said that on reflection she did not want it. Of course, that is not what happened.

That loophole is closed by the Bill in Clause 3(1) to (3). Subsection (1) says that, if the European Council agrees an extension to 31 January 2020, the Prime Minister “must, immediately” agree to the proposed extension, without qualification or consultation. But subsection (2) says that if “a date other than” 31 January is offered, the Prime Minister may not have to agree; subsection (3) says that if the Commons decided to disapprove the extension offer, the UK does not have to agree it.

I do not know why the two are treated differently. I note that the Commons is given this opportunity to consider the offer if an extension is granted that is not 31 January; it could be 30 January, or December next. But if the extension is 31 January, this is what might occur. Suppose the European Union agrees to an extension to 31 January but attaches a condition—for example, the holding of a second referendum, a payment of billions, settling issues to do with migration, or even a new Prime Minister. The Prime Minister has to accept it immediately, as set out in line 4 on page 3—no consultation, no Commons approval, unlike the provision in subsection (2). My amendment adds to the arrangement contemplated in subsection (1) the same requirement that the Commons should have two days to consider and accept or reject any condition attached. That must be right. I imagine the difference was an oversight, unless the proponents can explain the discrepancy.

I also note, but have not attempted to amend, a difficulty with the meaning of “two days” in subsection (2) and “two calendar days” in subsection (3). They are different—why? Imagine that the European Union offers an extension which is not to 31 January and that this is offered in early October or during some period when Parliament is not sitting. Is Parliament to be summoned to agree the question, or does “two days” mean two sitting days—indeed “Lords sitting days”, whatever they are—as set out in Clause 1? Might Parliament be prorogued to sidestep these time provisions? It is not clear. What is clear is that the Commons should have some power, for two days, to scrutinise and approve any offer of an extension to 31 January in exactly the same way as it is empowered so to do if the date were to be 1 February. That is the purpose of my amendment. I beg to move.

Viscount Hailsham: I will make a point that I made in the previous debate in the hope that the Government will respond. I hope they will also respond to this amendment. Clause 3(1) is premised on the basis that the European Council decides to agree an extension. So long as the United Kingdom is a member of the

European Union, in respect of a unanimous decision, it is at least possible in theory for the United Kingdom to oppose the extension, despite having applied for one. I seek an assurance from the Government that they will not seek to oppose an extension for which they have applied.

Lord Leigh of Hurley (Con): My Lords, I will speak to Amendment 2 as my name is on it. Second Reading yesterday was a fascinating debate with much history covered, as is appropriate at Second Reading. There were some wide discussions of well-rehearsed arguments, often most eloquently expressed. Like many noble Lords here today I had the—I should not quite say—pleasure of listening to the debate on the business Motion the preceding day, which went on until 1.30 in the morning. I can only admire and respect those Members of this House who, having left at the same time as me, at 1.30 am, came back to the House the same morning with such powerful and well-written speeches on a Bill which itself arrived only a few hours earlier.

The speeches at Second Reading were political, of course, but in Committee we come to the business part. This is the time this House should come into its own, looking at the detail of the legislation and offering suggestions to the wording which might have been missed out in the other place. Although the Second Reading debate contained some excellent and thoughtful points, today is when we as a House might take a cold and calm look, away from the politics, and add some value to the Bill.

I recall that yesterday the noble Lord, Lord Hannay of Chiswick, specifically said that the Bill is “rather skilfully drafted”. It may be. I am sure it was done by those with vast experience in such matters, but it was prepared in a huge rush and I understand that one amendment from Stephen Kinnock was included by accident. As I have suggested, there was an almost indecent hurry between the Bill arriving here and Second Reading, so it is more than understandable that noble Lords did not have the full opportunity to reflect on the actual wording and meaning of the Bill line by line, as the noble Baroness, Lady Deech, has said.

There were of course exceptions; I would like to highlight the remarks of the noble and learned Lord, Lord Mackay of Clashfern—and not only his wonderful sentence which from here on in I will try to remember every time I am in a debate:

“I wanted to speak near the end so that I would hear the wisdom of others rather than my own”.—[*Official Report*, 5/9/19; col. 1212.]

I want to pick up on his observation that Clause 1 seems to identify the reason for the extension. I quote from the Bill:

“The Prime Minister must seek to obtain from the European Council an extension ... in order to debate and pass a Bill to implement the agreement between the United Kingdom and the European Union under Article 50(2) of the Treaty on European Union, including provisions reflecting the outcome of inter-party talks”.

I should declare my interests. Although I voted leave, I publicly supported the agreement to which this refers, both in debates in this House and in print in a national newspaper. I am not sure in retrospect that I

[LORD LEIGH OF HURLEY]
was right, but I did. Even if people like me were happy that the agreement to the extension was one that we still wanted, what happens if it is not the one we are offered by the EU because of the terms attached, as said by the noble Baroness, Lady Deech? The reason this amendment has been suggested is that it is entirely possible that the EU will only grant an extension which contains new conditions not in that agreement or not currently on the table. As I understand it, the Prime Minister would have to agree these new conditions, and this was not the intention of the Bill as it appears to be drafted.

Some of these new terms might be acceptable and attractive. I put on record to the House that I went to Brussels to meet Monsieur Barnier as part of the all-party parliamentary emergency task force led by Alberto Costa MP to try to persuade him to give citizens of the UK rights in the EU, and citizens in the EU rights in the UK, immediately. We had a friendly meeting for over an hour and he clearly understood the points made by the representatives of both Houses and indeed those of the citizens concerned, but he refused to budge an inch. The EU can dig in when it wants to, as indeed can we. For the record, he has agreed to meet us again in October. If he acquiesces to our requests then that will be extremely helpful, but there may be other requirements that the EU would make, particularly perhaps financial, that none of us would find acceptable. We have to reserve the right for Parliament to review those in the usual way. Accordingly it seems only fair and right that such changes should rather be approved by Parliament under this Bill, and that is the purpose of the Bill. Of course the Bill has to go through the House, but it is entirely appropriate that it carries amendments that your Lordships feel are appropriate.

10.30 am

Lord Forsyth of Drumlean: My Lords, I do not wish to detain the House. I support the amendment of the noble Baroness, Lady Deech. I think she has spotted a loophole in the Bill. I am very surprised at my noble friend Lord Hailsham asking for responses from the Government. This is a private Bill, a piece of private legislation. Like a lot of private Bills, it is—

Lord Hunt of Kings Heath (Lab): My Lords, I am surprised that the noble Lord has expressed surprise. Private Members' Bills go through this House frequently, and not only are the government Front Bench present but they actually respond, normally, to every amendment. I am sure he would agree that, while he disagrees with it, this is one of the most important pieces of legislation that this House has considered in the last year. For the Government to refuse to answer any questions or make any response is an abuse of this House.

Lord Forsyth of Drumlean: I do not want to take us back into the territory that we were in earlier this week, so the noble Lord will forgive me if I do not respond on the abuse of this House, given that the Bill itself has arisen from an abuse of the procedures in the other place.

I am genuinely concerned that we should pass a Bill whose implications people do not realise. I have had no contact with the noble Baroness, Lady Deech, and until I read the Bill and her amendment this morning, I had not realised that there was a real problem here. I was simply making the point that private Members' legislation, without the benefit of the drafting and the backup of the government machine, is often defective. One of the things this House does is to point that out and to make those Bills sensible and possible to be carried forward.

I understand—and here perhaps I am agreeing with the noble Lord in his intervention—that where the Government have a particular interest in the Bill, it would be perfectly appropriate for Ministers to respond, but it is certainly not right to ask Ministers to comment on the drafting and nature of a Bill over which they have no responsibility.

Viscount Hailsham: Would my noble friend accept that the question that my noble friend Lady McIntosh posed yesterday relates not to drafting but to policy? As a matter of policy, this House and the country are entitled to know that the Government will not seek to oppose an extension that they have sought. That is a straightforward question to which Parliament is entitled to a clear and straightforward answer.

Lord Forsyth of Drumlean: And that would be a very good question to ask at Second or Third Reading, but we are in Committee here and we are discussing a particular amendment.

Viscount Hailsham: It was asked at Second Reading.

Lord Forsyth of Drumlean: We are aware of that because my noble friend told us so not 10 minutes ago. What we are discussing here is the amendment of the noble Baroness, Lady Deech, who has made a perfectly good point about the drafting of the Bill, and I hope very much that the noble Lord in charge of this private Bill will be able to address it.

My second point, in support of the intervention made by the noble Lord, Lord Hunt, is that I understood that the amendment to the Bill made by Mr Kinnock in the other place was considered deficient and defective and was passed because the Government, by mistake, refused to put in Tellers, but I do not see an amendment on the Order Paper to correct that. I would like to hear from the Chief Whip what the position is on that at some stage during these proceedings.

As we are concerned at the moment with the amendment by the noble Baroness, Lady Deech, I very much hope that the noble Lord, Lord Rooker, will be able to explain why she is wrong. My experience is that she is a clever and informed barrister and is seldom wrong. If she is right, this is a real problem with the Bill.

Lord Stirrup (CB): My Lords, I rise in the hope that some EU constitutional law expert may assist me. My understanding was that until the end of the Article 50 period we remain a full member of the EU, with all the rights and obligations of such a member except in instances where we have voluntarily decided not to

exercise such rights. Therefore, an extension to the Article 50 period would be an extension of our period as a full member of the EU. Any such extension that was offered with some sort of reduction in those rights would therefore seem to be not an extension of the Article 50 period but something else entirely. Have I misunderstood?

Lord Trevethin and Oaksey (CB): My Lords, I support the noble Baroness's amendment. She is clearly right, and I hope that will be accepted around the House. The drafting of the Bill treats the European Council's response to the request for an extension as if it might take one of two forms, but in fact the position is not binary; there are three possibilities.

The first is that the Council will unconditionally agree to the extension. In that case, pursuant to the Bill, the Prime Minister is bound to accept that. The second possibility, which is different, is that the Council might agree to the extension until the end of January, subject to conditions that may or may not be acceptable to the Government and the people. That is not an unconditional agreement; it is a counter-offer. As a matter of law, a counter-offer destroys the initial offer, which no longer remains open for acceptance, and is a new offer that can either be accepted or not. It is that possibility which has been overlooked by the Bill as presently drafted. That is why the noble Baroness's amendment is plainly right.

