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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Tuesday 14 January 2020

2.30 pm

Prayers—read by the Lord Bishop of Worcester.

Oaths and Affirmations

2.35 pm

Lord Garel-Jones made the solemn affirmation and Lord Nash took the oath, and both signed an undertaking to abide by the Code of Conduct.

Nuclear Power: Emissions
Question

2.37 pm

Asked by ***Lord Ravensdale***

To ask Her Majesty's Government what assessment they have made of the nuclear power capacity required to meet their target of net zero emissions by 2050.

Lord Ravensdale (CB): I beg leave to ask the Question standing in my name on the Order Paper. In so doing, I declare my interest as an engineer in the energy industry, as set out in the register.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy and Northern Ireland Office (Lord Duncan of Springbank) (Con): My Lords, a substantial increase in low-carbon generation will be needed to reduce our emissions to net zero by 2050. Nuclear power currently provides a fifth of our generation and will have an important role in securing a low-cost, stable, reliable low-carbon system by 2050. The Government will publish an energy White Paper in 2020, which will provide further detail of the necessary transformation of our energy system.

Lord Ravensdale: My Lords, I thank the Minister for his response. Our current nuclear fleet is approaching the end of its working life and only a single new station is being built. We need much more than that to provide additional zero-carbon firm power and reduce the risk of not meeting net zero by 2050. Does the Minister agree that a key means of doing this at least cost is to focus on replication: building a number of the same design to learn lessons and gain efficiencies, rather than using a wide range of designs, as per the previous strategy? Can he confirm that the Government are prioritising a decision on the financing of new nuclear to enable the industry to move forward?

Lord Duncan of Springbank: The simple answer to that question is yes, but more details are required. The first thing to remember is that by 2030 all but one nuclear power station will be closed.

The noble Lord's second point is correct: we do need replication on a common theme to help us, but there are other factors too, not least of which is experienced management in the construction industry and sometimes constructing nuclear reactors in greater numbers on the same site. Each of these can make a significant difference, and in order for us to increase capacity we need, in the energy White Paper, to give serious consideration to them, at which point the decision-making will be made clear.

Lord Cunningham of Felling (Lab): My Lords, I welcome the Minister's statement strongly in support of civil nuclear power. It is quite obvious to most people—not to everyone, I know—that we are never going to meet our carbon targets without a significant contribution from nuclear energy. For the first time in a generation we have the opportunity now, at Sizewell C, to use the learning curve and replication of design and construction to bring down costs and possibly the timescale involved in building the second nuclear power station, much more than the last Labour Government did, I must say—to my regret; I do not know about theirs. I hope the Minister will persuade his colleagues that we need to expedite these developments.

Lord Duncan of Springbank: We must expedite these developments. The nuclear sector deal which the Government have invested in is worth £200 million. Its purpose is to reduce significantly the costs of the replication of these new developments, and the regulated asset base should be a new model for us to make sure that there is value for money as well. Nuclear will be a vital part, I believe, of the ongoing energy mix in this country.

Lord Howell of Guildford (Con): My Lords, I wonder whether my noble friend's brief really reflects the full position. After all, Hinkley is now £3 billion over budget and delayed by a year or two, Wylfa has been suspended, Moorside has been abandoned, and the Chinese and French are struggling to raise finance for Sizewell C. It is not a very good picture. Should we not be focusing rather more on prospects for small modular reactors, which can be built much more quickly, and perhaps more cheaply, and might make an even bigger contribution when it comes to global climate change, which is the real problem?

Lord Duncan of Springbank: My noble friend is, of course, absolutely correct. If we get to the stage where Hinkley comes online according to its timetable in 2025, it will in due course supply 7% of our electricity needs. However, the reality is that small modular reactors are vital. That is why we have invested £18 million in development thus far—£18 million that is matched by the private sector. This may well be how we can move forward a whole new generation of nuclear electricity generation.

Lord Fox (LD): My Lords, I think all your Lordships will welcome the fact that an energy White Paper is going to be published. This country has lacked a joined-up strategy on energy for many years. Can the Minister confirm that this White Paper will include not only generation of all kinds but the storage of

[Lord Fox]
energy and the flexible, or more flexible, distribution of energy? Clearly those will be key in how we go forward.

Lord Duncan of Springbank: The noble Lord has raised these points before; he was right then and is right now. Storage is absolutely vital in this area. Without it, we run the risk not just in nuclear but in our renewables more widely that we cannot capture and hold the energy that we create. Storage needs to be in the White Paper.

Baroness Whitaker (Lab): My Lords, nuclear energy is obviously essential to enabling us to combat climate change, as my noble friend Lord Cunningham just said, but what are the Government doing to enable the public to move away from the other fossil fuel, gas, which is so widely used in domestic heating?

Lord Duncan of Springbank: There will also be a strategy next year examining gas in the domestic heating system. There are options available to us and decisions will be required. Shall it be electrification, use of hydrogen, or indeed a hybrid of the two? We need to consider that, and the White Paper will help inform our decisions going forward.

Baroness Neville-Rolfe (Con): My Lords, what discussions has my noble friend had with friends and partners internationally on the potential for using UK nuclear expertise and technology in the fight to deal with climate change?

Lord Duncan of Springbank: As part of my responsibilities as Climate Change Minister, we have engaged with a number of countries to examine what prospects we have to ensure the development of the small modular reactors, which we believe will be key to the development of a workable global strategy. We commit to continuing to do that at a greater pace.

Lord Lennie (Lab): How will the Government ensure that any new offshore wind capacity during the 2020s will not simply replace retiring nuclear plants rather than push carbon-emitting gas power plants off the grid?

Lord Duncan of Springbank: The noble Lord is quite right: each of our ambitions in these areas has a finite lifespan, and it is important to make sure that, each time we replace them with the next generation, the carbon footprint decreases. We would like to see it significantly decrease, which is why offshore wind remains vital and why nuclear has a significant part to play.

Lord Lansley (Con): My Lords, the Wylfa project on Anglesey has been suspended, as we have heard. Would my noble friend agree that it is clear that Governments will need to invest in new nuclear? Will the Government look at promoting that project with Hitachi through a government commitment to invest sovereign capital, thereby reducing the cost of capital and offsetting some of the risk?

Lord Duncan of Springbank: Yes, indeed. We will be looking at exactly this through the regulated asset base approach. The Wylfa site is at the moment still owned by Hitachi. There are still opportunities to build on that site, and we are in discussions to make sure that we can move this matter forward.

Lord Wigley (PC): In considering the position of the small modular reactors, can the Minister give an undertaking that the medical dimension will be taken on board so that any possible synergy between the development of the two can take place, possibly at Trawsfynydd?

Lord Duncan of Springbank: The noble Lord is absolutely right. We often think of nuclear only in terms of energy generation, but in fact our health service depends significantly upon the isotopes that are created by the system. Yes, we need to recognise the synergy and work with it.

Constitution, Democracy and Rights Commission: Civil Society

Question

2.45 pm

Asked by ***Baroness Bennett of Manor Castle***

To ask Her Majesty's Government what plans the Constitution, Democracy and Rights Commission has to engage with civil society.

Earl Howe (Con): My Lords, the commission will examine the broader aspects of the constitution in depth and develop proposals to restore trust in our institutions and in how our democracy operates. We anticipate a wide degree of engagement, and the Government will ensure that civil society's valuable role in informing the work of the commission is not overlooked. Careful consideration is needed on the composition and focus of the commission, and further announcements will be made in due course.

Baroness Bennett of Manor Castle (GP): I thank the Minister for his Answer. On the question of the commission's focus, the City of London Corporation enjoys many special privileges and perks in the UK constitution. For example, the corporation has the unique right to propose private legislation via its own parliamentary agent, the remembrancer. Will the Minister commit that the constitution review will consider the position of the City of London—the last rotten borough, which gives so much power to our banking sector—and bring the City of London into line with all other local authorities?

Earl Howe: My Lords, I understand completely the noble Baroness's desire for clarity on the issues she refers to. However, I am afraid that it is too soon for me to be able to provide her with answers, as much as I should ideally like to. No decisions have been taken on either the composition or the focus of the commission. Once we are able to make an announcement, we will do so.

Viscount Hailsham (Con): My Lords, may I suggest to my noble friend that, in order to enhance the status of the commission, it be made a royal commission? Alternatively—here I may be pre-empting a point to be made by my noble friend Lord Cormack—it might be made a subject of a Speakers' conference, as suggested by my noble friend in his speech during the debate on the gracious Speech last week.

Earl Howe: My Lords, I have read my noble friend's speech of last week, and the points he made have been registered. I can say again only that no decisions have been taken on the precise form that the commission should take. However, the most important thing is for it and the work that it does to command public confidence.

The Lord Bishop of Worcester: My Lords, I have seen the disillusionment to which the Minister refers. Given that no plans have yet been made for exactly how the commission will work, as well as the success of citizens' assemblies in Ireland and France in rebuilding trust in democratic institutions, might the Minister think it a good idea to involve such citizens' assemblies in the commission's work?

Earl Howe: I am grateful to the right reverend Prelate, and that idea is certainly in the mix.

Lord Wallace of Saltaire (LD): My Lords, the Minister quotes from the briefing on the Queen's Speech on careful consideration being needed, which seems to suggest that very little thought has yet been given to this. Will the careful consideration on the composition and focus of this commission take place within government or in co-operation with other parties, or with interested groups outside government and politics altogether? Is that the wider consideration that is intended?

Earl Howe: My Lords, I wish that I could help the noble Lord, but it is simply too soon for me to be able to comment on that. As we heard in the debate in your Lordships' House last Wednesday, the subject matter under the umbrella heading of the constitution is potentially very broad, so decisions are needed on exactly how broad the commission's remit should sensibly be.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, since the remit is still unsure and has not yet been decided, will the Minister ask for the consideration of a federal constitution for the United Kingdom to be included in the remit, before we see the breakup and the removal of Scotland and Northern Ireland, which is imminent unless we have some kind of federal constitution?

Earl Howe: I will make sure that the noble Lord's point is duly noted.

Lord Young of Cookham (Con): As my noble friend is aware, this commission generated some excitement in your Lordships' House when we debated it last Wednesday. If, as my noble friend said, this project is still in its formative stage, can we at least have a debate in your Lordships' House before it is set up so that your Lordships might influence its constitution and remit, and, I hope, make sure that it is a great success?

Earl Howe: I shall be glad to inform the usual channels of my noble friend's very good suggestion. However, I counsel on the fact that, at some point, the Government will give an indication of the scope and remit that they intend the commission to have; it would be best for your Lordships to present their views in that informed context.

Lord Morgan (Lab): My Lords, has not the main threat to democracy and human rights of late come from the Government, as in their attempt to silence this Parliament? What guarantee do we have, therefore, that this commission will not be an attempt to silence the courts and, further, to undermine the rule of law?

Earl Howe: My Lords, if the aim of establishing a commission is to restore trust in our institutions and democracy, as is the case here, it is axiomatic that the commission will need to command public confidence through both its membership and the way it operates. The Government are wholly mindful of that.

Lord Cormack (Con): My Lords, I thank my noble friend for the way he has answered these questions. Can he reflect on the fact that we recently elected a citizens' assembly? It is called the House of Commons.

Earl Howe: My noble friend makes an extremely pertinent point.

Baroness Smith of Basildon (Lab): My Lords, the Minister has twice referred to restoring trust in our institutions. I put it to him that we do not restore trust just by changing the structures of institutions. It is about engagement. I endorse fully the comment of the noble Lord, Lord Young. However, although I appreciate that this in its early stages, we need to take into account the fact that our constitution hangs together through not just individual bodies, but how these institutions relate to each other and how changing the powers of one affects the others, whether that is local government and Parliament or both Houses of Parliament.

Earl Howe: I do not disagree with the noble Baroness in the slightest. The commission will wish to engage with civil society, as I said earlier. The important thing is that that engagement is both wide and deep.

Health: Vaping

Question

2.52 pm

Asked by ***Baroness Redfern***

To ask Her Majesty's Government what assessment they have made of the effect of vaping on public health.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Blackwood of North Oxford) (Con): My Lords, despite reductions in smoking rates, smoking remains the leading cause of preventable death in England. E-cigarettes are not risk free but are less harmful to health than smoking tobacco.

[Baroness Blackwood of North Oxford]
Each year, more than 50,000 additional people who would not have quit through other means quit smoking through e-cigarette use. We continue to monitor the evidence base on e-cigarettes. The next Public Health England annual review is due in February 2020.

Baroness Redfern (Con): I thank the Minister for her response. Does she agree that people who vape and struggle to quit should be given the same support and access to NHS services that is offered to regular smokers?

Baroness Blackwood of North Oxford: The Government have consistently highlighted that quitting smoking and nicotine use completely is the best way to improve health. Although they are not risk free, research shows that e-cigarettes are effective in helping smokers to quit. That is why we committed in the long-term plan to roll out "stop smoking" services in the NHS, to support improvements even on our smoking cessation rates—smoking is now at its lowest level on record, down from 18.4% in 2013 to 14.4%.

Lord Hunt of Kings Heath (Lab): My Lords, does the noble Baroness agree that, looking back over the past 10 or 20 years, apart from the ban on smoking in public places, vaping has been the most successful intervention to reduce smoking? Does she therefore agree that we need to be cautious before we rush into trying to ban or overregulate its use, as some campaigners want?

Baroness Blackwood of North Oxford: As I said, more than 50,000 additional people quit smoking through e-cigarette use each year. We see e-cigarettes as an effective and safer route to quitting smoking than other routes. However, we understand that, at the moment, there is no evidence on the impact of long-term vaping, which is why Public Health England continues to update and publish the evidence base on e-cigarettes annually. We will continue to monitor the impacts of that use.

Baroness Meacher (CB): My Lords, modest process changes could be made to enable patients who need medical cannabis to gain access to it. This is the most effective way of reducing public use of cancer-inducing cigarettes and vaping, which I understand is not risk free, although we do not know all the results. Will the Minister agree to meet me to discuss these process changes, which really could make a big difference and save people?

Baroness Blackwood of North Oxford: The noble Baroness is an avid campaigner on this, and I commend her on the work she does on it. I would be delighted to meet her to discuss this, of course, but I am also pleased with the progress we have made in bringing forward clinical trials to improve the evidence base around medicinal cannabis.