The third possibility is that the Council will make a different type of counter-offer, which is to propose an extension that ends on a different date. That is a separate type of counter-offer, and that, as the Bill is presently drafted, triggers the provision in subsection (3). The noble Baroness's point, as I understand it, is that the second type of counter-offer should also fall under the scope of subsection (3). She is plainly correct.

Viscount Trenchard (Con): My Lords, I add my support to the amendment in the name of the noble Baroness, Lady Deech, who has set out clearly why the Bill is plainly defective. I think it happens to be a terrible Bill, and all that it will achieve if passed is to kick the can further down the road, which has a huge cost in terms of prolonged uncertainty and putting off decisions to make new investments.

As my noble friend who has just spoken has pointed out, there are different possibilities as to how the EU will react and respond to a request for an extension. Noble Lords will remember what happened at the last request for extension: there was a very long debate in Council, with President Macron seeking to allow us a much shorter extension whereas some other member states wanted to offer a very much longer one, and 31 October was a kind of compromise date. There was also much talk in the Council as to what other conditions should be applied to any acceptance of a request for an extension. That is the reason for the noble Baroness's amendment.

It is not just on that point that the Bill is defective. I would like to know what is a "Lords sitting day". There are two instances in the Bill of something called a "Lords sitting day", which I have never heard defined before, as well as "calendar days" and "days". So, the

Bill is a bit poorly drafted. I have always understood that the role of your Lordships' House is to scrutinise and improve deficient legislation.

I have another question; I think it is for the noble Lord, Lord Rooker, because he introduced this Bill. Clause 3(3) refers to what happens if the House of Commons has decided not to pass a Motion between two calendar days. It does not say what happens if the House has not decided to pass, or not decided not to pass, a Motion within two calendar days. Also, should "decision" have an upper-case d? If it is intended to signify a formal decision of the Council, it should have an upper-case d. If the decision is made on a Friday, or a Thursday when the other place is not sitting on the two subsequent calendar days, it is quite likely that the other place will not have had an opportunity to decide whether or not to pass such a Motion.

Quite apart from the very harmful effect of this Bill on our country and the current negotiations with the European Union, I think the least your Lordships' House could do would be to support the noble Baroness in doing something to mitigate its harmful effect by making it a little clearer.

Baroness Ludford (LD): My Lords, I rather echo the puzzlement of the noble and gallant Lord, Lord Stirrup. I would like to ask the noble Baroness, Lady Deech, or other sponsors of Amendment 2, to explain what part of Article 50 gives the EU 27 any power to impose conditions. As I read it, paragraph 3 of Article 50 just says:

"The Treaties shall cease to apply to the State"—

the UK in this case—at the end of the two-year period, or the end of the extended period. Could the noble Baroness explain what is the basis in EU law for believing that the EU 27 have the power to impose any conditions?

Lord Forsyth of Drumlean: The noble Baroness is vastly experienced; having been in the European Parliament, she understands these things and I cannot pretend to do so. When the issue of the extension beyond 31 March was discussed, I recall that President Macron and others were intent on imposing all kinds of conditions. Is she saying that, when he said that, he was not aware of the nature of the Article 50 process, or of European law?

Baroness Ludford: I obviously have no idea what went on in the private office of President Macron. However, as noble Lords know, there are loads of lawyers in Brussels; the legal services of the three institutions are very distinguished. I imagine that there could have been some lively discussion between the politicians and the lawyers as to what was possible. I acknowledge that I am not aware of exactly what the content of those discussions could have been. I make no pretence to be an EU lawyer, but I remain untutored—just on a reading of Article 50—on what power would allow the EU 27 to impose those conditions. Since the noble Baroness, Lady Deech, moved the amendment—I see that the noble Baroness, Lady Falkner, is keen to come in, perhaps because this is also relevant to Amendment 3—I ask where that power comes from.

Baroness Falkner of Margravine (Non-Aff): My Lords, I might be able to assist the noble and gallant Lord, Lord Stirrup, and the noble Baroness, Lady Ludford, because this is very much the subject of my amendment. If the Committee is willing to hear from me now, I will not need to move it later.

On 11 April 2019, when responding to Mrs May's request for an extension of Article 50, the European Council's concluding statement took the form of a decision. I returned from Brussels just yesterday; I would have spoken in the debate yesterday, but I was unable to, as I missed the beginning. In Brussels yesterday, I was told that the decision of the European Council of 11 April 2019 stands as law. That European Council took note of the duty of sincere co-operation. That duty exists in all treaties and the United Kingdom has been bound by it. In particular, it referred to the conduct of the UK as applied to its relations with the EU as a withdrawing member state. Moreover, in that decision, it added a further caveat, saying:

"To this effect, the United Kingdom shall facilitate the achievement of the Union's tasks and shall refrain from any measure which could jeopardise the attainment of the Union's objectives, in particular when participating in the decision-making processes of the Union".

10.45 am

What provoked me to try to intervene yesterday was that this is a clear curtailment of the decision-making process of the Union. I think the noble Lord, Lord Kerr, said, as the noble Baroness, Lady Ludford, just asserted, that the United Kingdom retains all rights. It does not, because that 11 April European Council decision, in granting the extension, imposed a new condition to say that the attainment of the Europeans' objectives in particular was not defined in law. When participating, the United Kingdom has to exercise restraint and refrain—the word is “refrain”—from jeopardising the attainment of the Union's objectives in its decision-making process. I would be extremely grateful if the noble Lord, Lord Rooker, would address this when he responds on this amendment; I have indicated to the Committee that I will not move my amendment if he gives me this response.

In Brussels, I heard that if an extension was offered, it was liable to be offered for long enough for the UK either to change its Government or to have a new referendum, giving us time to do that and then come back and renegotiate, or do whatever the Labour Party wishes to do. What I heard in Brussels yesterday was that the United Kingdom was likely to get a very long extension. Let us say that the extension goes up to December 2020. The European Parliament has not engaged with any of this House's European Union Select Committees since the triggering of Article 50 in March 2017, there is no access to the Commission, which is a new Commission with a very activist work programme, and we are not allowed to jeopardise the attainment of the Union's objectives, which we have some idea about but do not know because the new Commission is not appointed. Given that, could the noble Lord, Lord Rooker, explain whether that would imperil the United Kingdom's interests for a period which, in reality, started from when the Parliament and its committees stopped engaging with us, or—taking the minimalist view of this—from 29 March 2019,

when the United Kingdom was due to withdraw and this condition started to apply? This is a new condition and it applies from 11 April 2019. The United Kingdom could potentially be in a position where its interests would not be adequately safeguarded or represented for 18 months or so.

Lord Cormack (Con): My Lords, the problem we have today is that we are constrained on time. That is entirely the fault of the Government for deciding that Prorogation should take place next week. Therefore, we are in something of a constraint. We owe a great deal to my noble friend the Chief Whip, the noble Baroness the Leader of the Opposition and those who reached a sensible compromise solution in the early hours of Thursday morning. We are grateful to them. They say, and I accept, that we need to conclude proceedings on the Bill today. This is because of the Prorogation guillotine, which was announced by the Prime Minister two weeks after he decided to do it—we know that from the depositions in the Scottish court.

I regret that there is no Minister to reply to these debates. It is frankly an insult to the House and I deeply regret it. But when he was here yesterday my noble friend Lord Callanan made it quite plain that he knew that our European friends and neighbours would accept two things. One was the revocation of Article 50. Clearly that will not happen and I do not want it to happen, but he also made it plain that the deal that had been on the table—Prime Minister May's deal—was still possible. He also made the point that he had enthusiastically promoted it, as indeed he had. All members—I correct myself—most members of Mrs May's Government promoted it valiantly.

I believe that we now have the opportunity under the Bill, imperfectly drafted as I acknowledge it is, with the Kinnock amendment, to bring the Theresa May deal back and enable this Parliament to make a decision with a fourth vote on it. I am bound to say that I believe it will be a service to the country to do that. As I said yesterday, it is only the beginning of the beginning, because there are many more rounds of negotiations to take place, but it would at least mean that we had something that had been supported by the present Prime Minister and Mr Rees-Mogg in the third vote, so clearly they believed it was the right thing to do at that time. I wish we could now get on and do it.

Lord Forsyth of Drumlean: I entirely agree with my noble friend on the subject of getting on with discussing these amendments and their nature, but is he seriously arguing that if a problem that affects our national interest arises from the drafting of the Bill, we should just ignore it and allow it to go forward? It is perfectly possible for the sponsors of the Bill to agree the amendment, for it to go to the House of Commons, come back and for it all to be covered before Prorogation, particularly since both Front Benches have agreed to take whatever measures are necessary to try to expedite it. It is perfectly possible. Surely we need to address the point that the noble Baroness, Lady Deech, and other Members of the House have identified. All this repetition of all the arguments we have already had for the past

three years is, frankly, a waste of time. We are at the final point now and we need to put the Bill on the statute book, but in a way that makes sense. We cannot as a House say that we are going to pass imperfect legislation because the Government were responsible for Prorogation.

Lord Cormack: That was a fairly lengthy intervention, but the fact of the matter is that we have been placed in a straitjacket by the Government's decision on Prorogation. We have an agreement between the two Front Benches here. That is why we should move forward and get the Bill on to the statute book as quickly as possible.

Lord Kerr of Kinlochard (CB): I had not intended to follow my noble and gallant friend Lord Stirrup's remarks because he included in them an invitation to some EU constitutional experts. I absolutely do not aspire to the status of an EU constitutional expert, but what he said was absolutely correct. There are two possible statuses: one is that of a member of the European Union, the other that of a former member. The noble Baroness, Lady Ludford, is absolutely right that there is no provision in Article 50 for qualitative conditions on an extension. Temporal conditions—the length of the extension—are possible. That is what we are talking about.