Viscount Ridley (Con): My Lords, my noble friend will be aware that this week sees the centenary of the prohibition amendment in the United States, a policy that resulted in disastrous health outcomes and a huge increase in criminality and was repealed within 10 years. Does she feel that history is being repeated with America's policy of prohibiting vaping but not regulating it for product safety, resulting in a number of deaths caused by the illegal use of substances in vaping—contrasted with this country, where product safety regulation has enabled us to do safe vaping?

Baroness Blackwood of North Oxford: My noble friend has asked a comprehensive and pointed question. It is notable that e-cigarette use among young people in the United States has increased dramatically—78% in high-school students and 48% in middle-school students. We have not seen that in the UK because of the very effective and tightly regulated methods we have brought in around advertising and access for under-18s, which have borne fruit. I am proud of the way in which we have managed that in the United Kingdom.

Baroness Janke (LD): My Lords, is the Minister aware that smoking has again become much more normal, and indeed quite fashionable—particularly in the form of e-cigarettes, among not just smokers but young people and people who have never smoked? Does she consider that this risks growing nicotine use and dependence? If so, what is being done to monitor and evaluate in health terms the increased use of e-cigarettes?

Baroness Blackwood of North Oxford: I am not quite sure I agree with the fundamental hypothesis of the noble Baroness's question. If the normalisation hypothesis were true, we would not have expected to see smoking rates continue to decline as they have. Since 2013 smoking rates have fallen from 18.4% to 14.4%, and among young people regular use is very small. It is at 2% for those who have never smoked and is very rare or less, at 0.5%, for 11 to 15 year-olds.

Lord Brooke of Alverthorpe (Lab): Will the noble Baroness be good enough to check the facts and assertions made by the noble Viscount, Lord Ridley? The facts are that during prohibition in the States, health improved and did not decline. Will she check that and give him the correct facts on it? Also, will she make sure that before we make any great changes on cannabis, we look very carefully indeed at what is happening in those states in America where cannabis is freely and openly sold for recreation purposes, and check on the number of people now dying from accidents and a whole range of associated problems? True, it is raising tax, but it is also raising many social problems.

Baroness Blackwood of North Oxford: I assure the noble Lord that when it comes to questions around medicinal cannabis and smoking, one of the reasons the UK is successful is that we approach our policy based on the most excellent evidence base. We are world-renowned for the approach we take to using evidence and putting it into policy most effectively. We are considered the European leader in smoking policy, in particular when it comes to our most recent tobacco control plan, and we will continue to be so.

Lord Vaux of Harrowden (CB): My Lords, the noble Baroness has mentioned that smoking among children is relatively low, but it is growing fast: it has more than doubled in the last four years. I strongly urge her to speak to schools. My own conversations suggest that in the last year and a half to two years it has increased more than fivefold. Does she agree that flavours such as gummy bear, twister lollipop, jelly babies, pixie tarts and unicorn milk are quite clearly aimed at children? It really is time that we looked at the rules around this.

Baroness Blackwood of North Oxford: The noble Lord is absolutely right: there must be no complacency when it comes to any kinds of illicit drugs or substances aimed at children. We have very active policies, led by the Home Office in partnership with the department of health, to ensure that we keep up with all these substances. On smoking and the use of e-cigarettes, my figures are slightly different from his, and I am very happy to discuss this with him after Questions.

Nuclear Weapons

Question

3.01 pm

Asked by ***Lord Tunnicliffe***

To ask Her Majesty's Government what assessment they have made of the (1) management of, and (2) overspend on, the United Kingdom's nuclear weapons programme.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, as the National Audit Office has acknowledged, nuclear infrastructure projects are often large and complex, with bespoke designs. We are carefully examining the report's conclusions and shall respond formally in due course. We are committed to strengthening the management of nuclear programmes, including investing significantly in infrastructure and working closely with regulators and industry partners.

Lord Tunnicliffe (Lab): My Lords, the recent National Audit Office report on nuclear deterrents found that the UK's nuclear weapons programme is overrunning by £1.3 billion, partly due to poorly written MoD contracts which resulted in the Government paying for mismanagement and delays, rather than the companies responsible. Will the Minister explain where the money will be found for these extra costs? I hope it will not be from the dreadfully overstretched MoD equipment budget. Will she confirm that the integrated security, defence and foreign policy review will examine how the MoD negotiates? Will she set out what has been done to build up departmental skills in nuclear capacity?

Baroness Goldie: In relation to the noble Lord's second-last question, the review will be broad-ranging and its remit will become clear. The MoD expects to have a relevant role to play in responding to that review. The National Audit Office report is not an easy one for the MoD; we are quite clear about that. At the same time, as the report itself recognises, these projects are at the top end of technical, contractual and structural complexity; they do not come much tougher than these. It is important to get this into some kind of timescale perspective. It is good to see that the report recognises, under the heading of acknowledging MoD improvements, that the department has made improvements since the establishment of the DNO in 2016. These are important improvements, because they include material changes to the organisational structure, to improving relationships and to contract renegotiations.

Lord Trefgarne (Con): My Lords, when will the first of the Dreadnought class missile-carrying submarines go to sea and when will they subsequently enter formal service?

Baroness Goldie: With some hesitation, I will give a specific answer to that question. As my noble friend will know, the programme is on train for delivery and the submarines are expected to be completed within the estimated timespan of the early 2030s. I am reluctant to give more specific indications than that. Good progress is being made and they are being monitored and assessed. In due course, we will be able to report more specifically on expected dates for delivery.

Lord Campbell of Pittenweem (LD): My Lords, does the Minister accept that the credibility of the deterrent itself depends on the credibility of the programme to produce it, and that the failure to learn from the mistakes of the past will be meat and drink to the predatory ambitions for her department of Mr Dominic Cummings?

Baroness Goldie: I sometimes think that that my department receives attention from a number of predatory sources, and I shall not be specific in designating them. I was candid with the noble Lord, Lord Tunnicliffe, that this has been a bumpy journey for the MoD. But, as was acknowledged by the NAO, the important thing is that improvements have been made, deficiencies have been recognised and corrective action has been taken. For this highly complicated, very technical and challenging project, the MoD is on track—indeed, the material changes have facilitated a far better understanding by the MoD of the nuclear enterprise.

Lord Griffiths of Burry Port (Lab): My Lords, few people in this House are as familiar with these enormously complex and demanding projects as my noble friend who put the Question. His record in that area is astounding. Can the Minister answer his question about the £1.3 billion? Where is that coming from? Hopefully it is not at the expense of other parts of the defence budget.

Baroness Goldie: My understanding is that these costs are in many respects now historic; they have been absorbed and budgeted for. The MoD has benefited from the £10 billion contingency funding made available by the Treasury in recognition of how unusual and challenging these projects are. We are satisfied that they are on budget.

Lord Reid of Cardowan (Lab): My Lords, I am slightly confused. Traditionally, our nuclear deterrent was funded from the Treasury. Is that still the case, or is it now part of the MoD costs? That has a tremendous bearing on the original Question—whether it would have a knock-on effect on procurement. I am happy for her to consult the Minister beside her.

Baroness Goldie: I do not want to get lost in or confuse your Lordships with accountancy semantics. My understanding is that the initial money comes from the Treasury but goes into the budget of the MoD, which then has to meet its spend obligations.

Lord Wallace of Saltaire (LD): My Lords, has the MoD done any contingency planning for the extra cost of maintaining our nuclear deterrent if and when Scotland becomes independent?

Baroness Goldie: That is not something currently presenting itself to us. There may be strong rhetoric from certain presences in Scotland, but it is also very clear that the strong majority opinion in Scotland is that independence is not something Scotland currently wants. The MoD, like the UK Government, will respond to any events as they unfold and to any changes in constitutional governance—if they ever emerge.

Online Harms Reduction Regulator (Report) Bill [HL]

First Reading

3.07 pm

A Bill to assign certain functions to Ofcom in relation to online harms regulation.

The Bill was introduced by Lord McNally, read a first time and ordered to be printed.

Road Traffic Offences (Cycling) Bill [HL]

First Reading

3.07 pm

A Bill to amend the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988 to create criminal offences relating to dangerous, careless or inconsiderate cycling, in particular applying to a pedal cycle, an electrically assisted pedal cycle, and an electric scooter.

The Bill was introduced by Baroness McIntosh of Pickering, read a first time and ordered to be printed.

Schools (Mental Health and Wellbeing) Bill [HL]

First Reading

3.08 pm

A Bill to amend the Education Act 2002 and the Academies Act 2010 to provide for schools under those Acts to promote the mental health and wellbeing of their pupils.

The Bill was introduced by Baroness Tyler of Enfield, read a first time and ordered to be printed.

Heritage Railways and Tramways (Voluntary Work) Bill [HL]

First Reading

3.08 pm

A Bill to permit young persons to carry out voluntary work on a heritage railway or tramway.

The Bill was introduced by Lord Faulkner of Worcester, read a first time and ordered to be printed.

Inheritance Tax Act 1984 (Amendment) (Siblings) Bill [HL]

First Reading

3.09 pm

A Bill to amend the Inheritance Tax Act 1984 to make transfers between siblings exempt in certain circumstances.

The Bill was introduced by Lord Lexden, read a first time and ordered to be printed.

Flybe

Statement

3.10 pm

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, with the leave of the House, I shall now repeat in the form of a Statement the Answer to an Urgent Question given earlier today in the other place by my honourable friend the Parliamentary Under-Secretary of State for Transport. The Statement is as follows:

"Thank you, Mr Speaker. I thank my right honourable friend for raising this issue. I know she is a strong advocate for her own local airport.

Let me stress that Flybe remains a going concern. Flights continue as scheduled, and passengers should continue to go to the airport as usual. I must also emphasise that regional air carriers and airports are of vital importance to the Government, playing a key role in providing connectivity between communities, regions and nations across the United Kingdom.

The speculation surrounding Flybe relates to commercial matters. The Government do not comment on the financial affairs of, or speculation surrounding, private companies. We are working very hard, but there are limits commercially to what a Government can do to rescue any particular firm.

Be in no doubt, however, that we understand the important role Flybe plays in delivering connectivity across the whole of the United Kingdom. This Government are committed to ensuring the country has the regional connectivity that it needs. That is part of an agenda of uniting and levelling up across the whole country. We do not have good enough infrastructure in many areas, and people do not feel they have a chance to get to the opportunity areas with high-skill and high-paid jobs. That is what this Government are addressing now.

I hope the House will appreciate that I regret that I am not able to go into further detail at this stage, but I will update the House further when it is appropriate to do so."

3.11 pm

Lord Tunnicliffe (Lab): My Lords, Flybe is an important regional airline which provides vital support to communities and regional economies across the UK. The airline operates more than half of the domestic flights outside London and is one of only a handful of airlines to offer flights to Northern Ireland, with 68% of passengers from Belfast City Airport travelling with Flybe.

We need to protect passengers, staff and critical routes. What engagement have the Government had with the unions Unite and BALPA? Will the Minister ensure that those unions are fully engaged in the process going forward?

The climate change committee has said that the UK is currently "way off track" in meeting its climate change targets. Cutting air passenger duty across the board is not the right way forward. What are the Government doing to protect critical routes in a more targeted way and that also promotes sustainability?

After the collapse of both Thomas Cook and Monarch, what lessons have the Government learned, moving forward, to support Flybe?

Baroness Vere of Norbiton: I thank the noble Lord, Lord Tunnicliffe, for his questions. He did a good job of outlining how important Flybe is to regional connectivity. The Government are aware of this, and I assure noble Lords that for certain routes public service obligations will be in place. These are put in place to make sure that regional connectivity continues. I can reassure noble Lords that there is a mechanism by which local authorities can select a new provider for seven months and then retender that particular route. However, I stress that Flybe continues to operate as normal and that passengers should arrive at the airport for their flights as planned

On air passenger duty, as with all taxes the Government keep it under review. On the issue of sustainability in the future, we are carefully considering the climate change advice we received recently. We will set a clear ambition for the aviation sector. We plan to update both Houses shortly on the Government's position and we will have proposals for consultation.

Baroness Randerson (LD): My Lords, there is clearly regrettable instability in the aviation industry at the moment and a new approach is required. Can the Minister tell us when we can expect the aviation insolvency Bill to come to this House, because it is obviously urgently required?

It is important to note that Flybe is of much greater significance than Monarch, for example, to our country because it is about much more than interrupted holidays. It provides that vital link with some of the most isolated and distant parts of the UK. The answer to the problem should not include a general reduction in APD. If the Government are to have any credibility on climate change issues, they should not go down that path. Will the Government commit to investigating the domestic routes involving Flybe to sort those which are genuinely socially necessary from those which are economically viable? Will they look at increasing subsidy to those socially necessary routes in isolated areas where there is no viable rail alternative? Where there is a railway, will the Government commit to reintroducing good reliable services to the most distant parts of this country?

Baroness Vere of Norbiton: The noble Baroness, Lady Randerson, has made some very helpful suggestions, should they ever be needed in due course, about looking at which domestic routes would benefit from support. I reiterate that this airline continues to operate as normal and therefore at the moment the Government have no plans to kick off that work.

On the airline insolvency review, it follows from the important work which was done for the department by Peter Bucks. He looked at airline insolvency. As I am sure the noble Baroness knows, it is incredibly complicated. When he published his report, he said that there is no silver bullet. The noble Baroness will also know that we announced legislation in this area in the Queen's Speech, and I expect it to come to the House in due course.

Baroness McIntosh of Pickering (Con): My Lords, I entirely endorse the commercial strictures that my noble friend set out, but will she take this opportunity to explain to the House the Government's policy towards regional airlines so that they will have a vibrant future going forward and, in particular, the possibility of regional airlines delivering on public service obligations?

Baroness Vere of Norbiton: My Lords, my noble friend is quite right. I reiterate that regional connectivity is critical in aviation and across all modes. We will do whatever we can to ensure excellent regional connectivity going forward. Public service obligations can be incredibly important for social, medical and economic reasons. At the moment, we can add PSOs only on existing routes to London where they are in danger of being lost. However, we will look at all options for expanding the scope of our PSO policy in future.

Lord Kilclooney (CB): My Lords, since Northern Ireland has no bridge or tunnel connections with the rest of the United Kingdom, and since some 90% of the flights from Belfast City Airport are by Flybe going to the regions of Scotland, Wales and England, will the Government take into account the future viability of Belfast City Airport as they consider Flybe?

Baroness Vere of Norbiton: I thank the noble Lord for his question. It is the case that, should Flybe at some point in future not be operating, there would be a significant impact on certain airports, and I know that Belfast is one of them. I believe there is already one PSO in operation in Belfast, but I will have to check and I will come back to the noble Lord if I am wrong on that. The Government will look at all routes. Regional connectivity is critical to us, so where we need new PSOs, we will put them in place.