The point raised by the noble Baroness, Lady Falkner of Margravine, about the European Council decision refers to the treaty rights and responsibilities of a member, one of which is the duty of loyal co-operation. That is set out in the treaty. It would not be possible to withdraw treaty rights by European Council decision. The only way to change treaty rights is by amending the treaty, which requires unanimity, and while we are members we would presumably not vote to limit our treaty rights.

The language in the decision referred to by the noble Baroness relates to the contingency, which sadly has now arisen, that the United Kingdom is not present and voting in all committees and regulatory organisations of the European Union. The United Kingdom has voluntarily decided not to exercise some of its treaty rights. Some of these organisations operate by unanimity. If there is an empty chair there and we are a full member with full voting rights that we have not exercised, decision-taking machinery among the European Union—of which we are a member—being exercised by only the 27 could grind to a halt. That is why that language is in the European Council decision. That is why our Government, though in my view quite wrongly, has decided to operate an empty-chair policy in certain parts of the European Union organisation. They have agreed that the Finnish presidency shall exercise our voting rights as though we were there so that unanimity, where it is necessary for a decision to keep the business going, can still be reached. That is the purpose of the language of the European Council's decision.

The key point is that paragraph 3 of Article 50 is about only temporal extensions. I say to the noble Baroness, Lady Deech, for whom I have huge admiration—of course, she is a lawyer and I am not—that I believe it is not possible to set conditions to the extension of time under Article 50. I therefore say to her and to the

noble Baroness, Lady Falkner of Margravine, that both amendments are unnecessary and should not be pressed.

Lord Lilley (Con): Could the noble Lord clarify whether it would be possible for the European Council to set the condition that the British Parliament, or the British Government, agree to hold a referendum? I agree that it would not be possible for it to set conditions that limited our powers within the period of membership, but surely it is possible for it to do that.

Lord Kerr of Kinlochard: That is absolutely out of the question. The treaty language, including in Article 50, is absolutely clear that it is for the member state to proceed under its own constitutional procedures. That is specifically spelled out, including in Article 50. The idea that the European Union would interfere in our domestic decision-taking constitutional arrangements is out of the question.

Lord Lisvane (CB): My Lords, on a slightly more pedantic level, I will try to assist the noble Viscount, Lord Trenchard, with his earlier question. I think he thought that Lords sitting days had not been statutorily defined. They are actually defined in Section 13(16)—

Noble Lords: Oh!

Lord Lisvane: I promised pedantry. They are defined in Section 13(16) of the European Union (Withdrawal) Act 2018.

Viscount Trenchard: I thank the noble Lord for his clarification, but that does not affect my basic premise that the Bill nevertheless refers to “Lords sitting days”, “days” and “calendar days” in a confusing manner. That also needs to be clarified.

Lord Goldsmith (Lab): My Lords, I said yesterday what a privilege it was to be in this House, but having heard the noble and gallant Lord, Lord Stirrup, the noble Lord, Lord Lisvane, and the noble Lord, Lord Cormack, who is not on the Cross Benches, they have answered the points that I wanted to make on this amendment. The starting point for the context is, obviously, as the noble Lord, Lord Cormack, said, the limitation on time for this House and the other House imposed by Prorogation. We are in circumstances where we might think theoretically about asking the Commons to think again, but there will not be time. There will not be time for ping-pong because, if Prorogation hits, the Bill falls. I believe that that is what this House wanted to avoid, by pushing through and accepting Second Reading yesterday.

Let me come—

11 am

Baroness Butler-Sloss (CB): I thank the noble and learned Lord very much for allowing me to intervene. Has not the noble Lord, Lord Kerr, given us the answer? Does it not just simplify entirely the amendment before us?

Lord Goldsmith: The noble and learned Baroness is absolutely right about that, which is why I particularly complimented and thanked him for his intervention

[LORD GOLDSMITH]
and observation. The conditions referred to by the noble Baroness, Lady Deech—such as the monetary issue, us being required to have a new Prime Minister, and a referendum—are not, in my view, things that the European Union could impose on this country. We have said this before and I say it again: although the noble Lord, Lord Kerr, is not a lawyer, he drafted Article 50 and so knows something about what its conditions contain.

Lord Trevelin and Oaksey: Perhaps I may assist the House by addressing this point, which arises out of the observations of the noble Lord, Lord Kerr. He indeed drafted Article 50. It is drafted in terms that do not expressly confer a right to withdraw an Article 50 notification. However, according to his views, it has now been held that such an entitlement impliedly exists. It is not difficult to argue for an implication that it is legitimate for the European Council to seek to impose conditions on our request for yet another extension, which is a request for an indulgence. Can the noble and learned Lord assist on that?

Lord Goldsmith: I beg to differ from the noble Lord. The Committee will also bear in mind that anything the European Council does, or seeks to do, is itself subject to the requirements of the treaties. If it does something which is thought to be outside the treaties, that is justiciable in the courts of this country—we now know very well that they can do that—but also in Brussels and Luxembourg. I do not see a problem with that. I do not see the difficulty that is raised. The Bill is clear that, if we get the answer, “You can have this extension to this date”, the Prime Minister has to act. If the date is different, that is a different consideration, and will have to be considered by the Commons. However, if we were to make an amendment now to deal with something that we are being advised the European Council could not do, we would be defeating the Bill because we would be sending it back to the Commons, which would not be sitting to receive that amendment and deal with it. I therefore respectfully invite the noble Baroness to withdraw her amendment. If she does not do so, certainly we will oppose it.

Lord Lilley: My Lords, I am not a lawyer but, from what I have heard, I believe that this amendment carries considerable weight. I am not persuaded, even by the noble Lord, Lord Kerr, that conditions could not in practice be imposed. We know that that has been talked about frequently by the leaders of our partners in Europe and by European Commissioners. Are noble Lords able to tell me what would happen if, when we asked for an extension, those in the EU asked what it was for? They have repeatedly asked us that. What if we said that we did not know, and they then told us that we could therefore not have an extension? Or what if we told them that we were going to have a referendum, and they then said that we could have an extension? Is the noble Lord, Lord Kerr, saying that that process of discussion and dialogue could not happen? It seems to be quite compatible with paragraph 3 of Article 50, which says:

“The Treaties shall cease to apply to the State in question from the date of entry into force of the ... agreement or, failing that,

two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned”—

implying that there may be a range of things to be agreed—

“unanimously decides to extend this period”.

What I originally wanted to ask was this. To my mind, this amendment raises a rather more fundamental question about Clause 3(1), which begins:

“If the European Council decides to agree an extension”.

It can decide only by unanimity. Once it has decided, its decision is European law and binding upon us. There is therefore no possibility of coming back to the House of Commons and overruling that decision. We were told that in March, when the Prime Minister went to the Council and agreed an extension. When she came back, people in the House of Commons wanted to have a vote on it and were told, “You can have a vote if you like but it is law anyway”. The assurances we have been given that Parliament itself could overrule an agreement, or not agree to a decision made by the Council, if we did not like its length or any terms that might be implicit in it are, as far as I understand it, simply not true. Now, I am not a lawyer—those were my opening remarks—but if a lawyer is prepared to stand up and say that a decision of the European Council is not binding in European law, and therefore not binding on us before we have left, my objection falls. If not, we have found a very major weakness in the Bill.

Lord Rooker: My Lords, it would appear that everybody in the House is toing and froing to Brussels. I have to make it clear that the last time I was in Brussels, when I was still a Northern Ireland Minister, on the day that the beef ban was lifted I was serving Northern Ireland beef to trade delegations to rebuild that industry. That was my last time in Brussels, so I am not party to any of the discussions.

The point about the amendment, which has been sufficiently answered in a much better way than I could do, is that it is built on an assumption about the unconditional extension of time. It would actually confuse Clause 3. Clause 3 is precise in some ways but subsection (4) gives it flexibility. It is interesting that an amendment has been tabled by the same group of people to knock out subsection (4), because that provision gives the Prime Minister the capacity to agree a different date. That flexibility and precision are built in to achieve the objectives because, at the moment, we are in an unknown area. To be honest, to add the amendment would be confusing.

I am not going to get into disputes with lawyers and drafters of legislation, but the fact of the matter is that I would take the explanation of the noble Lords, Lord Kerr and Lord Cormack, over and above legalistic nitpicking of what is quite a precise clause. In fact, when you look at the Bill, this is probably its best drafted clause.

Lord Lilley: Did the noble Lord notice that the noble Lord, Lord Kerr, did not come back to deny that the sort of discussions I suggested could take place, which would implicitly involve conditions?

Lord Rooker: I did note it but I have no comment to make on it.

Lord Kerr of Kinlochard: I do not think it is for me to comment on discussions in the European Council. Like the noble Baroness, Lady Ludford, I do not know what happened when President Macron argued for a shorter extension at the last European Council. It is perfectly possible that dialogue with the British Prime Minister might take place, but what is not possible is that there could be a conditional extension. The extension would be unconditional because that is what the treaty says, or rather the treaty contains no powers for imposing a conditional extension.

Lord Rooker: That being the entire point, I invite the noble Baroness to withdraw her amendment.

Baroness Deech: My Lords, much more heavy weather has been made of this than I intended. I have a couple of opening comments: it is a pleasure to see the noble Baroness, Lady Falkner, over here, and I say to the noble Lord, Lord Kerr, that those who draft law are not thereafter charged with interpreting it. Once they have launched their draft, it is over to others to interpret it. I do not claim by any means to be a European lawyer—far from it—but my point is very simple: if an extension is granted to 30 January, the Commons gets two days to consider it. If an extension is granted to 31 January, it gets no time at all. I have still heard no reason or sense for why that should be so, and I remain convinced that this was some drafting oversight.

No one has clarified either whether the “two days” are sitting days or calendar days. What if an offer comes at the weekend, during the Christmas Recess or some time when we are not here? Since the lawyers, both the noble and learned Lords in this House and those who are clearly just as learned but are mere QCs, have different opinions about this, it is quite possible that something that is a bit tricky may come our way at a time when we are not sitting or when the Act provides no two-day pause for the Commons. So either the Commons should have two days to consider anything or it should not have two days at all. I have heard no logical answer to that.

I sense that it is the will of the House that I withdraw the amendment. However, before Report, I expect to hear some sense from someone. I do not know who gave the draftsmen their orders. I have not yet heard a sensible reason why an extension to 30 January gets two days’ consideration but an extension to 31 January does not.

Lord Wallace of Tankerness (LD): Perhaps I may try to give an explanation. It is because Clause 3(1) specifically states,

“at 11.00pm on 31 January 2020”.

By definition, that would have been passed by the House of Commons, as indeed it did on Wednesday this week. Therefore, it does not really need two days to agree something that it has already agreed to and put in statute.

Baroness Deech: I understand that point, but, given that there has been enough disagreement to worry me about what the European Union might say—others

who know much more than me have expressed different opinions—and we are left with this “two days” definition and nobody knows what it means, I think that there is a real legal problem. I do not know who drafted it; I do not know who gave the orders; we have not really heard a logical answer. I beg leave to withdraw the amendment, but I expect someone to give a proper explanation at some stage during the discussion, because we are in a bit of a legal pickle over that provision.

Some Lords objected to the request for leave to withdraw the amendment, so it was not granted.

The Deputy Chairman of Committees decided on a show of voices that Amendment 2 was disagreed.

Amendment 3 not moved.

Amendment 4

Moved by Baroness Neville-Rolfe

4: Clause 3, page 3, line 21, leave out subsection (4)

Baroness Neville-Rolfe (Con): My Lords, the House rightly scrutinises Bills that come from the Commons, including a Private Member’s Bill such as this.

I apologise for my late arrival today. I moved a time-critical meeting to very early and was then afflicted by a transport delay. Circumstances can upset timing, as we all know from our debates on these Bills.

As my noble friend Lord Forsyth said, we have a duty in Parliament, and this House plays a key role, wherever we come from, to make clear that legislation works—otherwise, I fear that we will be held up to contempt by the people of this country. They look upon us already with increasing incredulity, and that is a big concern. I just hope that the noble Lord, Lord Kerr, is right on Amendment 2.

This is Committee, and my amendment is a probing amendment. I gave notice of my concern at Second Reading and the noble Lord, Lord Rooker, has only half answered my question.

I am concerned that subsections (1) to (3) tie the Government’s hands too tightly and put UK interests in jeopardy, whatever the motivation for the Bill—which was of course agreed in the other place.

I will be brief. I do not understand what subsection (4) does and how it interrelates with the rest of Clause 3, or indeed the rest of the Bill, or the sponsors’ game plan for our relations with the EU once the Bill becomes an Act. I am also keen, like others, to hear what is happening to the Kinnock amendment, which the Minister explained yesterday was defective. I beg to move.

11.15 am

Lord Goldsmith: This provision was put into the Cooper/Letwin Bill very much at the insistence of the Government at the time. I am not trying to make a point against the Government—the reason for it was to preserve the prerogative of the Government to accept an amendment. At that stage it was thought possible that the European Council would offer an

[LORD GOLDSMITH]

extension at a Council meeting and there was the question of whether the Prime Minister would be able to accept it. After consideration of that, it was put into the Cooper/Letwin Bill that the Prime Minister should in fact be able to accept. This Bill, in Clause 3(4), says again that nothing will,

“prevent the Prime Minister from agreeing to an extension”—
it does not allow him to refuse an extension—

“of the period specified ... otherwise than in accordance with this section”.

So he does not have to go through the procedures if he wants to accept it. That is a way of preserving the prerogative, or privilege, of the Government to make agreements at an international level, but on that specific basis.

That is the reason for it, and it is appropriate to have it in this Bill too. The time for it to arise is limited and, if I understand correctly what Mr Johnson said about ditches, there will be no question of his agreeing to anything unless he is constrained by the Bill. So it is an interesting question and I think it is entirely academic. In those circumstances, I hope that answers the noble Baroness’s question and we can move to complete Committee.

Lord Wigley (PC): Will the noble and learned Lord explain, if the Prime Minister is faced in a Council meeting with the question of a change along those lines—if there were conditions placed upon it in the meeting—how will this subsection address that possibility?

Lord Goldsmith: Given what the Prime Minister has said, it is not going to happen. But the prerogative of the Prime Minister is retained under this provision—as it is in the other Bill.

Lord Mackay of Clashfern (Con): This simply keeps free from constraint the prerogative of the Prime Minister, notwithstanding this Bill. This Bill simply deals with requiring the Prime Minister to apply for an extension; if he manages to get one anyway, it does not matter. That is what is preserved. There is no question at that stage—if we accept the proposition of the noble Lord, Lord Kerr, about the nature of extensions—about conditions, except temporal conditions. Therefore, what the Prime Minister is allowed to do here is what, apart from this Bill, he would be able to do. This Bill is an additional requirement on him when it is activated.

Lord Brown of Eaton-under-Heywood (CB): I ask the Committee’s forbearance. Noble Lords on all sides are entirely agreed that the extension which the Bill demands that the Prime Minister seek is for one purpose only—look at the Kinnock amendment in the second part of Clause 1(4)—which is to try to get something like the May deal finally agreed. Heaven knows, I strongly support it and have long suggested that it should be agreed. However, having got such an extension, it would be quite unlawful for anybody to then say, “Ah, but we must use it instead to retract the Article 50 notice”—or seek a referendum or anything like that. Are all noble Lords happy and agreed on that?

Lord Goldsmith: No. I want to be clear that there is no certainly commitment coming from these Benches that that is what the Bill requires. If it is passed into law, it contains those words, but it does not constrain what the extension is used for.

Lord Rooker: My Lords, there is not much for me to say—although, as I alluded to in the previous debate, Clause 3 is precisely drafted and subsection (4) is there to give flexibility if other circumstances prevail. I had forgotten about where the Cooper/Letwin Bill—which I started off myself in April—came from. In other words, it came from the current Government on strike saying, “Please put it in your Bill”. We are happy to agree to the Government’s original plan to have it in the Bill. The noble Baroness said that this was a probing amendment. I would be very happy therefore if she would withdraw it.

Baroness Neville-Rolfe: My Lords, I am grateful for the good legal advice from all sides about what this provision means. It is obviously a helpful provision, and I am happy to withdraw the amendment. I am concerned that this Act has no end date, so it is right to make sure that we understand the provisions and how they would work in the future. I beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Clause 3 agreed.

Clauses 4 and 5 agreed.

Schedule: Form of letter from the Prime Minister to the President of the European Council

Debate on whether the Schedule should be agreed.

Lord Mackay of Clashfern: I would like to say something about that. This is the text of a letter that the Prime Minister is required to send under the Bill. If there had been time, I would have proposed that the letter included a reason. After all, it is to the European Union that the reason is to be expressed. As I understand it, the European Union says that, if it is asked to grant an extension, it wishes to have a reason. In the ordinary course of events it would be right to have the reason in the letter. Unfortunately, time prevents that happening. That would have been better, but I am sure the initiative will be sufficient for the reason to be communicated to the European Union, even though it is not stipulated in the letter. The terms of the Bill say that this is the letter, so there may be a risk in adding to it—but that may be a risk that should properly be taken.

Lord Forsyth of Drumlean: If the noble and learned Lord is arguing that the letter has to have a reason in it, does that not mean it is conditional?

Lord Mackay of Clashfern: The condition is obvious: to give the reason why you are applying for an extension. As the noble Lord, Lord Kerr, said, the important point is about time, and the EU wants to know how this time is to be taken up. That seems to me a perfectly sensible idea.

Lord Forsyth of Drumlean: The noble and learned Lord is far smarter at this than I am, but the noble Lord, Lord Kerr, argued that it was not possible for any conditions to be applied. So why is it necessary for us to give a reason?

Lord Mackay of Clashfern: It seems obvious to me that if you are asked to make an extension, you do not do it just for the sake of doing it; you have some reason for it. I do not think that the European Union, far as it may be from common sense in many respects, is so daft that it provides for an extension to be applied for with no reason on earth why it should be granted. It seems common sense to me that the reason is required and, of course, the Bill contains the reason but has just happened not to put it in the letter. I suspect that what happened may have been a copying of the previous Bill, the Cooper Bill, which did not have the reason in at all, as I pointed out at the time. This Bill is much better and includes the reason. Unfortunately, it is not so good that it has it in the letter as well but, as I say, I do not think that matters. At least, I do not think that ultimately it will matter.

As for my noble and learned friend's question about the reason, it is quite important that the reason given in the Bill is the reason that has to be given in support of the application for the extension. I would certainly have suggested that it should go in the letter if there had been time, but I fully appreciate that there is not time and therefore we must leave it as it is.

Viscount Trenchard: My Lords, beside what my noble and learned friend has just said about the letter and its deficiency in not including a reason, do your Lordships not think it would be much better if it also made clear what the parties are supposed to ratify? It simply says:

“If the parties are able to ratify before this date”,

but there is no object of the sentence, so there is no object to ratify. It is clear that it refers to a withdrawal agreement—I understand that—but it is very sloppy drafting and it could be argued that it refers to the ratification of something else.

Lord Rooker: To respond to the noble and learned Lord, Lord Mackay, we spoke outside the Chamber last night, because he raised this right at the end. He has a valid point, but the Bill as it stands is still sufficient, and we are under the Prorogation guillotine. If we were not, we would have some flexibility. It is the Prorogation guillotine that has removed the flexibility from the House to deal with this.

The Deputy Chairman of Committees (Baroness Morris of Bolton) (Con): My Lords, I apologise for forgetting the letter.

Schedule agreed.

House resumed.

Bill reported without amendment.

Baroness Chisholm of Owlpen (Con): My Lords, the House will now adjourn to allow for amendments to be tabled for Report. The Public Bill Office will be open to receive amendments for the next 30 minutes. The House will then resume as soon after that as possible and timings will be displayed on the annunciator.

11.28 am

Sitting suspended.

European Union (Withdrawal) (No. 6) Bill *Report*

1.06 pm

Clause 1: Duties in connection with the withdrawal of the UK from the European Union

Amendment 1

Moved by Lord Forsyth of Drumlean

1: Clause 1, page 2, line 14, leave out from “2020” to end of line 20

Lord Forsyth of Drumlean (Con): My Lords, I do not want to detain the House in any way.