Baroness Jones of Moulsecoomb (GP): My Lords—

Baroness Armstrong of Hill Top (Lab): My Lords—

Lord Ashton of Hyde (Con): Order. We cannot have two people. It is the turn of the Green Party.

Baroness Jones of Moulsecoomb: My Lords, the Minister must know that aviation is the fastest-growing source of dangerous carbon emissions. If we are to get to net-zero by 2050, we will have to cut flying in some way. At the moment, aviation is subsidised by being exempt from a tax on its fuel. Will the Government consider lifting that exemption and imposing a tax that reflects the true cost of flying?

Baroness Vere of Norbiton: I am sure that the noble Baroness is well aware of the reason that aviation fuel has no tax on it. The International Civil Aviation Organization is absolutely critical in getting the global aviation industry to work as a whole in many areas, including counterterrorism and climate change. If we are to reduce carbon emissions, we will need the members of ICAO to work together to achieve it. Under the Chicago convention, which set up ICAO, no nation can put tax on aviation fuel.

Lord Shipley (LD): My Lords, the Minister said that the Government would look at all the options. Perhaps I may suggest that they take a look at the landing charges at large airports for smaller commercial airlines. They might be subject to PSOs, but the overall issue of the cost base of small commercial airlines is particularly relevant.

Baroness Vere of Norbiton: The noble Lord makes a very important point, but of course landing charges are set on a commercial basis.

Baroness Armstrong of Hill Top: My Lords, regional connectivity is very important, and I am pleased that the Government keep repeating that phrase. However, if you come from the north-east, there is the threat of the Flybe difficulties; LNER is now telling people not to travel north on two weekends out of the next six because of engineering works and disruptions; and there is now real uncertainty over the future of HS2 because of the Government's announcements post the election. Does the Minister understand that regional connectivity is absolutely critical to the survival of the manufacturing industries of places such as the north-east when so many other things are against them? All these issues coming together spell really bad news for the north-east.

Baroness Vere of Norbiton: This Government are absolutely aware of all the issues that the noble Baroness has raised. We are taking a new look at regional connectivity to make sure that we are able to get people to where they want to be across all modes. She mentioned that the train service is sometimes out of service at weekends. Of course, that disruption is simply a function of the amount of money that we are putting in for maintenance and for enhancements.

European Union (Withdrawal Agreement) Bill

Committee (1st Day)

Relevant documents: 1st Report from the Delegated Powers Committee, 1st Report from the Constitution Committee

3.22 pm

Clauses 1 to 6 agreed.

Amendment 1

Moved by ***Lord Greaves***

1: Before Clause 7, insert the following new Clause—

"Rights of European citizens resident in the United Kingdom

(1) This section applies to citizens of the EU, EEA and EFTA nationals and Swiss citizens who are ordinarily resident in the United Kingdom on exit day.

(2) Except as provided for in this Act, following exit day all persons mentioned in subsection (1) have the rights, status and obligations which applied to them before that day.

(3) The provisions in this section apply to the children and other dependent relatives of such persons whether or not they were ordinarily resident in the United Kingdom on exit day.

(4) The rights referred to in subsection (2) may not be amended or removed except by primary legislation."

Lord Greaves (LD): My Lords, it seems slightly odd that we launch into Committee at Clause 7 but that is the way it is. It comes at the beginning of Part 3 of the Bill, which is the extremely important part referring to the European citizens who now live and work among us and the question of what will happen to them when we leave the European Union. It is about settled status and the future of a very important part of our community.

This is the first time that the details and principles behind the settlement scheme have really come to Parliament. Before now, the matter has been dealt with through orders and regulations under the Immigration Act and by ministerial diktat. It is interesting that today the Law Commission is saying that the Immigration Rules are not fit for purpose and proposing that they have a thorough rewrite. Can the Minister tell us when the Government will respond to that and whether it is likely to happen? It would be very welcome indeed.

This is not a carefully honed amendment that can be fitted into the Bill; that will come in Amendments 2 and 3 tabled by my noble friend Lord Oates. It is a declamatory amendment; it states a principle and a promise made, which very large numbers of the people it affects—European citizens living here—believe has not been, and is not being, carried out in full.

Before the referendum, back in 2016, Boris Johnson, Michael Gove and Priti Patel issued a statement. It was not a government Statement, but they are now the Prime Minister, the Chancellor of the Duchy of Lancaster—who has been tasked with getting Brexit done—and the Home Secretary, so they are pretty important people in the present Government. The statement said:

"There will be no change for EU citizens already lawfully resident in the UK. These EU citizens will automatically be granted indefinite leave to remain in the UK and will be treated no less favourably than they are at present."

The words "automatically" and "no less favourably" are now in considerable doubt.

On television this morning, the Prime Minister, Boris Johnson, was talking about really important things in relation to the Elizabeth Tower and Big Ben. He explained that

"we need to restore the clapper in order to bong Big Ben on Brexit night, and that is expensive. The bongs cost £500,000 … but we are working up a plan so that people can bung a bob for a Big Ben bong."

I had to read this carefully—and listen to it carefully on the BBC this lunchtime—to be quite sure of the last word. I am assured that it did end in a "g" and was not some other word which might have meant something different, and which I might have had difficulty saying in your Lordships' House. Having said that

"we need to restore the clapper in order to bong Big Ben on Brexit night"

the Prime Minister continued that they

"have not quite worked out how to do it."

Yesterday at Second Reading, I said that people who have won the Brexit debate should not be triumphalist. People may be euphoric and have the kind of "paroxysms of joy" that the Prime Minister has described in the *Sunday Times*—the suggestion was that there would be a baby boom as a result of these paroxysms, which is why I wondered whether the word "bong" was right—but that will not do any good in bringing this country together and healing the serious wounds that have been, and continue to be, caused by the whole Brexit debate. Many people in this country, far from being full of paroxysms of joy, sexual or otherwise, are full of dismay and distress—

Noble Lords: Oh!

Lord Greaves: Noble Lords can moan. People are crying when they go to sleep at night and when they wake up in the morning, and all they get from the unfeeling, hard-headed Tories is moans. People are feeling a sense of loss, which is akin to bereavement and a grieving process has only just begun. In these circumstances, triumphalist behaviour, festivals of Brexit and all the rest will simply make things worse. The people who feel it the most are the many citizens of the EU who live, work and take part in our communities in every way. There are said to be 3.6 million of them—that was the guess of the Office for National Statistics, although a lot of people think it is rather more. In addition to the EU citizens there are families, UK citizens, spouses, partners, relatives and friends. Families and marriages have already broken up as a result.

3.30 pm

People came here on the basis of law. They were given promises on the basis of trust, and some of those promises are being broken. They know that whatever goes into British law now, there is no longer European law that can protect them in future against a British Government who want rid of as many of them as possible. I should declare an interest of a sort, in that one of my daughters is married to an EU citizen who comes from Denmark. They are going through traumas as a result of what is happening, as are many other people, and they are relatively well off and settled.

Professor Tanja Bueltmann of Northumbria University, working together with the campaign group the3million, carried out a settled-status survey between 20 November and 20 December last year of people living in this country. No fewer than 3,171 individuals responded to the survey with detailed written testimonies which, as a social scientist, she suggests is a phenomenal response rate for this kind of survey. The material that she now has amounts to 245,000 words in free-text comments, which is quite a lot. She tells me that the report is due to be released next week, and I hope we will have it here in time for our deliberations on Report. She says:

"The Settled Status Survey will provide unprecedented insights into the situation of EU/EEA and Swiss citizens, as well as non-EU/EEA and Swiss family members, in the UK and their experiences of the EUSS scheme. They need it. Fear and anxiety remain common sentiments expressed regularly and this is also reflected in the Survey. That fear and anxiety need to be taken away, and having something tangible to hold—physical proof of status—would go a very long way towards achieving that."

That is something that we will discuss later.

I am particularly concerned about what the Government are doing about the prevention of discrimination in the transition period or the implementation period—call it what you will. I am fearful that on 31 January some things may happen in some places that could be reminiscent of events in Germany in the early 1930s. I am worried about this because there is that sentiment among a hostile minority of the population. I would like to know what the Government are doing to try to stop that happening.

There is a lot of evidence. The *Independent* published an article on Saturday headed:

"EU settlement scheme delays leave people 'unable to get jobs or housing'."

Landlords and employers are simply saying no if people do not have settled status or because they are a European citizen and their future is unknown. That is particularly true if they have pre-settled status and no guarantees beyond five years.

Lord Grocott (Lab): The noble Lord just made a comparison—I am slightly reeling from it—between Britain on 1 February of this year and Nazi Germany in 1933. Could he elaborate on that a little, because that seems to me to be stretching the point a bit?

Lord Greaves: We will see. What we know is that the day after the referendum, people's windows were put in, people were abused in the street and paint was daubed on people's houses. That is the kind of thing I am talking about. From talking to European citizens here, I know of people who are now reluctant to go into shops if they are not known in them, because of their accent and the attitude people might have towards them. This is quite widespread; I am not saying it is very frequent, but it is going on. I know plenty of instances of people being abused in the street and shouted at, and even more instances when people have, quite kindly, said to people, "I suppose you'll be

[Lord Greaves]
going home now." That is happening all the time. It happened immediately after the referendum and I am very worried that on 1 and 2 February there will be a wave of this kind of thing. Police statistics show that the number of racially motivated offences has increased significantly since June 2016. I am not making it up; it is happening. Noble Lords who perhaps live a sheltered life might get out there a bit more and find out what is going on.

I believe that the Government are not fulfilling their promises—or promises that three leading members of the Government made—and the least they ought to do is explain why and apologise for it. I do not imagine that they will do that, but they ought to. The least we ought to do is make appropriate amendments to the Bill—some of those coming through—to improve it. If the House of Commons throws it out, so be it. That is our duty as unelected people on behalf of people who did not have votes. I beg to move.

Lord McNicol of West Kilbride (Lab): My Lords, the amendment moved by the noble Lord, Lord Greaves, would grant an automatic continuation of pre-exit-day rights and immigration status for EU citizens resident in the United Kingdom. This is a position that the Labour Party has consistently supported. Indeed, the party put forward amendments to that effect when the original Article 50 Bill was considered. However, the then Prime Minister resisted any amendments to that Bill on this issue.

The Government waited a long time to announce that they would unilaterally guarantee the rights of EU citizens resident in the UK, even in the event of a no-deal exit. However, regarding this amendment, the reality is that the settled status scheme has now been operational for some time and the withdrawal agreement was negotiated on the existence of such a scheme. As such, while we sympathise with the thrust behind the amendment of the noble Lord, Lord Greaves, we believe that a better approach is to reform the current system, as the next group of amendments aims to do.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank the noble Lords, Lord Greaves and Lord McNicol, for their comments. The initial points made by the noble Lord, Lord Greaves, were about Immigration Rules. There will be an update in March. He made some points about Big Ben; I was not sure what they were. He also talked about gloating, but I do not observe any member of your Lordships' House gloating over the Bill and I concur with the noble Lord, Lord Grocott, that comparing the UK on 31 January to Nazi Germany is a step too far.

To get to the point of what the noble Lord eventually said, we reject the proposed new clause in Amendment 1. It is well intentioned but unnecessary; it conflicts with our general implementation of the withdrawal agreement, the *EEA EFTA Separation Agreement* and the Swiss citizens' rights agreement. For brevity, I will refer to these as the agreements. My references to EU citizens should likewise be taken to include these EEA/EFTA and Swiss nationals, and their family members.

Citizens' rights have been a priority in negotiations and the Government have delivered on that commitment, reaching agreements that provide certainty to EU citizens in the UK and to UK nationals in the EU that they can continue to live, work, study and access benefits and services broadly as now. Clauses 5 and 6 create a conduit pipe, which makes the rights and obligations contained in the agreements available in UK law. This is intended to replicate the way that EU law applied in the UK while the UK was a member state, and these clauses ensure that the rights contained in the agreements are available to EU citizens in the UK. The agreements provide certainty and protect the rights of EU citizens lawfully resident in the UK before the end of the implementation period. Existing close family members, including children of those covered in the agreements, will also have a lifelong right to family reunion. The as-yet unborn children of EU citizens will also be protected. This protection applies equally to UK nationals in their member state of residence and is guaranteed by the withdrawal agreement.

The UK has already introduced the EU settlement scheme, which is the means for EU citizens to obtain the status that confers rights under the agreements. The scheme provides a quick and easy way to do this, and it is a success. According to the latest internal figures, over 2.8 million applications have been received and 2.5 million grants of status made. The Home Office is processing up to 20,000 applications a day. We are working tirelessly with communities up and down the country to raise awareness and keep up this momentum. The scheme already allows EU citizens protected by the agreements to obtain UK immigration status, which enables them to remain here permanently after exit. The proposed new clause is therefore unnecessary, as it conflicts with the purpose and operation of the scheme.

Finally, the proposed new clause makes reference to those resident in the UK on exit day, at the end of this month. As the noble Lord should know, rights under the agreements are conferred on those resident in the UK at the end of the implementation period, which is at the end of this year. The proposed new clause therefore does not align with our obligations under the agreements. I hope that has reassured the noble Lord on the concerns expressed through this new clause and I ask him to withdraw his amendment.

Lord Greaves: My Lords, I will certainly withdraw the amendment and I am glad that the Minister discovered the error that I had made when it was too late to correct it. I thank her for that but, as I said, it is not a carefully honed amendment; it is an amendment to declare a principle. The Minister says that it declares the principle behind what the Government are doing. That is clearly not the case. It is the case in many areas, but not in all. As for the settled status scheme, it is certainly the most efficient Home Office scheme that I have come across in recent years—although that does not say very much—because of the effort that has been put into it. I thank her for that. The Minister said, and the Government keep saying, that the rights of European citizens will be broadly as now. It is "broadly" that is a weasel word.

Finally, I did not compare this country to Nazi Germany and obviously I would not do so; that would be ridiculous. What I am saying is that some of the conditions that exist in this country are similar to those that existed in Germany between the wars before the Nazis came to power. You can think that that is right or that it is wrong, but I believe it is the case. Look at the amount of racist abuse there is on social media, while if you listen to pub conversations, you can hear people saying things that perhaps three, four or five years ago they would have kept to themselves. There is an amount of abuse by a small minority of people that is not being stopped by the social controls that previously existed. That, I am afraid, is the position.