Noble Lords: Oh!

Lord Forsyth of Drumlean: I mean that seriously. However, it may be of assistance to your Lordships if I explain why I have tabled this amendment. It arises from an exchange we had in Committee when my noble and learned friend Lord Mackay of Clashfern queried why the letter the Prime Minister is required to send under the Schedule to this Bill did not include a reason. We had an exchange about how, if you had to have a reason, surely that would be a condition. He said that the reason is in the Bill.

The reason is indeed in the Bill; it is the bit I want to take out—page 2, line 14, from “2020” to the end of line 20. I am not sure how many of your Lordships have studied this and thought about its implications. It is written in language which makes it less easy to understand, but it is essentially saying that the letter has to be sent,

“in order to debate and pass a Bill to implement the agreement between the United Kingdom and the European Union under Article 50(2) of the Treaty on European Union, including provisions reflecting the outcome of inter-party talks as announced by the Prime Minister on 21 May 2019, and in particular the need for the United Kingdom to secure changes to the political declaration to reflect the outcome of those inter-party talks”.

It means we are asking the Prime Minister to send a letter saying not only that he wants to debate the May deal and the subsequent matters that were agreed between the parties but that he intends to pass a Bill, when he has made it absolutely clear that he is determined not to do that. More particularly, for those Members who have argued about the supremacy of the House of Commons, it is a deal which has been rejected by the House of Commons on three separate occasions.

[LORD FORSYTH OF DRUMLEAN]

Here we have a piece of legislation which, by agreement between the Front Benches, is being given safe passage—I certainly do not support the Bill but I do not wish to delay it, if that is what the Government want—but what on earth is going on with the Government? Why have they not tabled an amendment to take this out? It does not reflect their declared policy, nor the view that the House of Commons has taken on three separate occasions.

I therefore went to have a look at the *Hansard* of the House of Commons to find out how this had got into the Bill. It has done so by accident. The Labour Party's position in the other place was to abstain on this matter. Its author—showing that some families stick together—was a certain Stephen Kinnock.

Lord Cormack (Con): He is a very good chap.

Lord Forsyth of Drumlean: My noble friend Lord Cormack says that he is a very good chap. I know we are a broad church, but—

Stephen Kinnock is quoted as saying on this matter:

“I understand that our position at the present time would be to abstain, but I am not 100% sure of that”.—[*Official Report*, Commons, 4/9/19; col. 262.]

My noble and learned friend Lord Mackay corrected me, quite rightly, when in Committee I said that the Government had failed to put in tellers for the Division—although I am confused because in my day, only the Government proposed Business Motions and matters of that kind. However, it was of course the promoters of the Bill who failed to provide tellers for the Division, which is how this has ended up in the Bill.

We therefore have a provision in that Clause of the Bill which the Labour Party did not want—it was going to abstain on it—and the Government cannot possibly have wanted. I am as good as my word—I said that I would not seek to delay the implementation of this legislation, if that is what has been agreed between the parties—but that strikes me as extraordinary. I did not table an amendment in Committee, which in the normal way I would have done, because I expected the Government to put down an amendment to deal with this, and they have not done so. I say to my noble friend that we would be very grateful indeed if he could explain why the Government are leaving in a Bill which they are proposing to support, a provision which requires the Prime Minister to write a letter for the purpose of giving an undertaking to debate and pass a Bill to implement the so-called May compromise agreement, including the discussions that took place between the previous Prime Minister and the Labour Party, which include giving assurances about regulatory requirements and the rest. It seems extraordinary, and that is the reason behind the amendment, which I beg to move.

Lord Cormack: My Lords, I very much hope that the House will not be seduced by the silver tongue of my noble friend Lord Mackay of Drumlean.

Noble Lords: Oh!

Lord Cormack: I apologise profusely to my noble and learned friend. Of course, nobody could possibly confuse an erudite lawyer with—

Noble Lords: Stop digging!

Lord Cormack: My Lords, it is important that the Bill goes through as it came from the House of Commons, and I say that for one reason above all others. I believe that this Kinnock amendment gives an opportunity to bring to a seemly end the wrangling and the disputes that have taken place.

There are many in all parts of your Lordships' House who would have supported the Theresa May deal. That was made plain in debate after debate. We never had the opportunity specifically to divide on it, but it was quite clear that a large number of influential Cross-Benchers, and of my friends on the other side of the House and this, would have accepted it. I believe that would have been a sensible decision.

1.15 pm

We must remind ourselves that when it came up for the third time of asking in the other House, Mr Boris Johnson, not then the Prime Minister, voted for it, Mr Rees-Mogg voted for it and the Government in their entirety voted for it. I know that there has been a great clear-out of the Government, but it is entirely reasonable that, having had a chance to reflect after a change of leader and seeing the stark reality of falling off the cliff of no deal, we should have a chance to revisit it. That is not least because my noble friend the Minister—I am delighted that he is on the Front Bench at the moment—has repeatedly said this very week how hard he had fought to get the May deal through. Indeed he did, and I gave him constant support throughout those debates.

Therefore, this is no backtracking. It is a recognition of what we can do to bring this long, three-year saga to a decent end. Then we can move forward to a general election in due time, having agreed with our friends and allies in the European Union the terms of exit. I remind noble Lords in all parts of the House that, to use words I have used before, this is only the beginning of the beginning: there are many long months and years of negotiating ahead, but it would be far better to negotiate from a base of amity and accord than from a base of discord. That could and indeed would be the case if we came out without a deal, because acrimony would be the prevailing emotion, and that is not a good thing.

I hope that my noble friend Lord Forsyth will not have succeeded on this occasion in seducing your Lordships with his silver tongue, and I oppose the amendment.

Lord Brooke of Alverthorpe (Lab): My Lords, yesterday I raised the issue of the opportunity that rests within the political declaration for a solution to the problem which the country faces. The offer from the Commission is still open for the Government of the day to hold discussions and negotiations to find a way through on the backstop, linked to the political declaration. I asked the Minister twice yesterday why the Government have not, as yet, taken up the opportunity to embark on a negotiation along those lines to try to find a way through, which in turn would link to the deal negotiated by Mrs May.

If, as the noble Lord, Lord Forsyth, wishes—he has spotted this—we take out this provision, that prevents that opportunity to take this forward. Those of us who are looking for a way through, who have been prepared to shift our ground to a degree to find an accommodation to try to get some healing of the divisions which exist, should vigorously oppose what he presents to us. We should ask the Minister and the Government to pick up the opportunity offered by the Commission to negotiate on the political declaration and find a way forward. Then, in turn, we should get the Bill through the House very quickly today as the basis for moving forward.

Lord Hamilton of Epsom (Con): My Lords, I support my noble friend Lord Forsyth. I am rather surprised at my noble friend Lord Cormack, because he has always been a great champion of the revising powers of this Chamber. When a Bill comes before us containing a clause that is clearly a complete mistake and which the proposers did not intend to be there, surely it is our job to send it back to the Commons, which has already organised to accept Lords amendments on Monday. The Commons can then accept my noble friend Lord Forsyth's amendment, which will go through anyway. It will not delay the Bill or make the slightest difference; in fact, it will make the Bill better than it is already. It is quite extraordinary that, when a mistake like this has been made and is widely acknowledged by everybody as such—it happened because the Bill's proposers did not put in tellers; that seems a bit amateur but there we are, that is what they did—we are not in a position to put the Bill right and concur with the wishes of the other place, which will pass the amendment so that nothing will change in terms of timing or anything else. I cannot understand why my noble friend Lord Forsyth's amendment is being resisted in any way.

Baroness Jones of Moulsecoomb (GP): My Lords, I heard the noble Lord say that this was a mistake. I am curious as to how he knows that. Does he have some inside knowledge—not just gossip?

Lord Hamilton of Epsom: I have the inside knowledge that the Labour Party wanted to abstain on this and that there was no way that the amendment would have been carried had tellers been put through by the Bill's proposers.

Lord True (Con): My Lords, I was not intending to intervene—

Noble Lords: Oh!

Lord True: I seem to have become very swiftly a Member that this House does not want to hear from. That has been confirmed because this House does not care for certain inconvenient truths—or Trues. In my 22 years of service in this House, first in the usual channels and then having the honour of being a Member of the House, I have never made it my practice to comment publicly on the usual channels' discussions. I do not do so now. The only thing I will say, which should be placed on record, is that at a certain significant hour in the small hours of Thursday morning, it was my understanding that this amendment would, by agreement, be removed. That was clearly a misunderstanding.

Lord Marks of Henley-on-Thames (LD): My Lords, I would have preferred not to see the Kinnock amendment in the Bill, whether it was a mistake or not. As the noble Lord, Lord Kerr, pointed out in Committee, it is not open to the European Union to impose conditions on an extension, and this amendment seeks to remove the provision that suggests that there could be conditions. It is certainly not possible for the European Union to impose conditions on the conduct of the British Government during any extension. The words of the Kinnock amendment that this amendment seeks to remove are so woolly as to be meaningless. They refer to the outcome of cross-party talks, which was uncertain; indeed, the talks were abandoned. Along with the Bill's promoters in the House of Commons and here, I believe that the words of the Kinnock amendment would have no legal effect.

To the noble Lords, Lord Cormack and Lord Brooke of Alverthorpe, I say this: there is nothing whatever in the Bill as it stands to prevent the negotiation of a deal by the Government, if it were negotiated and passed through the House of Commons. The central point is that we have to live with the Kinnock amendment. We need to vote against the amendment in the name of the noble Lord, Lord Forsyth, because we are under the time constraints of Prorogation. Whatever the noble Lord, Lord Hamilton, says about the opportunity that may be there on Monday morning, we cannot foretell what may happen in the Commons on Monday morning if we send back amendments. I therefore urge the House to reject the amendment, which will not affect the central thrust of the Bill in any way.

Lord Jones of Birmingham (CB): My Lords, could I just—

Noble Lords: No!

Lord Jones of Birmingham: So tolerant of democracy.

I support the amendment suggested by the noble Lord, Lord Forsyth, for one reason only: there is not a small business woman or small business man in this land who has not had it up to here with this place and the other place. They just want everybody to get on with it and give the businesses of the land—which generate the profit, pay the tax and build the schools and hospitals—the chance to get on and make money, employ people and pay tax. They hold us all in very high disregard at the moment—all of us. The political class has let down this country and business, and that is not a partisan point. We should all, of every party in both places, look into our souls about what we have done to this country in so many ways. If these people, who hold us in such high disregard, thought we spent a Friday afternoon accepting the fact that we just knocked through on the nod something factually inaccurate, they would think we were even worse than they do right now.

I thought the point made by the noble Lord, Lord Brooke, was excellent. The chance of coming together and healing—he used that word, and I thought it was excellent—has a lot of merit in it, but we surely cannot knowingly vote for something that is factually wrong. On that basis I support the amendment—I do not think it would hold up anything on Monday—but after this debacle is over we ought to go from this

[LORD JONES OF BIRMINGHAM]

place and just start trying to respect the optics: the businesses, the businesswomen and businessmen, the good people of this country, have had enough of us. If we do not start communicating with them as to why we are on their side, God help us.

Lord Mackay of Clashfern (Con): This amendment proposing to delete what is in the Bill strikes me as rather unnecessary, apart from the fact that we have difficulty with time. In my view, the amendment proposed by Mr Stephen Kinnock—a distinguished member of a distinguished family—was perfectly in order. The fact that, through the procedures of the House of Commons, it went into the Bill and is in the Bill we read for a second time, passed in Committee and are now considering on Report strikes me as perfectly in order. It makes the important distinction, which I tried to make yesterday, between the withdrawal agreement and the political declaration.

It has always seemed to me that the Irish backstop has the character of a future relationship. What is objected to is the fact that it is said to be permanent and so on. That is part of the future relationship, and therefore I have always felt that the backstop itself is not an objection to the withdrawal agreement as such. There may be other objections but, so far as the backstop is concerned, the aspect of it to which objection has been taken is as part of the future relationship. I would therefore welcome the idea of the House of Commons having a discussion separating out these two, which the Kinnock amendment does with complete accuracy. I do not for a minute believe that it does not make sense; it is perfectly readable and understandable, even for lawyers. In my view, therefore, this should stay in.

My noble friend says he expected the Government to object to it. The Government are not for the whole of this Bill. The whole thing is a Private Member's Bill by a group that was not part of the Government as such. It may have included Members who were previously in the Government, but at any rate it is not a government Bill. The Government therefore do not care for it at all, so I do not know why they should have to propose an amendment to part of it. It is perfectly right that they had not done so. I understand they have been advised that it is meaningless. I do not agree with that, and I do not think anybody who reads it will think it is meaningless; it is perfectly clear what is wanted. It is the basis on which an extension is asked for.

According to the formulation of the noble Lord, Lord Kerr, no conditions are attached. However, if you apply for an extension the European Union will require a reason—which seems to be common sense—and, if you give a reason, good faith suggests that that is the reason, and therefore it promotes the likelihood that something may suddenly emerge which distinguishes between the political formulation and the withdrawal agreement, which is the vital thing to get through in time.

1.30 pm

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): Perhaps it would be helpful for the Committee if I said a few words about the amendment. Both my noble friends

Lord Forsyth and Lord True are essentially correct, except in one important detail. I should say to my noble friend Lord True that even if the rest of the Committee does not want to hear from him, I do, because he speaks a lot of good sense on these issues.

It is true that initially, during the fast-moving events at a late hour on Wednesday evening, it was our intention to ask the House to remove this amendment. However, since then we have looked at it further. My noble friend Lord Forsyth said that the Government do not support this Bill and do not favour it. We think it is flawed and that this Kinnock amendment tries, but does not succeed, to make it even worse. The amendment is confusingly drafted, is contradictory to the aims of the rest of the Bill and its deficiencies are such that its effect is rendered pointless.

I always hesitate to disagree with my noble and learned friend Lord Mackay but my strong advice is that this amendment is legally inoperable. It appears contradictory with other parts of the Bill because it requires an extension to pass legislation to implement a deal, when, under this Bill, the extension is being sought only because no deal has been agreed.

For all those reasons, as I have said, we think it is inoperable and largely pointless. I am happy to say that it was our original intention to take it out—we had discussions to that effect and so my noble friend Lord True is correct, as always—but since then we have looked at the matter further.

Lord Goldsmith (Lab): My Lords, I am grateful to the Minister for helping the Committee at this stage by explaining the Government's position. We do not support the amendment. In short, given that the Minister has said the Government's view is that the Kinnock amendment is legally inoperable, it does no harm to keep it in the Bill. I do not know why noble Lords are laughing because the critical point, which was made by the noble Lord, Lord Cormack, is that the Bill has to pass. We do not have time to send it back to the House of Commons given the guillotine of prorogation imposed by the Prime Minister.

Lord Rooker (Lab): My Lords, in principle, the noble Lord, Lord Forsyth, makes a seductive case—in principle. The noble Lord, Lord Cormack, made the point that the House of Commons might want to look at it again. I do not see any contradiction in the fact that they have rejected the agreement three times. It is their choice—the meaningful vote is theirs, not ours—and it is a soft Brexit. It is Brexit in name only—there is no question about that. They are free at any time they want in the Commons to fix their business to do it. It is nothing to do with us because we are not part of the meaningful vote process. It is not our job to manipulate the way they organise their business on an issue that we have nothing to do with.

It grieves me that we cannot do our proper scrutiny. There is a breakdown of trust because the Government say that there will be time in the Commons on Monday to deal with this Bill. Any amendments sent down there can be amended and something in lieu can come back. Forget the idea that this is a sound deal. Trust has broken down; the prorogation guillotine is there; we have no choice. I therefore ask the noble Lord, Lord Forsyth, to withdraw his amendment.

Lord Forsyth of Drumlean: Oh my goodness. I have to say to the noble Lord, Lord Rooker, for whom I have great admiration, that I am struggling with that response because the words say that a letter should be sent by the Prime Minister requesting an extension in order not just to debate but to debate and pass a Bill. He has to send a letter saying he wants an extension because he is planning to pass a Bill to implement the May agreement, which has been rejected three times—the noble Lord, Lord Rooker, is absolutely right—and put in place the results of the discussions, on which I do not have information, other than what I have read in the newspapers. That is anticipating the decisions by the House of Commons.

My noble friend Lord Cormack said that he supported the May deal and that there are many people who supported the May deal, but the May deal was rejected by the biggest vote ever in the other place. The noble Lord, Lord Brooke, made a very good point about the political agreement and having discussions. He may be right in his criticism that not enough has been done to take that part of the thing forward. Taking out this defective part of the Bill does not prevent discussions taking place.

My noble friend Lord Hamilton made a crucial point that if this provision is deficient—and everybody agrees that it is deficient—what is this House for if not to deal with those matters? The noble Lord, Lord Rooker, said there is a matter of trust. I am most grateful to my noble friend Lord Callanan for his honesty and transparency. We were under the impression that the deal agreed between the Front Benches would result in this matter being taken out—he has confirmed that—and we are now being told that it is not being taken out because the legal advice is that it would not fly anyway, so we put into the Bill something which is legally deficient; that is okay, and that is what this House has come to. We do that because we do not believe that the Government will be as good as their word when the people who were on the other side of the agreement have not been as good as their word. I hope that the Government are rather better than that. We have a duty to pass legislation which is proper. I am not a lawyer, but the noble Lord, Lord Marks, told us that it would have no legal effect whatever, and my noble and learned friend Lord Mackay of Clashfern—not Drumlean—gave us the opposite advice, so it would appear that there is at least some doubt about whether it would have legal effect.

My noble and learned friend Lord Mackay said it was not meaningless and the noble Lord, Lord Marks, said he agreed that—I hope I am not pushing too far here—it should not be there but because it is meaningless, it could stay there. The noble Lord, Lord Jones, told us that the entire country is sick to death of all of us. On that, I am sure we can all agree.

Lord Goldsmith: I am going to ask the noble Lord this question because he has questioned the comments that have been made about trust. In that context, does he want to comment on what the Prime Minister said this morning, which was that he will not seek an extension even if it is passed in law? Does that change his view on whether a question of trust is at play here?

Lord Forsyth of Drumlean: No, it does not change my view. What the Prime Minister says he will or will not do has nothing whatever to do with what the law of the land is.

Noble Lords: Oh!

Lord Forsyth of Drumlean: What he says he will do has nothing whatever to do with the law of the land as decided by both Houses of Parliament. I would expect every single parliamentarian to obey the law of the land. In passing the law, there is a responsibility on us to ensure absolute clarity about what it means and what it does. The noble and learned Lord's party was not prepared to vote for this matter. It was going to abstain on it, and it was put into the Bill because Tellers were not appointed by the amateurs at the other end who had taken control of the agenda. For this House, and in particular for the noble and learned Lord with his vast experience, to suggest that we should leave it in while making that point makes my argument for me.

Baroness Ludford (LD): In response to the noble and learned Lord, Lord Goldsmith, yesterday the Minister—the noble Lord, Lord Callanan—gave an assurance that the Government would fully comply with this Bill once it became an Act. Not only would it get Royal Assent but the Government would comply with it. However, almost simultaneously the Prime Minister said that he would be dead in a ditch before he would request an extension. Does the noble Lord, Lord Forsyth, think that we should rely on the Minister's assurance on behalf of the Government while the Prime Minister says something completely different? Does that not undermine trust not only in the Prime Minister but in the assurance that we got from the Minister yesterday?

Lord Forsyth of Drumlean: I am so tired of this political argy-bargy.

Noble Lords: Oh!

Lord Forsyth of Drumlean: If the Prime Minister is dead in a ditch, he is not the Government, and at this stage in considering these proceedings we are talking about ensuring that we have clear and effective law. That is why I tabled this amendment. My noble friend Lord Callanan did not really give me a satisfactory answer, although I appreciated the answer in which he said that the Government had decided that they would not after all take out this measure because they had received advice that it would not have any effect—advice that is contrary to what we have heard from perhaps our most distinguished former Lord Chancellor. Therefore, I am sorry but I do not wish my name to be associated with defective legislation passed by this House and I intend to test the opinion of the House.