3.45 pm

I shall give a brief example from Colne, my home town. A planning application was made to turn an old Sunday school into a mosque. It did not need permission to do that but for the changes to be made to a listed building. What happened last summer was shocking. There was outside influence and local far-right agitators stirring it up. Their behaviour during a demonstration they held on a Saturday afternoon when they brought a far-right fascist group in to occupy the town centre was the kind of thing that we really do not want. There is danger here, so I ask the Government to make renewed efforts to prevent this kind of thing happening, particularly immediately after exit day and as the end of the year approaches. I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Clause 7: Rights related to residence: application deadline and temporary protection

Amendment 2

Moved by ***Lord Oates***

2: Clause 7, leave out Clause 7 and insert the following new Clause—

"Rights related to residence

(1) This section applies to—

(a) persons within the personal scope of the withdrawal agreement (defined in Article 10) having the right to reside in the United Kingdom;

(b) persons to whom the provisions in (a) do not apply but who are eligible for indefinite leave to enter or remain or limited leave to enter or remain by virtue of residence scheme immigration rules (see section 17).

(2) The Secretary of State may by regulations make provision to extend the scope of persons eligible for indefinite leave to enter or remain or limited leave to enter or remain by virtue of residence scheme immigration rules (see section 17).

(3) A person has settled status in the United Kingdom if that person meets the criteria set out in 'Eligibility for indefinite leave to enter or remain' in Immigration Rules Appendix EU, or any amendment of these rules according to subsection (2).

(4) A person with settled status holds indefinite leave to enter or remain and has the rights provided by the withdrawal agreement for those holding permanent residence as defined in Article 15 of the agreement, even if that person is not in employment, has not been in employment or has no sufficient resources or comprehensive sickness insurance.

(5) A person has pre-settled status in the United Kingdom if that person meets the eligibility requirements set out in 'Eligibility for limited leave to enter or remain' in residence scheme immigration rules (see section 17), or any amendment of these rules according to subsection (2).

(6) A person who has pre-settled status has leave to enter or remain and has the rights provided by the withdrawal agreement for those holding permanent residence as defined in Article 15 of the withdrawal agreement, even if that person is not in employment, has not been in employment or has no sufficient resources or comprehensive sickness insurance, except for the right to reside indefinitely in the United Kingdom and subject to the limitations set out in Article 23(2) of the withdrawal agreement.

(7) The Secretary of State must by regulations made by statutory instrument make provision—

(a) implementing Article 18(4) of the withdrawal agreement (right of eligible citizens to receive a residence document), including making provision for a physical document providing proof of residence;

(b) implementing Article 17(4) of the EEA EFTA separation agreement (right of eligible citizens to receive a residence document) including making provision for a physical document providing proof of residence;

(c) implementing Article 16(4) of the Swiss citizens' rights agreement (right of eligible citizens to receive a residence document), including making provision for a physical document providing proof of residence.

(8) The regulations adopted under subsection (11) must apply to those defined in subsections (1)(a) and (1)(b).

(9) A person holding pre-settled or settled status does not lose the right to reside for not having registered that settled or pre-settled status.

(10) A person who has settled or pre-settled status who has not registered their settled or pre-settled status by 30 June 2021 or any later date decided by the Secretary of State may register at any time after that date under the same conditions as those registering prior to that date.

(11) After 30 June 2021 or any later date decided by the Secretary of State, a person or their agent may require proof of registration of settled or pre-settled status under conditions prescribed by the Secretary of State in regulations made by statutory instrument, subject to subsections (12) to (14).

(12) Any person or their agent who is allowed under subsection (11) to require proof of registration has discretion to establish by way of other means than proof of registration that the eligibility requirements for pre-settled or settled status under the provisions of this Act have been met.

(13) When a person within the scope of this section is requested to provide proof of registration of settled or pre-settled status as a condition to retain social security benefits, housing assistance, access to public services or entitlements under a private contract, that person shall be given a reasonable period of at least three months to initiate the registration procedure set out in this section if that person has not already registered.

(14) During the reasonable period under subsection (13), and subsequently on the provision of proof of commencement of the registration procedure and until a final decision on registration on which no further administrative or judicial recourse is possible, a person cannot be deprived of existing social security benefits, housing assistance, access to public services or private contract entitlements on the grounds of not having proof of registration.

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

Member's explanatory statement

This amendment creates a declaratory registration that provides incentives for registration while at the same avoiding EU citizens becoming illegally resident if not registering by the deadline. It ensures EU citizens receive physical proof of registration. It consolidates both the current eligibility criteria of the EU Settlement Scheme immigration rules, and the rights of those eligible under the Scheme, into primary legislation.

Lord Oates (LD): My Lords, in moving Amendment 2 I shall speak also to Amendment 3, in my name and those of the noble Lords, Lord Kerslake and Lord McNicol of West Kilbride, The noble Lord, Lord Kerslake, gives his apologies that he cannot be in the Chamber because he has been called away to another meeting.

Amendment 2 seeks to create a declaratory registration system to replace the existing application-based system. Its intention is, first, to continue to provide incentives for registration but to avoid making EU citizens who do not register by the deadline immediately and by definition illegal. Secondly, it seeks to ensure that EU citizens can receive physical proof of registration, which is a concern that I know has been expressed to many Members of your Lordships' House, and indeed has been the subject of representations made by EU sub-committees.

Thirdly, it would consolidate in primary legislation both the current eligibility criteria of the EU settlement scheme Immigration Rules and the rights of those who are eligible under the scheme. Amendment 3 tries to do similar things: that is, it would establish the declaratory principle and make provision for physical proof, but it would not seek to put into primary legislation the rules and rights under the scheme.

The aim of Amendment 2—that of seeking to put these issues into primary legislation—is to be helpful to the Government by ensuring the categorical commitment made to EU citizens, referred to by my noble friend Lord Greaves, during the referendum campaign by the current Prime Minister, the current Home Secretary and the current Chancellor of the Duchy of Lancaster, to guarantee that those rights would be automatic and that EU citizens would be treated no less favourably than they are at present. The current scheme does not honour that commitment. The settled status scheme is not the automatic route to indefinite leave to remain that was promised by the leave campaigners. It is an application-based system with a finite cut-off of 30 June 2021. In fact, the only thing that is automatic about the scheme is that, after midnight on that date, any person who has not applied will be criminalised. They will be deemed to be unlawfully in the United Kingdom whether or not they are otherwise eligible for permanent residence under the scheme, and they will therefore be subject to deportation.

I echo the comments of my noble friend and others: the Home Office is clearly making strenuous efforts in this regard. But we know that, inevitably and despite its best efforts, it will not be able to reach and grant settled status to every one of the 3.6 million—we do not know the exact number—EU, EEA and Swiss citizens. Tens or even hundreds of thousands of otherwise eligible people may find themselves undocumented and criminalised in as little as 18 months' time. Inevitably, those most at risk will be the most vulnerable: young people in care, the elderly and the marginalised.

The Government's argument for a cut-off date seems to be that it will help avoid a repeat of the injustice inflicted by the Home Office in the Windrush scandal. But it will do nothing of the sort. It will just criminalise the latter-day Windrush people. The solution of the Home Office to the problem of Windrush seems to be simply to ensure that it will not be acting unlawfully by removing eligible people, as it was found to be in the case of the Windrush victims. It is a bizarre form of protection.

Another issue with the settled status scheme is that, unlike the indefinite leave to remain scheme, where you have a stamp in your passport, it does not provide successful applicants with physical proof of their right to be in the United Kingdom. Instead, they must rely entirely on a code issued to them by the Home Office, which has to be entered into the relevant website by whoever requires proof of their immigration status. the3million, which represents EU citizens in the UK, has highlighted the many difficulties and concerns that this inevitably will cause for EU citizens. Interactions with landlords, airline staff and other officials obliged to check immigration status will become fraught with anxiety and will be dependent on the fragility of an internet connection or the resilience of a government IT system.

Finally, and most fundamentally, the current settled status scheme rests on immigration regulations, which can be changed virtually at the stroke of a ministerial pen, and on the undertakings of Ministers. But, as we know, Ministers come and go. We know already that the commitments—categorical, without any room for confusion or misunderstanding—that were issued by the Home Secretary and the Prime Minister have not been honoured. So why should EU citizens in this country have faith that this system will not be changed at a later date?

Beyond the principles of the settled status scheme, there are also lots of concerns about how it is applied: who is actually getting settled status and who is instead getting presettled status. In summing up at Second Reading last night, the Minister, the noble and learned Lord, Lord Keen, said that

"presettled status is a pathway to settled status,"—[*Official Report*, 13/1/20; col. 552.]

as if it did not matter which you got—but it does. It matters very much because the rights under each are different.

We are not seeking to change anything about the rights of citizens under the EU settled status scheme, or about eligibility. We are asking, first, that the rights are placed in primary legislation to give the reassurance that EU citizens need and want, so that they can feel secure and settled in their status in this country. Secondly, we ask that their request for a means of having physical proof is answered. It may be that not everybody wants that, but there should be an option for EU citizens to have it. Lastly, we ask for a shift to a declaratory system in which eligibility is the basis on which one has rights, not the application system. As the amendment sets out, it is perfectly possible to continue to give incentives to registration while establishing a declaratory system that will ensure that a whole load of vulnerable people are not criminalised when the registration date passes in 2021. I beg to move.

Lord Hamilton of Epsom (Con): My Lords, the Government have done an amazing amount to look after EU citizens in this country. I cast my mind back to the early days of the May Government when there was great pressure to unilaterally make steps to ensure the position of EU citizens living in this country. At that stage, the Government resisted the pressure because they said that this should be part of the negotiations. It should be reciprocated by the EU: it should do the same for our citizens in the EU. As far as I can make out, that has not happened. We have made a generous, unilateral gesture towards EU citizens in this country and there has not been reciprocation from the EU. Does that not mean that the Government have been rather mistaken to make this generous offer? Surely we have an obligation to our citizens in the EU and we should look to it to reciprocate anything that we do in this country. Will my noble friend address this problem when she sums up? As I understand it, British citizens in the EU do not, at the moment, have any freedom of movement between one EU country and another and there are certain problems with EU citizens in this country travelling to and from their country of origin in Europe. This has not been a very satisfactory outcome in the negotiations. Perhaps we would have been better not to have made this extremely generous, unilateral offer.

Lord Warner (CB): My Lords, I support these two amendments. I do so as the roommate of my noble friend Lord Kerslake, who sends his apologies for not being here but has strengthened my arguments for supporting the amendments. I speak as someone who, after the 1997 election—oh glorious days—spent two years in the Home Office and saw every submission of any significance that was made to the then Home Secretary. I always shuddered a little when we got submissions from the immigration part of the department. They sent a quiver through my soul, because of reliability. I remember a former Conservative Home Secretary briefed us shortly after that election. He said to the then Home Secretary: "You have to remember that there are always 500 people in the Home Office who can ruin your political career. The really scary thing is that none of them actually realises that they can do it." The Windrush exercise demonstrated rather well the wisdom of those remarks.

The important thing about these two amendments is that they do not in any way disturb significantly what the Government want to do. They provide legal certainty, about which I think we will hear more later in Committee. They also provide some very practical stiffening of the arrangements around these new Immigration Rules. I went to one of the Home Office briefings for parliamentarians on the new scheme, at which everybody, MPs, Peers and members of MPs' offices, made the point to the Home Office that in the real world a lot of people expect someone to produce hard-copy evidence, whether it is the landlord, the GP or whoever. I can speak from personal experience, having helped a number of people get permanent leave to remain here, and not that long ago either. These people had had experiences of having to produce some written documentation that they were entitled to live here.

4 pm

I shall just tell the story of a person who has lived here 10 years and has a son at school who has lived here for that period of time. The child was bullied in his school because there was no evidence, as they thought, that he had an entitlement to be here. We could deal with that issue only by being able to produce Home Office evidence that this person had permanent leave to remain here. It was the piece of paper that convinced the head that something had to be done. The absence of that documentation is very worrying, and it is why I think Amendment 3 is so important: it would give people confidence that they can convince people that they are entitled to be here. Just think about the idea of someone having to say, "I have this code and if you go on the Home Office website it will prove to you that I am entitled to be here." That is not the way the real world works; it is not a credible way of helping people to reassure others that they have an entitlement to be here.

I think this House would be very wise to send this Bill back with both these amendments in it, or some government alternative to the precise wording, because, however hard we try, we will not be sure that by the deadline everybody who has settled status at the moment will be able to ensure that they are registered in the new scheme. If one stops to think about it for a moment, it is counterintuitive. If someone has in recent years secured a permanent right to be here, why should it occur to them, despite all the briefings to the public by the Home Office, that they are not entitled to be here? Why should they have to go through another step to prove to the Home Office that they are entitled to be here when they have already received, within the last two or three years, a letter from the Home Office guaranteeing them the right to be here? The Home Office is asking a lot of people to do a counter-intuitive thing and I think we should support these two amendments.

Viscount Waverley (CB): My Lords, I hope I may be permitted to elaborate on a point made by the noble Lord, Lord Hamilton. I do so as a long-term resident of Portugal, where there is a sense from officialdom on the continent that the rights of UK citizens in Portugal, and indeed elsewhere, are actually in a good place. The key word in all this is reciprocity. The Portuguese have made certain protections for UK citizens in their country, but there is this key word in Article 19 of the appropriate legislation that specifically—I will not translate it directly from the Portuguese—relates to reciprocity. The conditions are broadly the same; if you go and register, your rights are protected. In reality, that is what everyone should be doing anyway. If there is a single message that the Minister and others in this country might want to give, it is to encourage UK citizens to do the very easy and simple thing—go and register, and your rights are protected.

Baroness Hamwee (LD): My Lords, important points have been made about UK citizens in other European countries, and my noble friend Lady Miller and I have an amendment on one aspect of that which I think will be taken on Thursday.

[Baroness Hamwee]

The noble Lord, Lord Warner, referred to permanent residence status. I understand that while the numbers of people applying for permanent residence have dropped a bit, as one would expect given the rollout of the settled status scheme, they are still significantly higher than they were before 2016. One can only speculate about the reasons for that—I do not think we can know what they are—but permanent residence provided documentary evidence, and the physical evidence available through that route may well have been a reason for the high number of applications.

Points have also been made this afternoon about immigration rules. I cannot let the occasion go by without saying how much I would welcome rules that are simpler and cannot be changed without going through full scrutiny and parliamentary process.