1.42 pm

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1.57 pm

Clause 5: Interpretation, commencement, extent and short title

Amendment 2

Moved by Lord True

2: Clause 5, page 3, line 39, leave out subsection (5) and insert—

“(5) This section comes into force on the day on which this Act is passed.

(5A) All other provisions of this Act come into force on such date as the Secretary of State may appoint by regulations made by statutory instrument, following the first general election to take place in 2019.”

Lord True: My Lords, I start by saying that when an agreement is reached by the usual channels, in my view that is an agreement which must hold. Not only was an agreement made in the usual channels but, in the course of that, I gave personal assurances that no effort would be made to delay the progress of this Bill. I stand by that assurance. I did not take any part yesterday. I hope this will not be made an occasion for prolonged debate; the debate we just had took no more than three-quarters of an hour. It is up to Members of the House whether they are interested in the remarks I am about to make, but I hope that this will not be the occasion of a very prolonged debate. Without being discourteous to any Member of your Lordships' House, if it appears that it is tending in that direction, I will rise—or support the noble Lord, Lord Rooker, if he rises—to attempt to bring the debate to a close without any need for the repugnant nonsense of the closure Motions used on Wednesday.

I wish to bring one point of principle to this House and ask the House to determine the matter publicly. I shall be pressing this amendment to a Division in which each and every Member of this House will have to declare publicly their position on the simple proposition that I put before them, which is that the Bill, which will be an Act when it passes from this House and goes to the other place, should not come into force until the British people have had a chance to decide the matter in a general election.

Yesterday there was talk that the Labour Party might accept a general election and now there is not. I am not particularly concerned about who said what when. I agree with all those who say that somehow we need to bring a conclusion to this matter. In the history of our great democracy, in the times of greatest crisis and doubt, that has been done, is done and—please

God—always will be done by recourse to the people of this country to ask them to decide the matter in a general election—yes, in a general election, not in some second referendum, a first referendum or a third or a fourth cooked up by a majority of the time with the power to decide the question.

2 pm

Let the people decide who governs. There is plenty of time if the parties stick to the opinions we heard and, as the leader of the Opposition has been saying all around the country, and as the leader of the Scottish nationalists and the leader of my party have been saying: we want an election. As we all know, there is plenty of time to have an election in October to allow the British people to choose parties that will either pursue the course set out in this Act—which would lie on the statute book and could be implemented by a new Secretary of State one minute after the formation of a Government—or a Government who wish to take this country out of the European Union, as the public have been promised, on 31 October. A general election will enable the people of this country to make that choice, not some cabal in the House of Commons.

Lord Hunt of Kings Heath (Lab): Over the years that the noble Lord has been a Member of the House, he has regularly lectured it about its role in relation to the other place. Does he really think that this amendment, at this time, is at all appropriate for a revising Chamber?

Lord True: My Lords, I absolutely do. There is no purpose in this House if it is not to enable at some point the rights of the people to be sustained. Indeed, the one deliberate and absolute power of this House is that it can prevent the House of Commons extending itself indefinitely. We can require a general election after five years; we cannot in this case. That is an absolute power of this House under legislation. I am making a submission to and through this House to all the parties, and to people on both sides who support them, that this matter should be decided by a general election, not by House of Cards shenanigans on one side or the other—if you ask me, both sides are as bad as each other—as they try to do chess moves one against the other. I totally agree with what was said by the noble Lord, Lord Jones: it is doing nothing to advance the credibility of politics.

Lord Campbell of Pittenweem (LD): I am most grateful to the noble Lord for giving way, because I am examining his amendment, the last phrase of which is, “following the first general election to take place in 2019”.

If no such general election takes place, what is the effect of his amendment?

Lord True: The effect of the amendment is that the Act will not come into place until a general election has taken place. I have been advised by—

Lord Campbell of Pittenweem: Forgive me if I did not make myself sufficiently clear. If there is no general election in 2019, how can the amendment have any statutory effect?

Lord True: The noble Lord has just voted for an amendment that we have been told has no statutory effect, so now he can vote against one that he says has no statutory effect. He can have it both ways.

Viscount Hailsham (Con): But surely what it means is that if there is no general election in 2019, the Bill will never come into effect.

Lord True: I would cheerfully welcome that outcome, my Lords.

Noble Lords: Oh!

Lord True: But the matter is much simpler, and those outside this House will understand where we are.

Lord Hayward (Con): I thank my noble friend for giving way, and in asking this question I remind him of the last time that a Government went to “let the people decide”. It was in 1974—which is an interesting parallel that he might not wish to follow. I will ask about the wording, in the opposite direction to the question of the noble Lord, Lord Campbell. The amendment refers to the “first general election” of 2019. Are we expecting to have more than one in 2019?

Lord True: My Lords, the words are as tabled and the House has any opportunity—it can use whatever excuse and whatever thing it wants to say—to vote down this amendment. I was advised by the clerks on the wording of the amendment and its purpose—

Noble Lords: Oh!

Lord True: My Lords, there are more interruptions—

Lord Greaves (LD): Notwithstanding what my noble friend and others have said about the amendment not making sense, the noble Lord’s argument is all based on the supposition that a general election can be held before 17 October, when there is a European Council. I am always interested to hear what the noble Lord says, because he has great expertise in these areas, but the *Independent* today reports that, if the Prime Minister loses the vote on Monday and does not achieve a general election on 15 October, he is going to resign his position. Would the noble Lord give us his expertise on how the provision in the Bill telling the Prime Minister to write a letter will apply if we no longer have a Prime Minister?

Lord True: Like my noble friend Lord Forsyth on a previous amendment, I am not going to pursue the ifs, buts, whys and whats that we have in every newspaper of this country. I return to the fundamental point of principle. Noble Lords can say that they are voting against the amendment because it is defective for one reason or another, but the purpose of this debate, and of trying to put this amendment down, is crystal clear. It is so that under the Bill the decision to foreclose the United Kingdom leaving the European Union on 31 October should not be taken without the sanction of the people.

Baroness Altmann (Con): Perhaps it would assist the House if one could point out that there has been a general election since the referendum. The Bill is about rejecting no deal, and at the general election in 2017, 53.2% voted for parties that opposed no deal—17.1 million people—and only 14.4 million people, 45.1% of the electorate, voted for the Conservatives, the DUP or UKIP, which would sanction no deal. So the people spoke then, and in the 2019 EU election 44.4% voted for the Brexit or Conservative parties while 54.4% voted for parties that were opposed to no deal, which is what the Bill is about.

Lord True: Then the noble Baroness should be very confident about supporting my amendment and voting for a general election.

When I spoke after the disgraceful closure of debate on the amendment of the noble Baroness, Lady Deech, I said that we were now in a situation—the public and the world know this—where the Government were not in control of matters relating to Brexit. Power on those matters rests with a majority in the House of Commons. That majority is served—perhaps driven—by a group of people, some of whose names appeared on the back of the Commons print of the Bill, who are taking decisions, thinking up clever wheezes and have now put forward legislation designed to frustrate the will of the people and an Act passed by this very Parliament that states that we should leave on 31 October.

Who are these people? We know who the members of the Cabinet are. We know who the Cabinet Secretary is. We know who gives the legal advice to the Cabinet. We know the civil servants involved. But who are the people who meet and seek to decide the destiny of this country in relation to legislation on Brexit? Who are those behind this Bill and behind the strategy of the remainder group in this country? Where are their names? They must be accountable in the same way as the Cabinet.

I return to the fundamental point—

Baroness Crawley (Lab): How much more accountable can you be than putting your name to a Bill?

Lord True: If the noble Baroness is telling me that those six people are now the new governing group driving remainder policy, that is very interesting—but I rather suspect that others are involved. There may be one or two of them in this House, and I think we should know their names.

Lord Patten of Barnes (Con): Perhaps I may ask my noble friend one simple question. Why did he leave out of the list of those who run the country Mr Dominic Cummings?

Lord True: My Lords, yet again, my noble friend, despite his distinguished Oxford degree, clearly was not listening. I was referring to those driving the policy of the remainder faction—and the public outside know this to be true—and seizing control of the conduct of our affairs without a general election.

Lord Cormack: Will my noble friend stop using the term “remainder faction”? He can use “no-deal faction” if he wishes, but the vast majority of people who voted

in the House of Commons the other day, all of whose names are publicly listed, did so because they wanted to save this country from going over a precipice. Why should he take it upon himself—this was the point made by the noble Lord, Lord Hunt—to urge this House, which has no validity in these matters, to seek to effectively bring to an end a Parliament that still has almost three years to run? If the Prime Minister is able to persuade the House of Commons to have a general election, I would personally welcome it, but it is really no business of this House to interfere in that.

Lord True: My Lords, when I see a political faction, I see a political faction and I will name it—and I name it the remainder faction. I will conclude by saying this—

Noble Lords: Hurrah!

Lord True: I would have liked to conclude some time ago, but I have courteously tried to take many interventions. How many more times are the long-suffering people of this country going to be asked to take another delay to what they voted for? Whatever may have happened then or since, on 29 March, they were told that there must be a delay. Now, with this Bill, they are told that 31 October is not enough time and there must be another delay to 31 January 2020. When it comes up to 31 January, how many times will we be told that there has to be another delay? How many times are the long-suffering people of this country going to be asked for delay after delay by those who quite patently want only one thing?

Lord Bowness (Con): My Lords—

Noble Lords: Oh!

Lord True: My Lords, I will not give way. I have given way many times. There is a custom creeping into this House, which is becoming more and more like the House of Commons, of constant interruptions and interventions. I have courteously taken a large number of interventions and I wish to conclude my remarks.

I repeat what I said: how many more times must the British people be asked to take a delay? How many more times must they tolerate those who wish to change the policy which Parliament has agreed and the vote that Parliament made, enacted on the statute book, that this country should leave the European Union on 31 October? How much more must they take from those who want this country to remain and want this to stop? There will be a limit to the tolerance of many in this country and I beseech those involved to allow the cleansing balm of a general election so that everyone, whatever their views, can put their case to the people. It is the only way in which this matter will be resolved. I would accept the result of any general election wholeheartedly, as I have all through my political career. I have had to accept general election results that were repugnant to me; that is the essence of our democracy.