I will make a couple of points on these amendments, which I wholeheartedly support. One is the importance of ensuring that people who have some sort of status are not impeded in travelling. I have come across this in connection with independent leave to remain obtained by a refugee, only the latest of a number of examples I have heard of people who have had problems with travel documents. There is something about not fitting the boxes that officials are given and need to tick. We must make sure that those with settled status can properly exercise their rights and come in and out of this country freely.

My other point was mentioned by the noble and learned Lord, Lord Keen, last night in summing up the debate. He said that there will be an "automatic reminder" to those with pre-settled status to apply for settled status. I urge the Government to work with the embassies and the groups that have been so involved in this process and made such helpful interventions and comments to ensure that whatever very necessary arrangements they put in place to remind people both that they will have to apply for settled status and that pre-settled status is different will work as well and efficiently as possible—taking account of human frailty, if you like.

Baroness Bennett of Manor Castle (GP): My Lords, I support both these amendments. I will begin with the words of the noble and learned Lord, Lord Keen, from the end of our very long day yesterday:

"EU citizens in the United Kingdom are our neighbours, colleagues and workplace friends, and of course we value the contribution they make to the United Kingdom and wish them to remain here."—[*Official Report*, 13/1/20; col. 552.]

I contrast that with a report from 10 October, when the Security Minister, Brandon Lewis, was quoted as saying that EU citizens who do not apply for settled status face deportation.

I ask your Lordships to put yourselves in the shoes of an affected citizen here in the UK, who may have come here quite recently or have been here for many decades, and think about which set of words you will have heard more clearly, which set of words will be affecting your sentiment and understanding of your place in the United Kingdom. I think everyone knows that what people will be hearing, worrying about and fearing are the words "threatened with deportation". We are talking about up to 4 million people being affected. The latest figure I have seen is that 2.5 million people have applied for settled status. However, as the noble Viscount, Lord Waverley, said, there are also the 1.4 million UK citizens across Europe, for whom reciprocity means that they will be affected by how we treat their fellows here in the UK.

My arguments for these amendments fit into two groups. First, there are the practical arguments. As many noble Lords have said, to have a physical document will be immensely useful in dealing with landlords and immigration—just knowing that it is in your wallet or purse. There is also the fact that to have a declaratory scheme is far easier and far less daunting. That is a practical benefit. Those are the practical advantages. But there is also the question of sentiment—sending a message of welcome to our EU and other friends who are part of our communities. I urge noble Lords to back these two amendments, to back the message which the noble and learned Lord, Lord Keen, delivered last night and which the Government say they want to send to these citizens.

Baroness Ludford (LD): My Lords, I too support these amendments, which were introduced by my noble friend Lord Oates and which are in his name and those of the noble Lords, Lord McNicol and Lord Kerslake.

I too was pleased to hear the noble and learned Lord, Lord Keen, say last night that those with pre-settled status would

"receive an automatic reminder to apply for settled status before their leave expires."—[*Official Report*, 13/1/20; col. 552.]

I may have lost track of this issue, but is that new? I do not remember it. I remember that we on the EU Justice Sub-Committee asked repeatedly for that to happen, as well as for physical proof of status. Perhaps it is not new, but I do not recall when I was on that sub-committee that that system had been set up by the Government, and I am pleased that it now exists. Perhaps the Minister could explain whether it is new.

Some of us worry about 40% of people getting pre-settled status. Have the Government been able to do any surveys or analysis of how many people genuinely do not have the five years' residence they need for settled status, or of those who give up because they have not managed to provide the evidence that is required for five years, some of which might be a little challenging to provide?

In a different context, I read in the papers about people who have had real problems convincing HMRC—regarding the years they need to clock up for a state pension—that its records are wrong about national insurance contributions. People have talked about how it has taken a year's effort to persuade HMRC that they did indeed make national insurance contributions in a particular year. So the part of the supplying of evidence that relies on HMRC and DWP records may or may not be accurate. Some people might be struggling.

Can the Minister tell us whether there is any analysis of how many people genuinely do not have five years' residence, and of those who are having difficulty providing the necessary evidence? A lot of us are very concerned about this. I agree that the Home Office appears to be putting good effort into it—some of my colleagues went to Liverpool; I did not manage to do that. None the less, the consequences come June of next year of

people not having settled status are so severe that we cannot afford to overlook any possible problem—of course, I support the proposal that we pursued on the EU Justice Sub-Committee that applicants should get physical proof. We never managed to get, to my satisfaction at least, a good answer from the Home Office on why it refused to countenance that. I am sure the Minister will give us that answer.

That tracks into the fact that, as my noble friend said, there are people with permanent residence who believe, wrongly, that they do not need to apply for settled status. That adds to the concern about people who may find themselves bereft in 18 months' time.

4.15 pm

Then there are people who have been here for decades. They are often very elderly and just assume that, because they have always been allowed to stay, they do not need to do anything. They need our particular concern. I know that we are getting lots of reassurances and so on—we are about to get some more—but many of us will continue to worry very much about this situation and this scheme.

Lord Cromwell (CB): I also add my support to this pair of amendments. Others have said so many of the right things about them so I will not detain the House by repeating them. I had the honour of serving on the EU Justice Sub-Committee with at least two of the previous speakers. Witness after witness raised with us the issues that others have already spoken about, but I promised not to repeat them so I will not.

When picking up this list of amendments, I was concerned about the extent to which we were going to encounter obstructive rather than good faith amendments. I have to say, this is an entirely good faith set of amendments and some version of it needs incorporating into the law. It does what the Government declare they want to achieve; it simply gives what the noble Lord, Lord Warner, eloquently called "practical stiffening" to achieve it. I am happy to support the amendments.

Lord Cashman (Non-Afl): My Lords, I too support these two amendments. Initially, I did not intend to speak but I also served on the EU Justice Sub-Committee. I reinforce the point that was made time and again about the deep concern of those seeking settled status that they would not have physical evidence and that the only evidence would remain in a database. Databases can come under cyberattack and be wiped. I ask the Government seriously to think again on this issue, which I have raised with the Minister before. I hope that the Government will look kindly on and support these two important amendments, which go to the heart of the concerns of the 3 million-plus people wishing to remain here and continue their lives with their families in our country.

Lord Greaves: My Lords, I have a couple of questions for the Minister. The November statistics for pre-settled status have been published and show a reduced number of applications after the 31 October deadline that did not happen. The proportion with pre-settled status in November was 47%, compared with the 40% figure overall. Does the Minister have statistics for December or any time after the end of November?

Secondly, what will the Government do if they notify people—by whatever means—that they need to apply for settled status in good time, perhaps a year in advance, to convert their pre-settled status into settled status, but they get no response? Will efforts be made to trace these people? Some of them will be ordinary people who have lived here for not very long at the moment and have to wait, but some—perhaps quite a lot—have been given pre-settled status even though they have lived in this country for perhaps more than five years, because they simply have not been able to provide proof of five years' continuous residence here. Many of these people might have the kind of jobs that require them to move about a bit or a lifestyle that means moving from house to house quite frequently. They, or at least their current address and whereabouts, can quite easily be lost from the Home Office's database of those who have pre-settled status. What will happen to chase these people, to find out where they are and to make sure they know their rights?

Lord McNicol of West Kilbride: My Lords, the amendments that the noble Lords, Lord Oates and Lord Kerslake, and I have laid before us draw attention to, and look to move to and secure a shift to, a declaratory registration system—away from a constitutive application system to an automatic, declaratory system. These amendments demonstrate that there are different ways of going about this, with different levels of detail. However, the principle that such rights are written into primary rather than secondary legislation is critical.

Amendment 2 proposes that EU citizens should not lose their rights to reside if they are legally resident in the UK at the time of Brexit but have not registered for settled or pre-settled status. Labour has always been clear that citizens should not have been used as bargaining chips in the withdrawal negotiations and that the Government kept the question of citizens' rights open for too long.

The noble Lord, Lord Hamilton, asked the Minister whether the Government were mistaken to offer pre-settled status before any reciprocity had been dealt with for British citizens living on the continent. I think the Government were right to do so. We are talking about 3.5 million to possibly 3.8 million people who live, work and play among us. Offering those people reassurances, security and, probably most important, the knowledge that our Government want them to stay in the United Kingdom, rather than be treated as pawns in a political negotiation, was absolutely the right thing to do.

Lord Hamilton of Epsom: Is the noble Lord saying that we have no responsibility for British citizens in the EU and that their position is something we just leave to the whims of individual countries in the EU? The noble Viscount, Lord Waverley, said that he regarded what he was benefiting from in Portugal as complete equivalence—but he is not allowed to move from one country to another within the EU, so you could say that British citizens in the EU have been seriously disadvantaged by not having a balanced agreement giving settled status to people on both sides of the English Channel.

Viscount Waverley: As a resident of Portugal, at this moment in time I am well able to go across to Ayamonte, Sevilla and elsewhere in Spain without any hindrance whatever. I am a little concerned about what happens after a certain date; I do not fully understand the issue. Does that opportunity prevail? Does this exclude people from just being able to work in those other member states? If someone could answer that, it would be helpful to me and others.

Lord Cashman: Before my noble friend replies, does he agree that, as a member of the EU, a citizen has freedom of movement within the EU? If a country removes itself from the EU, its citizens cannot have the right of freedom of movement within the EU.

Lord McNicol of West Kilbride: My noble friend Lord Cashman puts it very well. To the noble Lord, Lord Hamilton, I say that, on the contrary, the rights of British citizens across the European Union are of the utmost importance, and I believe that their position can be negotiated over the coming months. I was referring to people who have chosen to move to this country to work, live and bring up their children, who go to our schools, and who help in our hospitals. The Government of this country, and all of us, have a responsibility to look after and do right by these people, but not by way of punishing British citizens who have chosen to live abroad.

We will discuss appeals in the next group of amendments, but there are too many examples of the current settled status scheme falling short of expectations. As we have heard, those who get settled status receive it digitally, rather than in the form of a physical document. As the noble Lord, Lord Warner, said, a piece of paper, not a code, gives so much reassurance. It does not feel as though it is too much of a step to move to a physical document rather than something in the cloud or on a computer. While the Government more generally are trying to shift services online, there is evidence to suggest that the lack of physical documentation leads to an increased level of discrimination. As we heard from my noble friend Lord Cashman, there is also a risk of temporary outages of online systems and hacking, which could compromise the data of hundreds of thousands—or millions—of EU citizens. It is not too late for the Government to change their approach. This would provide reassurance to law-abiding EU citizens legally resident in the United Kingdom.

The motive for both these amendments is probably best summed up in a note from the3million. As the Government have stated, those who fail to successfully apply by the deadline can be deported. They become fully illegal immigrants overnight: by simply remaining in the country, they commit a criminal act. They have no right to reside, to keep their jobs or to access benefits or healthcare. In closing, I support Amendments 2 and 3.

Baroness Williams of Trafford: My Lords, I thank all noble Lords who have spoken in the debate on this group. I take note of the words of the noble Lord, Lord Warner, about the 500 civil servants who could end my career—I am surprised I have lasted so long, given that there are so many people out to get me.

I commend noble Lords for what they seek to achieve in their amendments, because they do not seek to achieve anything different from the Government: to reassure those highly valued EU citizens already resident here that they will have the right to remain after exit. However, the amendments take a slightly different approach to getting there, and we think they undermine the whole approach under the EU settlement scheme in the creation of a declaratory system.

Under the proposed new clause in Amendment 2, EU citizens would be able to apply for a document confirming their residence status if they wished, but would have to provide evidence of their rights if they wanted to access benefits and services. This is inconsistent with our international obligations under the withdrawal agreement. Alternatively, the proposed new clause in Amendment 3 would make provision for rights to be automatically conferred and enable EU citizens to register for a document confirming their residence status only if they wished to do so. This change in approach would cause confusion and uncertainty among the very EU citizens who we are trying to protect, including the over 2.8 million people who have already applied under the EU settlement scheme.

4.30 pm

After the implementation period, free movement will end and those who are not British or Irish citizens will require a UK immigration status to enter and reside in the UK. The EU settlement scheme is a vital part of transitioning the UK from free movement to a new points-based immigration system which starts in 2021. The UK's immigration system has long been predicated on individuals applying to the Home Office to be granted leave to enter or remain, under what we call a "constitutive" system. A requirement to apply for an individual status by a deadline provides a clear incentive for EU citizens living here to secure their status in UK law and obtain evidence of it.

By contrast, a declaratory system, as proposed by both the amendments and under which individuals automatically acquire an immigration status, would significantly reduce the incentive to obtain evidence of that status. This risks creating confusion among employers and service providers, and inevitably would impede EU citizens' rights to access benefits and services to which they are entitled. Notwithstanding the protections that the proposed new clause in Amendment 2 seeks to provide, such an approach could also lead to EU citizens who had not applied for documentation suffering inadvertent discrimination compared with those who had.

This must be giving your Lordships déjà vu, because this is exactly what happened to the Windrush generation. The Government are adamant that we must avoid a situation in which, years down the line, EU citizens who have built their lives here find themselves struggling to prove their rights in the UK.

The approach suggested in the amendment is also unnecessary. Managing the end of free movement in the UK and the transition for resident EU citizens has been an absolute priority. We believe that the current constitutive approach under the EU settlement scheme is the right one. The proof of the pudding is that it is already working well.

Lord Warner: I am sorry to interrupt the Minister's flow, but how many people who have already registered have sought hard copy or physical evidence of their registration and status?

Baroness Williams of Trafford: If you apply and are successful for either pre-settled status or settled status, you will receive a letter. That is not in itself proof of your status, because your status is a digital one, but you will receive a letter to confirm the success of your application.

Lord Warner: I am sorry, but that is not my point. How many people have applied for a document saying that they have settled status, which they can show to a GP or a landlord?

Baroness Williams of Trafford: I do not have the numbers for how many people have applied for a document that confirms settled status, but I can find out. The fact that 2.5 million people have been successful should partly satisfy noble Lords that the system is working well. Also, there have been only five rejections on the system so far. I will come to the point made by the noble Baroness, Lady Ludford, later, but that is quite a decent statistic when you think about the—

The Lord Bishop of Leeds: I thank the Minister for giving way. Does she agree that many of the 2.5 million people who have registered have done so resentfully and unhappily, because the process that they have been made to go through is effectively applying for a status that many of them have for decades felt that they should have had automatically? Even though I accept that the system might be working successfully, and I applaud that, there are still some reassurances to be given—the soft power, if you like—to those, many of whom I know in my own diocese, who have applied with a great deal of resentment and unhappiness.

Baroness Williams of Trafford: My Lords, I have spoken to my noble friends beside me and I have not had any feedback on resentment. I have had feedback on the fact that we have made the scheme free, which was a noble thing for the previous Home Secretary and Prime Minister to do. The fact that so many people now have a status they can prove can be only a good thing.

We are processing 20,000 applications every day. We are working with communities—sometimes on a one-to-one basis because some people find the filling-in of any application process difficult.

Baroness Hamwee: I am not sure whether I am hearing this right, but I think the Minister is responding to the amendments as if the proposal was to replace digital with documentary evidence. In fact, it is proposed that the documentary evidence would be supplemental to the digital provision.

Baroness Williams of Trafford: My Lords, I would not agree with two systems because that really would confuse people. If I could get to the end of my comments, I would be grateful.

The scheme already allows EU citizens protected by the agreements to obtain UK immigration status to enable them to remain here permanently after exit. Both EU citizens with pre-settled status and those with settled status will be able to continue to live, work and access benefits and services in the UK after the end of the implementation period on the same basis as now. If individuals with pre-settled status go on to acquire settled status, they will then be able to access benefits and services on the same terms as comparable UK nationals. This is consistent with the approach taken under EU law, and we will assess individuals at the point they apply for benefits or when accessing services such as the NHS.

The proposed new clauses would interrupt the flow of a system which is already working well and achieving precisely what it was designed and implemented to do, providing certainty to those people who have made their lives here.

Under the future immigration system, EU citizens who are in the UK before the end of the implementation period will have different rights compared to those who arrive afterwards. It is essential, therefore, that EU citizens have the evidence they need to demonstrate their rights in the UK. This is also why many other member states are planning to take exactly the same approach and establish a constitutive system for UK nationals living in the EU. I shall come on to UK nationals in the EU shortly.

The EU settlement scheme means that those who have built their lives here do not find themselves struggling to evidence their rights in the UK or having to carry around multiple bits of paper and documents to evidence their previous UK residence. As I pointed out to the noble Lord, Lord Warner, we are legally required to issue all successful applicants under the scheme with formal correspondence setting out their immigration status, and this status can also be viewed online and shared with others. We do not want to go back to issuing physical documents when our vision for the future is a digital status and service for all migrants.

I should perhaps make a point about data protection, on which some noble Lords are very keen—certainly on the Liberal Democrat Benches. Under the digital system, employers, immigration control or whoever it might be will have access to the information on a need-to-know basis: not everything will be written down on a piece of paper, which is an important consideration. A continued declaratory system in the form suggested by noble Lords in Amendments 2 and 3 would force banks and other service providers either to wade through various documents, which they perhaps have no right to see, to establish for themselves whether the person is protected by the agreements or has been granted rights while they complete the registration process as envisaged in Amendment 2.

Additionally, Amendment 3 would grant EU citizens automatically conferred rights under the agreements, creating two groups of EU citizens: those with a registration document and those with no evidence at all of their status. There is therefore a high risk of inadvertent discrimination, particularly for those with no evidence at all in years to come.

Lord Greaves: There was controversy not very long ago about allegations that the settled status database would be shared with outside organisations, perhaps abroad. Is that completely untrue?

Baroness Williams of Trafford: The noble Lord outlines the point that I have just made about information being seen by people who are entitled to see it for the purposes for which it should be seen.

Lord Scriven (LD): The Data Protection Act protects all data whether written or digital. Therefore the argument is nonsensical.

Baroness Ludford: I think my noble friend is forgetting that immigration data is not protected under the Data Protection Act put through last year or the year before. I think there is litigation going on about that.

Baroness Williams of Trafford: The point I am making is that if you have a physical document which outlines everything, people have access to everything. When people go into banks, they do not necessarily know which documents to bring. Under the digital status, employers and landlords are entitled to see only the data which they need to see.

Lord Warner: Before the Minister moves on, sticking with this issue, I am totally confused—more than usual. The Minister said earlier that, if I have been sent my letter from the Home Office describing my status, I can then apply for another document of some kind that I can produce to other people who want the other document. That seems to be an alternative to the code. Will the Minister explain what is the difference between the letter and the other document that I can apply for, which apparently I can use to satisfy someone that I am entitled to something?

Baroness Ludford: Before the Minister gets up, I do not think I heard her answer the question about whether the settled status database is going to be available outside the Home Office, within government and to third-parties outside government. Will she answer that very precise point?

Baroness Williams of Trafford: I shall start with the point made by the noble Lord, Lord Warner. The letter is confirmation that you have been successful. It is not evidence of your status, but it is there for anyone who wishes to have a physical document to say that they have been successful.

On the digital status—this comes to the point made by the noble Baroness, Lady Ludford—if you want to rent, it could be accessed by the landlord. There is access to the data for people who need to see it for the purposes for which they need to see it.

Lord Warner: The second document—

Lord McNicol of West Kilbride: There is only one document.

Lord Warner: Regarding the document that I apply for after my first letter—the Minister is saying that there is a second document—why would I apply for something that I already have?

Baroness Williams of Trafford: My Lords, you automatically get a letter confirming that you have been successful. There are not two documents. You have online status and you get a letter confirming that you have been successful. There are not two documents.

4.45 pm

Lord Warner: This is rather a critical issue. Is the Minister saying that the document I have can be used? It apparently cannot be used to satisfy landlords and GPs, so what is the person going to do if the landlord, the GP and everybody else is not satisfied with the Home Office document?

Baroness Williams of Trafford: My Lords, the document that the noble Lord refers to is a letter confirming that a person has been successful. Anyone who is successful in obtaining the status could show that letter to a landlord and say, "There. Go and look online to confirm that I have the status". However, it is not a proof; it is a confirmation. Does that help the noble Lord? I see that it does. Thank goodness.

Lord Greaves: Can I ask another question?

Baroness Williams of Trafford: No. I am going to continue, and the noble Lord can speak when I have finished if he wishes.

I want to move on to the point that the noble Lord, Lord Oates, made about the criminalisation of people who do not apply by the deadline. That is a very important point—made also, I think, by the noble Lord, Lord McNicol. An EU citizen who fails to apply to the EU settlement scheme before the deadline will not be acting unlawfully in the same way as an illegal entrant or overstayer would be. They will not have knowingly entered the UK in breach of the Immigration Act or overstayed their leave. That is an important point to make. Once free movement has ended, they will need leave to remain in the UK—there is an important distinction there. We set up the EU settlement scheme to provide a quick and easy way to secure that leave, confirming their status in the UK.

We have been very clear that we will take a pragmatic approach, in line with the agreements, to provide those who have reasonable grounds for missing the deadline with a further opportunity to apply. I hope that that helps the noble Lord. He might want to intervene to ask what constitutes reasonable grounds for missing the deadline. We have deliberately not published a list of acceptable grounds for missing the deadline. As the noble Baroness, Lady Ludford, requested, we will send reminders to those with pre-settled status six months before their leave expires so that they can apply for settled status. In the first instance, we want to continue to encourage people to apply. We do not want to provide an exhaustive list as we want to give ourselves the maximum possible flexibility when this

situation arises. Examples of people in such a situation might include a child whose parents or guardian failed to apply on their behalf, people in abusive or controlling relationships who are prevented from applying or from obtaining the documents they need, or those who, as I said before, lacked the physical or mental capacity to apply.

The noble Baroness, Lady Ludford, pressed me again on the automatic reminder. I have previously confirmed that there will be an automatic reminder. In fact, in the *EU Settlement Scheme: Statement of Intent*, published in June 2018—quite some time ago—we committed to reminding people ahead of the expiry of their pre-settled status and it remains our intention to do so. That is not in place yet, as it will not be needed until five years after the first granting of pre-settled status, if that makes sense, so it will be September 2023 at the latest. The noble Baroness is looking puzzled. That is because March 2019 was day one, so it will not be needed for another five years.

Baroness Ludford: If they had already had two years, they would not need another five years.

Baroness Williams of Trafford: The noble Baroness is absolutely right. I think that my last statement was wrong, but I shall confirm that to her in writing.

The noble Baroness talked about people struggling, and I think that I have outlined some of the ways in which we are trying to help people to make their application. She will have heard me say previously how we have put money into various centres around the country to help people.

The noble Baroness also asked whether we are still granting permanent residence. Yes, we are.

On the question of why settled status is better than permanent residence, you do not have to be exercising treaty rights to get settled status; there is a more generous right of return—so five years rather than two years permitted absence—and there is an automatic entitlement, as a UK national, to benefits for those with settled status. However, that does not stop people from applying for permanent residence, and they do.

Finally, my noble friend Lord Hamilton of Epsom and the noble Viscount, Lord Waverley, talked about UK nationals in the EU. I recall the discussion that we had about unilaterally guaranteeing the rights of EU citizens, but they asked about UK nationals in the EU. The withdrawal agreement that we have reached with the EU provides reciprocal protections and certainty on citizens' rights. The agreement applies equally to EU citizens here and UK nationals in the EU, in their member state of residence, by the end of the implementation period. Ministers and officials have already engaged extensively with UK nationals across the EU and will continue to do so. I am very pleased to hear about the good experiences of the noble Viscount, Lord Waverley, in Portugal.

Lord Hamilton of Epsom: I am grateful to my noble friend for giving way. Does she agree with the noble Lord, Lord Cashman, however, that the EU will treat British citizens in the EU as foreigners who are unable to travel from one EU country to another? Surely, if we had balanced these negotiations, we might have been able to wring that concession out of the EU so that our citizens living there could travel from one country to another.

Baroness Williams of Trafford: I agree with my noble friend; of course, that will be a matter for future negotiations. In the meantime, I ask the noble Lord to withdraw his amendment.

Baroness Ludford: I should correct myself. The Minister was kind enough to say that she would have another look at that reminder system. After all, people could have four years and 300 or whatever days, just not five years. That system needs to come in a lot sooner; they might need a reminder in the next few months. Also, I do not quite understand—it may just be that I do not understand immigration—why the Home Office is twin-tracking settled status and permanent residence. I take the point that for settled status you do not have to be exercising treaty rights and perhaps simply have to meet a tougher standard for permanent residence. However, I do not see the value, either to the applicant or to the aim of simplicity and understanding of the immigration system, to have these two systems running coterminously.

Baroness Williams of Trafford: I ask the noble Baroness to understand that perhaps they might not be EU citizens.

Lord Greaves: My Lords, I did not get an answer to my question about the numbers. I have checked: there were 2.6 million at the end of November; there are now 2.8 million. Of the extra ones, does the Minister have a breakdown between settled and pre-settled? Should she not have the answer now, it would be helpful if she could let us know.

Secondly, something has occurred to me while listening to all this about documents. If I want to order a railway ticket in advance, I order it on my computer and print it off. Some might not, but I do. People do different things; they take their devices with them and even buy tickets. Regardless, I can print off a railway ticket. If I have settled status and I want to prove it, why can I not bring it up on my computer, take a screen shot and use that? What legal validity would that have?

Baroness Williams of Trafford: My Lords, by preference I do my tax online and get an email confirmation. If I book a train ticket, it is on my phone. In fact I rarely take my credit or debit card out any more; everything is on my phone. However, if the noble Lord is honestly suggesting screenshotting your settled-status proof online and then printing it off, I suggest that that might be forgeable.

Lord Oates: My Lords, I am grateful to all noble Lords who have taken part in this debate. This discussion, and even the confusion from the Dispatch Box about some of the rules, demonstrates the issues that are going to be faced by EU citizens if there is not even clarity in this House.

[Lord Oates]

I want to pick up on a number of points. The noble Lord, Lord Hamilton, talked about reciprocity. As the Minister has explained, Part 2 of the withdrawal agreement, on citizens' rights, applies equally to UK citizens in the European Union. I was a little astonished because I thought I heard the noble Lord arguing for free movement. He is notably not a pro-European so I am a little baffled by that. I can only guess that because, I understand, he has Liberal politicians in his ancestry, perhaps he has a genetic disposition to Europhilia that he cannot escape from.

A more serious point is this: the current Prime Minister and Home Secretary made a categorical, unequivocal commitment to European Union citizens. It was not based on whether the EU did this or that; it was a categorical statement. The noble Lord, who sits on the Conservative Benches, seems to be saying, "It's absolutely fine—we should use EU citizens as bargaining chips". I am glad that the Government have not done that; it is absolutely the wrong approach. All the bodies representing UK citizens in the EU that have been in contact with me and, I am sure, many other noble Lords in this House have always made the point throughout these negotiations that Britain should act early and unilaterally. I am glad that we did eventually but goodness me, it took a long time.

The Minister said that it was a very noble decision of the former Home Secretary to waive fees on this scheme. I find that an astonishing statement. EU citizens had rights in this country that they were going to lose as the result of a referendum in which they had no say whatever, and then we were planning to charge them for the privilege of retaining any rights. To call it "noble" to not charge them I find astonishing.

Physical proof has been discussed at length. The Minister said that two systems would confuse people. It is not two systems—it is one system that has a digital output and a physical one. That is pretty common and it is not confusing. While the Minister says we should not have these two systems because they are confusing, she then tells us that we do have two systems: the European Union settled status scheme and the permanent residence scheme. If we want to avoid confusion, perhaps we should address that point.

The noble Lord, Lord Warner, made the important point that we have to live in the real world of how these things work. I know this from experience because my partner is not a citizen of the UK—not a citizen of the EU, I should say—but a citizen of the United States. He has in his passport his permanent residence stamp that he can show to people. That is quite a simple thing and I am sure that we could apply such a system as well. Doubtless, it is also on an official computer system somewhere—I hope so.

5 pm

We have had real examples of these digital systems going wrong, as in the case with the United States. When we first used to go to the United States, my partner was detained on every single occasion, even though he was an American citizen. Apparently, there was somebody with the same name on the Department of Homeland Security no-fly list. He was detained every time. He was not the person and looked nothing like the person. After the poor officials had been through the process, which usually took about an hour, they would say, "Well, you're not the person." He said, "How can I stop this?" They said, "You can't. It is the computer system." Eventually, the Department of Homeland Security thankfully came up with a scheme, issuing him with a letter which effectively says: "This is not the guy you are looking for." It has changed our lives, because we now go through and it is fine. He gets the letter out and they go, "That's great, thanks."