2.15 pm

Even if this idea is defective—I do not accept that it is—I beg noble Lords to give it some houseroom. Whatever arguments may be made about this amendment,

I will press it. All those in this House who do not want to allow the British people what they voted for, and who agree with those in the House of Commons who wish to resist a general election, should march through the Lobby and let their names be counted in the face of history.

Baroness Hayter of Kentish Town (Lab): My Lords, it may help the House if we are able to curtail this fairly quickly. The noble Lord said at the beginning of the debate that he was going to press the amendment, so we cannot persuade him to withdraw it, which is what we usually try to do. I will make a few comments, then my noble friend Lord Rooker can respond and we can move on.

On the will of the people, there are two ways of doing it: a general election and a second referendum, which the noble Lord has not supported. I will say two things about the amendment, which is close to being a wrecking amendment. In the first minute of his speech, the noble Lord said that it gives an incoming Government the ability to scrap the Act by statutory instrument—which this House, by tradition, never opposes—allowing a Secretary of State to tear it up without the permission of Parliament. This cannot be the right way to treat an Act. The second issue is even more serious and has already been raised. If there is no general election, the whole Bill does not come into force. This seems to be a completely wrecking amendment and I urge noble Lords to oppose it.

Lord Rooker: My Lords, I spent 27 years in the other place, so I know a little bit about the problems that Members have with the Table Office there. I can absolutely guarantee that this amendment would not be allowed in the House of Commons, because it is a textbook wrecking amendment. I do not propose to say anything else.

Lord True: My Lords, I have stated my case clearly and I now put it to the House. I beg to move.

2.18 pm

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Baroness Chisholm of Owlpen (Con): My Lords, the House will now adjourn to allow amendments to be tabled for Third Reading. The Public Bill Office will be open to receive amendments for the next 30 minutes. The House will then resume as soon after that as possible and timings will be displayed on the annunciator.

2.34 pm

Sitting suspended.

European Union (Withdrawal) (No. 6) Bill

Third Reading

3.23 pm

Motion

Moved by Lord Rooker

That the Bill do now pass.

Baroness Hayter of Kentish Town (Lab): My Lords, I thank everyone who has been here for what has been a most extraordinary experience. There are some people not in the Chamber who we should also thank. Those in the Public Bill Office and the Printed Paper Office have enabled us to deal with the Bill in an unusual way. They have worked, along with the doorkeepers, above and beyond the call of duty. On our side, to be personal for a moment, we have had in our office Dan Stevens on the content and Ben Coffman keeping our wits together. I know that it was bad news for noble Lords moving amendments that they are so effective, but for our side it was great, and I use this moment to thank them. The work of my noble friend Lady Smith and my noble and learned friend Lord Goldsmith has been superb over this and I think the whole House will thank them for what they have been able to do. We thank the Minister, of course, and I think we are going to hear from him.

Baroness Ludford (LD): My Lords, I second everything that the noble Baroness, Lady Hayter, has said and I add my own thanks to all those who have co-operated so well to ensure that the Bill has passed successfully, especially the noble Lord, Lord Rooker. I thank my leader, my noble friend Lord Newby, and my Chief Whip, my noble friend Lord Stoneham. I think we have had an excellent experience in the passage of the Bill.

Lord Hope of Craighead (CB): My Lords, on behalf of these Benches I associate myself with the remarks of both noble Baronesses and pay tribute to the many Cross-Benchers who have been present throughout these proceedings, to whom I am particularly grateful.

A noble Lord: Very cross.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, I first add my thanks to those expressed by the noble Baroness, Lady Hayter, and others to the staff of the House, who have worked incredibly long hours—including quite late last night—to process all the different stages, amendments, et cetera. I also personally pay tribute to my officials, who have also worked extremely late—particularly the legal ones, who have had the impossible job of explaining complicated legal constructs to me, a simple engineer, so that I can, I hope, communicate them to the House. They have done a sterling job and I am incredibly grateful.

The Government cannot support this Bill. I quite agree with the point made by the noble Viscount, Lord Trenchard, that it brings delay and uncertainty. I would add that it undermines our efforts to renegotiate the withdrawal agreement and the political declaration and aims to tie the Prime Minister's hands when he is seeking to secure the best possible Brexit deal. However, as I reiterated to the House yesterday, in line with assurances made by the Chief Whips in both Houses, if this Bill completes its remaining stages it is the Government's intention that it will be ready to be presented for Royal Assent.

I hope it will help the House if I respond directly to some of the points raised by noble Lords throughout the discussion. I recognise that we are now at Third Reading, so I hope noble Lords will forgive me if I take some time to address some of the points—

Noble Lords: Oh!

Lord Callanan: I think some noble Lords might want answers to some of the questions that have been asked, particularly about the Government's intentions—

Baroness Smith of Basildon (Lab): If I might help the noble Lord, the only point of dissent there was that we are not at Third Reading but the Do Now Pass stage.

Lord Callanan: I apologise—perhaps the legal officials did not explain it to me clearly enough. I thank the noble Baroness for her clarification.

My noble friends Lady McIntosh of Pickering and Lord Hailsham raised concerns about whether the Government would request an extension but then vote against it in the European Council. I reiterate, as we have stated many times, that the Government have been clear that we will of course adhere to the law. Noble Lords have the text of Clause 1(4) in front of them and can see what it requires. The noble Baronesses, Lady Deech and Lady Falkner of Margravine, and my noble friends Lord Forsyth of Drumlean and Lord Leigh of Hurley have raised the prospect that the extension could come with conditions. Noble Lords are well aware of my position, which is of course that the Bill hands powers to the European Union, and it is true that the Bill, as drafted—

3.30 pm

Baroness McIntosh of Pickering (Con): I am most grateful to my noble friend for answering a slightly different question from the one I put. The answer that I think he wishes to give, as I understand the legal position and as the noble Lord, Lord Kerr, explained earlier, is that the UK Government will not be present in the room. My question was whether the United Kingdom will veto its own application for an extension. Perhaps my noble friend can confirm for the record that the United Kingdom Government will not be in the room when the vote is taken, and therefore the situation I asked him to elucidate on would not arise.

Lord Callanan: I thank my noble friend for her questions, but she has had the answer that I am going to give her on this subject. The Government will abide by the law. Noble Lords have the text of the relevant clause in front of them and no doubt lots of great legal minds can spend a lot of time advising noble Lords of the legal intent of it.

As I said, the noble Baroness, Lady Deech, my noble friends Lord Forsyth and Lord Leigh of Hurley, and the noble Baroness, Lady Falkner, raised the prospect that the extension could come with conditions. Noble Lords know my position, which is that the Bill hands power to the European Union. It is true that the Bill as drafted makes no provision for the event that the EU attaches conditions to that extension. However, during any extension the UK would remain a member state. The noble Baroness, Lady Ludford, noted that Article 50 does not give the EU any special power to impose conditions which would cut across those member states' rights. The most important point, however, is that an extension is objectionable in itself because it delays the point at which we can satisfy the will of the people as expressed in the referendum.

While the previous extension, which was agreed in April, contained political statements reflecting the EU's expectations of how the UK might act during the extension period, noble Lords, having no doubt studied the decision of the European Council at some length, will note that these sat outside the central, legally operative provisions of that decision and did not amount to conditions. The phrase which says that this extension,

"excludes any re-opening of the Withdrawal Agreement",

sits in the preamble, not in the decision itself. That difference is important, because it means that this is not a legally binding condition. Of course, it is precisely because there is a difference that the Government have been able to reopen the negotiations and are seeking, as noble Lords are aware, to remove the undemocratic Northern Ireland backstop.

My noble friend Lord Trenchard and the noble Baroness, Lady Deech, asked what would happen if the EU offered a longer extension at a time when the Commons is not sitting for the next two days. Would it be unable to reject it? As a matter of fact, as drafted, the legislation means that the House of Commons cannot reject a longer extension if it is not sitting. The only way to rule out an unacceptably long extension is to reject the Bill, which is why we have opposed it.

Finally, my noble friend Lord Forsyth raised questions about the Kinnock amendment. The House has taken a decision on this but let me be clear about the

Government's position. The amendment is confusingly drafted and contradictory to the aims of the rest of the Bill. It says that the purpose of any extension is to pass legislation to implement a deal when, under the Bill, the extension is being sought only because there is not an agreement. The Kinnock amendment's deficiencies are such that its effect is therefore rendered wholly unclear.

I have detained your Lordships long enough.

Noble Lords: Oh!

Lord Callanan: I thought that would get a cheer.

We have heard many concerns raised about the Bill. However, more fundamentally, the issues at play here are not just technical. This is about seriously undermining negotiations that could achieve a deal before 31 October, frustrating the referendum result and stopping Brexit.

Lord Framlingham (Con): My Lords, I shall genuinely be extremely brief. I just want to say that I object strongly to both the Bill and the way it has been handled. This is a sad day for both the country and for our House.

Lord Rooker (Lab): My Lords, I second everything that was said from the two Front Benches on this side in thanks to everybody. I have just been the messenger from the Commons, intervening occasionally, because these are unusual circumstances. I certainly thank everybody who has been involved.

At about 1 am the other day, I was quite looking forward to the debate, because I had almost got my second wind—it was just like the old days in the Commons. Then, of course, it all went quiet and packed up. Genuinely, I thank everybody who has participated. I have to say that we have rewritten the conventions, not the least through the seven-minute speech we have just heard from the Minister. That should have been made as a Statement or in the wind-up of Second Reading; it was completely inappropriate under the rules of this House to do it under the Motion that the Bill do now pass.

Having got that off my chest, this is not the end, because our procedures will change as a result of the Bill. Things will happen differently. That may be regrettable, it is true, but precedents have been created during the Bill's passage, some of which we may come to regret, but I thank everybody who has participated.

Bill passed.

House adjourned at 3.36 pm.

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