In this country, we are sending all the people who have settled status a letter that says they have settled status, but the letter also says that it is not proof of settled status. It is a crazy Kafkaesque world. Obviously, a letter on its own is not enough; you need some documentation with watermarks or whatever. As I said, we do this at the moment with indefinite leave to remain status. It is not beyond the wit of this Government to do it. European Union citizens ask for this on a wide scale, as they are extremely concerned. It is particularly concerning for elderly EU citizens. I do not like to think of my elderly relatives being told first that they have to apply for the right to live here, having done so for maybe 40 years, and then being told, "You've got it but this piece of paper we've given you doesn't prove it. It is on some system in the cloud." I ask the Government and their Ministers to please think about the human experience and, as the noble Lord, Lord Warner, says, to live in the real world. I hope that the Government will take this back and really think about it. This is not a partisan point but a genuine appeal. Please can we look at this again?

On the declaratory principle, we have been told by the Minister that, in a way, we do not need to worry too much because after the registration date has passed, there will be some bases on which people will be given a further opportunity to apply—the Minister explained why she did not feel she could list them all, but she gave some examples. However, this will of course be entirely a matter of discretion; the courts will probably interpret what a good reason is. Simply not having been aware, for whatever reason, of the importance of meeting that deadline will not be seen as a good reason—we know that. However, we do not know the following: if somebody is allowed to apply after the date because they were hospitalised during that time, for example, and the Home Office—hopefully—regards that as a legitimate reason, is there clarity about their payment during the period in hospital when they were an illegal resident? If they were not legally resident, who is responsible? Do they have to pay during that period? As I understand it, even if the issue is corrected and they are given residence, it is not backdated.

The Minister said that we do not need to worry because people who do not meet the registration date and therefore become illegal residents in this country are not illegal on the same basis as people who had come into the country illegally. If they are breaking the law but in a different way, I am not sure about the reassurance on that. Are they breaking the criminal law or is it a matter of civil law? Where is the reassurance? To be told you are breaking the law in a different way does not seem terribly reassuring.

We know that mistakes are made in systems all the time. That is why the declaratory system will allow that leeway. We have had examples of people resident in this country for 15 years being given pre-settled status, entirely wrongly, so we know that mistakes are happening. It may well be that only five people have been refused under the scheme but 40%—or more on the last figures, I think—have been granted pre-settled status and not settled status. That is a materially significant difference. If you are offered a job, maybe on a contract to work for three years outside the country, but have pre-settled status you cannot go because you would lose your rights.

The final point is about putting these rules into primary legislation, which is such an important issue. Because of all the back-and-forth and bad faith on this, it really is important that people are given that reassurance. I fully accept that the Minister has told me that the problem with putting the rules in is because I do not have the amendment exactly right. I am very happy to sit down with her and her colleagues on this. Let us get it right and put it into primary legislation to reassure people. It cannot be that hard to do and the unwillingness of the Government to put this into primary legislation, particularly given that senior Ministers have already not lived up to their commitments, is a matter of great concern.

Both these amendments raise incredibly important points. I ask the Government to go away and think about them in a non-partisan way, from the point of view of the human beings who are having to deal with this situation. I really hope that they will take them on board and with that, I withdraw my amendment.

Amendment 2 withdrawn.

Amendment 3 not moved.

Clause 7 agreed.

Clauses 8 to 10 agreed.

Clause 11: Appeals etc. against citizens' rights immigration decisions

Amendment 4

Moved by ***Lord McNicol of West Kilbride***

4: Clause 11, page 14, line 2, leave out subsection (1) and insert—

"(1) A person may appeal against a citizens' rights immigration decision to the First-tier Tribunal."

Member's explanatory statement

This amendment would give a right of appeal against a citizens' rights immigration decision.

Lord McNicol of West Kilbride: My Lords, I shall speak also to Amendments 8 and 9 in my name and Amendment 10 in the name of my noble friend Lady Hayter. These are relatively short amendments, but they cover a very important issue.

The settled status scheme does not currently provide a right of appeal, causing unnecessary confusion and frustration for applicants who do not receive the decision they were expecting, and in many cases were entitled to. Under the current scheme, if somebody's application is unsuccessful, they may be able to apply for an administrative review at a cost of £80. The administrative review process applies for people whose applications were refused on eligibility grounds, or where they applied for full settled status but were awarded only pre-settled status. As we have recently heard, the percentages of those awarded pre-settled status is anywhere between 40% and 47%.

While the Bill's current provisions allow for regulations to be made providing for appeals, this does not amount to a legal obligation, and neither does it guarantee equal treatment in all cases. There is a clear need for a formal appeals process, as we can see from the Government's wish through making provision in the Bill to deal with this under regulation. A statutory right of appeal should be set out in primary legislation. These are important rights that should not be played with at the whim of individuals.

There have been several cases where EU residents have submitted documentation demonstrating residency for a period of more than five years, yet they have been granted only pre-settled status. The Home Office claims that the scheme is a success because only a small number of people have had their application rejected—we have heard that the number is five—largely due to the criminality of the individuals. As you would expect, we support those rejections. However, the figures discount those who may have wrongly received pre-settled status. My understanding is that the most recent statistics show that the figure for those being granted pre-settled status is, as was touched on earlier, as high as 40%. But this is a temporary form of leave lasting up to five years; it is not indefinite leave to remain. A number of NGOs have expressed concern that outstanding administrative reviews at the end of the implementation period could leave individuals in difficult and possibly hostile situations. I beg to move.

Baroness Jones of Moulsecoomb (GP): My Lords, I support Amendment 4, to which I have attached my name, as well as Amendment 8 and others in this group. As currently drafted, the Bill does not match the Government's previous assurances that EU citizens' rights will be protected. It is impossible to deny that massive errors occur in the UK immigration system. People are wrongly deported, sometimes in tragic circumstances leading even to death. While many of these tragedies occur whether or not there has been an appeals process, it is certain that many more injustices will happen if an appeals process is not available. For that reason, the Bill must set out a clear right to an appeals process. It is not good enough to leave it to Ministers to decide on an appeals process in the future, because the Bill does not give a date by which an appeals process should be brought into force. This means that Ministers might never create an appeals system at all.

Also, no principles are set out, or basic rights which must be protected, or rules which must be obeyed. I do not want a situation where government inaction, for whatever reason, leads to injustice or, worse, citizens' rights becoming another bargaining chip in the next stage of Brexit negotiations. I say this as someone who

[Baroness Jones of Moulsecoomb]
voted for Brexit—but I did not vote to be nasty or to make people feel vulnerable and at risk of being deported, and I did not vote to ruin people's lives.

Surely the Minister understands that the Government are creating a quite complex new immigration status for EU nationals and that it is almost certain that administrative errors will happen, so a clear appeals process must be set out in this important legislation. I therefore make a plea to the Minister to take the amendment away and discuss it with his officials. We need something like this in the Bill so that errors can be put right and so that our EU friends and neighbours know that justice will be done.

Viscount Hailsham (Con): My Lords, I rise briefly to speak to Amendment 10 in this group, to which I have put my name. From my point of view, the amendment is more by way of a probing amendment, because I appreciate that the regulation-making powers that are provided for in Clause 11 are subject to the affirmative resolution procedure, as set out in Schedule 4. However, my concern is that the regulations could strike down the ability to make an effective appeal review under judicial review, and I would like to know why this is.

Judicial review is a very important remedy so far as the citizen is concerned, because they can challenge the power of a public authority on the grounds that it is, for example, unlawful, unreasonable or ultra vires, or on a number of other grounds. I appreciate that the courts have sometimes gone a bit far in their interpretation of their powers, in that they have on occasion usurped the executive functions of Ministers—but that is by the way. What I would like to know in this case is why we are extending the power in the regulations to tackle judicial review, and in particular what kinds of changes the Minister has in mind when contemplating this power in the statute.

5.15 pm

Baroness Hamwee: My Lords, I have put my name to Amendment 10. As the noble Viscount said, judicial review—the right to apply to the courts to review the decision of a public body—is hugely important. I do not share the view that the courts have acted inappropriately and entered the political arena when they should not have, but, as he says, that is not the point.

Viscount Hailsham: I was not trying to suggest that, for example, striking down the Prime Minister was in any way wrongful. I would have done so if I had been in the Supreme Court. What I am suggesting is that quite often courts do intervene on executive matters. I certainly do not include in that the decisions made by the Supreme Court at the back end of last year, which I profoundly supported.

Baroness Hamwee: I was not seeking to have a go at the noble Viscount. If judicial review has grown inappropriately, that is a separate matter. It is dangerous if the Executive are seeking through this provision to protect themselves from proper oversight by the courts.

In the Commons, a Member said on rights of redress for EU citizens that

"appeal rights and judicial review are enshrined".—[*Official Report*, Commons, 7/1/20; col. 330.]

The Minister endorsed that, at col. 336. But Clause 11(3) seems to "deshrine"—if that is a word—judicial review. I too am concerned that at the least we understand what we are doing, but, if it is as I understand it, that we do not do it.

Lord Greaves: My Lords, I added my name to the amendments in the name of the noble Lord, Lord McNicol of West Kilbride, on behalf of the Liberal Democrat group. I have one or two other amendments in this group. One is on the judicial review point, and I am perfectly happy to leave the lawyers to argue the case on that, which they know far more about than I do.

Amendment 6 relates to Clause 11(1), on appeals against citizens' rights immigration decisions, which says:

"A Minister of the Crown may"—

I would prefer "must" but I accept that "may" means it is probably going to happen—

"by regulations make provision for, or in connection with, appeals against citizens' rights immigration decisions of a kind described in the regulations."

Clause 11(2) defines a "citizens' rights immigration decision" for the purposes of the Bill and it talks about various kinds of entry clearance, decisions in connection with leave to enter or remain, a deportation order, and

"any other decision made in connection with restricting the right of a relevant person to enter the United Kingdom".

That all seems fairly comprehensive. What I do not understand, which is why I tabled Amendment 6 to probe this, is what is meant by

"of a kind described in the regulations."

Does it mean that some of the things listed will not be covered by the regulations and the right to appeal? If so, what is the Government's thinking about which ones they may be, or do they intend that they will all be covered, in which case why does the kind have to be described in the regulations since it is set out here in the Bill?

On the question raised by the noble Lord, Lord McNicol of West Kilbride, and other noble Lords, it is fairly clear that many people who have been given pre-settled status because they have not been living in the United Kingdom for five years or, in some cases, cannot prove that they have been doing so. There is also a significant number of people—I have no idea how many—who have been living here for five years but whose applications have been found difficult, for some reason or other. Rather than refusing them, the scheme is giving them pre-settled status because establishing the true facts would take a lot of time, energy and workload and, as the Minister said, millions of people are applying. It would be helpful to know what proportion of the people who have got pre-settled status have been, or say they have been, living here for more than five years—in some cases, they have been here pretty well all their lives—and have been given that status to give them something without prolonging

the argument. In those cases, does the provision that they will automatically get settled status once they have been here for five years still apply?

Baroness Williams of Trafford: My Lords, I thank noble Lords who have spoken to these amendments. We cannot support them, and I will outline why. The Government will provide for a right of appeal against citizens' rights immigration decisions. While I commend noble Lords for their commitment to citizens' rights, these amendments create unnecessary changes to the wording of Clause 11 and, at worst, undermine our ability to provide for a right of appeal in all circumstances and ensure consistency for judicial review, and even create perverse incentives to appeal decisions to gain the benefits of indefinite leave to remain.

Amendments 4 and 9 are unnecessary. EU citizens who are appealing a decision on residence must be able to appeal if refused leave, or given what they believe is an incorrect status under the EU settlement scheme, under our international agreements. It is also damaging, as a power is required to implement the numerous situations requiring appeals.

Amendment 5 is at best unnecessary and, at worst, could prevent the provision for necessary appeals. This Government will provide for a right of appeal against citizens' rights immigration decisions. This is an essential part of our commitment to protecting the rights of EU citizens, EEA EFTA and Swiss nationals under the withdrawal agreement, the *EEA EFTA Separation Agreement* and the Swiss citizens' rights agreement.

On Amendment 6, the current wording of Clause 11(1) allows the Government to make sufficient regulations in relation to appeals against citizens' rights immigration decisions. It fulfils our commitment in the agreements and provides certainty to EU citizens that they shall have a right to appeals. Moreover, the Delegated Powers and Regulatory Reform Committee has recently commended the powers in the Bill as,

"naturally constrained by the scope of the particular matter contained in the Agreements".

As such, Amendment 6 is unnecessary.

As for Amendment 7, it is in the public interest to make reviews of exclusion directions made in respect of those protected by our implementation of the withdrawal agreements consistent with how similar reviews are treated now. This power enables us to do this, but Amendment 7 would remove that ability.

Amendment 8 would make it harder for EU citizens to challenge an exclusion direction, would prevent the Government being able to prevent removal unless the appeal is certified and would create a perverse incentive for individuals to launch appeals to gain access to the benefits of indefinite leave to remain.

Amendment 10 seeks to limit the power in Clause 11 in relation to judicial review. It is in the public interest to make reviews of exclusion directions made in respect of those protected by our implementation of the agreements consistent with how similar reviews are treated. This power enables us to do this, but the amendment would remove that ability.

Viscount Hailsham: Will my noble friend give way?

Baroness Williams of Trafford: I will, but first I reiterate that appeals processes will be set out in the regulations to be made under the power in Clause 11. The regulations will be made in the last week of January, to answer the question asked by the noble Baroness, Lady Jones of Moulsecoomb. I may now be answering my noble friend's question, because he asked whether we have a power to make changes to reviews, including judicial reviews. This limb of the power will be used to ensure that the legislation that interacts with new citizens' appeal rights continues to function appropriately. It ensures that we can amend Section 2C of the Special Immigration Appeals Commission Act 1997 to provide that the Special Immigration Appeals Commission can hear reviews in respect of those protected by the agreements in the same way as they hear reviews in other cases, such as the most sensitive immigration cases. We will not be restricting the availability or scope of judicial review.

Viscount Hailsham: I would like just a little more clarity, although my noble friend has given quite a lot. Do I understand that what the Government are thinking of doing is procedural only, and they are not seeking in any way to curtail the substantive rights that presently arise under judicial review?

Baroness Williams of Trafford: I can confirm that.

Lord McNicol of West Kilbride: My Lords, I thank all noble Lords for taking part in the debate on this group of amendments and the Minister for her response. Mistakes can be made in any process and, as the Minister said, the Government will be moving to provide the right of appeal. These amendments seek to put that right of appeal in the Bill and ensure that it is dealt with properly at this stage. With that, I beg leave to withdraw Amendment 4, but I will continue to push the points that have been made.

Amendment 4 withdrawn.

Amendments 5 to 10 not moved.

Clauses 11 and 12 agreed.

Clause 13: Co-ordination of social security systems

Amendment 11

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

11: Clause 13, page 17, line 12, at end insert—

"( ) No regulations may be made under this section after the end of the period of two years beginning with IP completion day."

Member's explanatory statement

This amendment introduces a two-year sunset on the delegated powers relating to the coordination of social security systems, ensuring any subsequent changes must be enacted through primary legislation.

Baroness Hayter of Kentish Town (Lab): Amendment 11 concerns a sunset clause and deals with one of the most crucial aspects of the Bill as it affects EU and

[Baroness Hayter of Kentish Town]
UK citizens: the implementation of the guarantee that all their health, pension and benefit rights will continue after exit. It is true that there is a fixed cohort of citizens, perhaps up to 5 million EU citizens here and UK citizens abroad, who will be covered by these provisions as at the end of December. However, some of the rules and regulations will have a very long tail, affecting the access those 5 million people and their dependents will have to a range of payments and services long into the future. Ministers may well say, "It's a fixed cohort, but these rights, and therefore the regulations affecting them, will go on a long time; that's why we need the powers to continue to make tweaks and adapt to changing circumstances".

5.30 pm

There are two flaws in this argument. First, doing this by statutory instrument means that there will be inadequate scrutiny—by those representing recipients to check that their interests are being well served, and by Parliament to ensure that the original aims are being met. This is particularly the case, as we set out yesterday, given the lack of statutory parliamentary oversight of the Joint Committee, which will have oversight of the implementation of such measures and decide on any disagreements over how social security and other issues are being dealt with. We will not have proper scrutiny of the Joint Committee; if there were disagreements which could not be resolved in the Joint Committee and so went to arbitration, under this Bill Parliament would only be notified and have no say over the outcome or any changes one would want to make after it.

Our concern is that, possibly many years in the future—because this will go on into the future—Ministers could be making some pretty crucial decisions with scant reference to Parliament. At that stage, some Members of Parliament might have forgotten the original purpose of the power, so it will be even more important that it is brought to Parliament's attention.

Secondly, as our Constitution Committee pointed out in its report this morning—this is the other flaw in the Government's argument that they will need these powers ad infinitum—given that there will be a detailed statutory scheme in a future Bill, it is not clear why the powers in Clause 13 of this Bill are required beyond the implementation period, or perhaps a year or so afterwards, as this could be dealt with in the future detailed statutory scheme. Our Select Committee therefore asks for a better explanation of why these powers need to continue or to include a sunset clause, which, in anticipation of the report—which I had not seen—we had nevertheless tabled. Amendment 11 would include a sunset clause on these powers. I beg to move.

Viscount Hailsham: My Lords, I very gratefully support the points made by the noble Baroness, Lady Hayter. I entirely agree with her; I think it is necessary to have a sunset clause, and if it is not necessary it behoves the Minister to tell us why. One of the central problems arising all the time is whether secondary legislation, whether affirmative or negative—I acknowledge that in this case it is very largely affirmative; I am aware of that—is unamendable. Statutory instruments are often published very close to the time when they are to be considered by both Houses, with the consequence that you do not get proper consideration by members of the public or people who have an interest in what is proposed. I hope that the Government will give serious consideration to a sunset clause. If we are told that two years is too short a time, let us have an argument about that. I am sure we could come to a date that would be acceptable to all parties. Could we please have a reason why a sunset clause is unacceptable in principle to the Government?

Baroness Hamwee: My Lords, my name is also put to the amendment. In the Commons, the Minister said that the clause enables the Government to

"maintain our statute book in accordance with the social security co-ordination provisions".—[*Official Report*, Commons, 7/1/20; col. 323.]

That puzzled me, because they do not need this to do that. Both noble Lords who have spoken pointed out the potential problems. The noble Viscount, Lord Hailsham, reminded me that, so often when the House is asked to look at secondary legislation—or is given the opportunity to do so, having had to take positive steps to raise the issue—people who are affected and organisations that know about it make really valid and useful points. It does no good to the reputation of the House to be able to do no more than say, "Well, I'll raise that in debate", because we know that we cannot make any changes. I support what is proposed here; it is entirely sensible and in no way wrecking.

Lord Howarth of Newport (Lab): My Lords, Clause 13(5) contains a Henry VIII power; it is admittedly constrained by the specific subject matter and context of the Bill, but is none the less within those constraints a wide-ranging power:

"The power to make regulations … may … be exercised by modifying any provision made by or under an enactment."

Henry VIII clauses are in principle objectionable, and in principle the Government ought always to explain to us why they think they are justified.

Lord Bethell (Con): My Lords, I am enormously grateful for the opportunity to respond to the amendment of the noble Baroness, Lady Hayter of Kentish Town, and others. I thank all those who have contributed to this debate.

The noble Baroness put it very well; the importance of this measure should not be underestimated. As we leave the EU, protecting the rights of UK nationals in the EU and EU citizens in the UK, including EEA, EFTA and Swiss nationals remains a massive priority for this Government. It is a commitment that we have delivered very clearly in the withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement. For those noble Lords who have enjoyed the pleasure of reading those pages, it is a really hefty chunk of the withdrawal agreement. The detailed and complex nature of these commitments is testified to by the large number of pages taken up describing them. For brevity's sake, I will not go through these pages and will refer to EU citizens and agreements thereafter.

The dynamic nature of the EU's social security co-ordination rules means that, following the end of the implementation period, updates at the EU level to the EU social security co-ordination regulations will be reflected in the agreement and therefore apply to those citizens within the scope of the agreement. The current social security system is dizzyingly complex. These updates are also very complex; they include minute changes to things such as definitions, the templates in which organisations communicate with each other and the line by line minutiae of the regulations. They ensure the clarity and delivery of benefits for citizens and the operational viability of the overall system. This clause ensures that the appropriate authorities, including the devolved Administrations, have the power to make regulations to align the domestic statute book with the amendments made in these regulations.

A question was asked about Henry VIII powers. I reassure the House that these provisions are focused solely on the regulations described in Part Two, Title III of the withdrawal agreement relating to social security co-ordination, as well as to the supplement, and deal only with matters arising.

Lord Howarth of Newport: The Minister pointed out that the regulations are extraordinarily complex. Would he accept that, the greater the complexity, the greater the need for accountability?

Lord Bethell: No, that is a neat way of putting things, but it is not quite the point I was trying to make, which is that they are very closely defined in terms of breadth and that the detail of the regulations is so minute that it would waste the time of these Houses to go through them line by line. It is important for solidity and confidence in the system that they are expedited quickly and resolved without delay. Without wishing to give the game away regarding what I am about to say, the bottom line is that we simply do not have the legislative capacity in these Houses to go through all the complexity of the details as they arise at an EU level.

Viscount Hailsham: That is a serious statement to make. My noble friend is saying that Parliament cannot do its job. Does that not mean that these matters need to be considered by the commission on the constitution—and preferably a royal commission?

Lord Bethell: No; my noble friend puts it well, but I am alluding to the fact that there is a hierarchy of priority, and there are matters of significant policy and implementation that are of a sufficiently high level to warrant the attention of the House. However, this clause refers to matters of an operational nature, which are there to implement the agreed clauses of the withdrawal agreement.

There is no question of this clause being used to bring in new policy, new arrangements or the kinds of policy changes that, frankly, would warrant discussion in the Houses. That is the reassurance that I am trying to communicate to the House, that any changes in the actual policy and arrangements and the benefits of those in the 5 million, whom the noble Baroness, Lady Hayter, accurately referred to, are absolutely not part of either the intention or the way in which these clauses are written.

Lord Howarth of Newport: If there is no intention to change policy, why is Clause 13(5) in there?

Lord Bethell: All the arrangements within this part of the Bill are heavily constrained to Title III of Part Two of the withdrawal agreement. There is therefore no need to escalate to questions of policy; if there are questions of policy, they will be brought to the House but in a completely different way. The purpose of this clause is to make sure that there are no conflicts or inconsistencies in domestic law that refer to the current commitments within the withdrawal agreement, which could give unfair treatment and uncertainty about the rights and benefits of the 5 million in the group of people who benefit from these arrangements. It allows Ministers to protect the entitlements—

Baroness Hamwee: Can the Minister point us to where in the clause we can find reassurance that, if there is a change in policy, it will not be dealt with through regulations?

Lord Bethell: That reassurance is not in the clause; it just does not provide the necessary powers, and without those powers, the ability to change policy does not exist. I hope that noble Lords will agree that the way in which it is written is tightly refined around the specific arrangements of implementing the detailed clauses in the withdrawal agreement. That is its confined and determined nature. What it does, in a focused way, is to allow Ministers to protect the entitlements of those in the scope of the agreements, and only that. It includes both EU citizens living in the UK, as the noble Baroness, Lady Hayter, explained, and UK nationals who have chosen to work in or retire to EU member states before the end of the implementation period. Many of those people will have lifetime rights within that agreement which may last many decades, and the effect of the changes of EU regulations will continue to need to be tweaked during those decades.

This power is therefore essential to give the Government the flexibility that we need to provide legal certainty to individuals subject to these rules as the EU social security co-ordination regulations evolve over time. We have an important duty to protect the social security co-ordination rights of those in this scope, to give them that confidence, and for the lifetime of these agreements. This power enables us to protect those rights, and without prejudice to any future system that would apply to those not covered by these agreements.

5.45 pm

It is important to note that the power is restricted to making provisions which implement, supplement or deal only with matters arising out of the relevant sections in the agreement relating to social security co-ordination; I reassure the House on that point. That is why we cannot accept this amendment, which would sunset the powers to make regulations only two years after the end of the limitation period, whereas

[LORD BETHELL]
the withdrawal agreement social security co-ordination provisions have no such sunset and potentially may last decades for many people. To put an expiration date on the power could therefore prevent the UK ensuring—

Lord Kerr of Kinlochard (CB): I understand the point the Minister is making and that the scope of action is limited to the areas covered in the withdrawal agreement—I understand all that. However, would it not be more reassuring to recipients if the sunset clause were there, and if changes could be made only after the expiry of the period by primary legislation? I understand the argument, but if the argument is reassurance, surely it is more reassuring to people that changes could be made only by primary legislation than that they could be made using these Henry VIII powers laid out in these provisions.

Lord Bethell: My Lords, the point is well made, and I understand the desire of the Houses to keep scrutiny on measures, which is entirely fair. However, in this case, confidence, solidity and a sense of commitment can be promised and delivered by the Government only if they do not have the fear that the pipeline of legislation going through the House might delay important technical changes and hold up the delivery of these benefits. It would put a huge pressure on these Houses of a kind that is not realistic or reasonable to have the entire legislative timetable of our proceedings held hostage to the microchanges and small needs of EU social security regulations and improvements, which may in decades to come affect only hundreds of thousands of people and require small administrative changes in regulations.

Viscount Hailsham: Hundreds of thousands is quite a lot.

Lord Bethell: My noble friend puts it well; I am not trying to brush off hundreds of thousands. I am trying to communicate a sense of this long tail of microregulatory changes, which are technically incredibly important. However, the priority is to demonstrate commitment and security to those millions of people today who will look to the Government to make a commitment to deliver those in years to come. To put an expiration date on the power could therefore inadvertently prevent the UK ensuring that its statute book complies with its international obligations under the agreements, and put in jeopardy the Government's unequivocal guarantee to protect citizens' rights. I therefore urge the noble Baroness, Lady Hayter of Kentish Town, to withdraw this amendment.

Baroness Hayter of Kentish Town: I welcome the noble Lord, Lord Bethell, to the Bill; I assume that this is only the first of his outings on it. I thank my noble friend Lord Howarth, the noble Lord, Lord Kerr, the noble Baroness, Lady Hamwee, and the noble Viscount, Lord Hailsham. I urge the Government to listen to what they say.

Perhaps the Government are saying that there will be so many small technical changes—but we would need to know that. If there was a sunset clause—possibly for longer than two years, as the noble Viscount suggested—we could see whether we are talking about lots of changes, but the Minister has not answered the question of why this cannot be dealt with more properly in a detailed statutory scheme where we will have a greater handle, or a greater grip, on these sorts of amendments.

I am concerned about what is referred to as "complex" or "technical" or a "tweak". Over the past 10 or 15 years, we have seen pension regulations change: as we brought in civil partnerships, the right to a pension or the age of dependants also changed. These are big issues. These are not small tweaks where you report to this pension authority rather than that one. As has been said, some big issues could be addressed here without giving people outside this House enough time to comment on them. Remember, we are talking about people in Spain and Luxembourg, for example; by the time they hear that a statutory instrument is coming, it will probably have been passed. We are talking about a group of people who are very disparate and yet could be seriously affected by what is said to be a tweak.

I am still slightly concerned that, by enabling this to be there for all time, changes may be made to people's death benefits, pensions or health provision, for example, without a proper discussion here. It would be a good idea, after I withdraw the amendment, for the Government to look closely at our Select Committee's recommendation on whether there is a better method of achieving what the Government want to achieve, perhaps through moving an amendment to put in a sunset clause. Perhaps it could be for five years; in that time, we really would be able to see whether it is working as envisaged. Just having an open-ended commitment for all time on issues that will possibly affect people's pensions or benefit payments seems to be a wide-ranging Henry VIII power.

Viscount Hailsham: Might I make a suggestion to the Government through the noble Baroness? One way would be having an extended sunset clause—for five years, for example—with a power to extend it further through an affirmative resolution procedure if, as the noble Baroness suggested, it appears to be working all right.

Baroness Hayter of Kentish Town: I think that what we are urging is: can we look at this and can we not get hung up on "We don't want any amendments to this Bill"? If it were a government amendment, it could get nodded through and we could pretend that it had not happened, if the Government want a clean Bill—we will not even tell anybody, just send the tweak through. But it is important to get this right rather than worry about one's amour propre. For the moment, I beg leave to withdraw the amendment.

Amendment 11 withdrawn.

Clause 13 agreed.

Clause 14 agreed.

Clause 15: Independent Monitoring Authority for the Citizens' Rights Agreements

Debate on whether Clause 15 should stand part of the Bill.

Lord Greaves: My Lords, Clause 15—and Schedule 2, to which it refers—is about setting up a new quango, if I can use that term, created as an independent monitoring agency on citizen's rights, which is what its title will be. It occurred to me when I was in a hurry that a simple clause stand part debate would give the Government an opportunity to provide more explanation and information on how this new quango will work. Then, when I found myself with a bit of spare time this afternoon, I looked at Schedule 2 in detail and tabled amendments.

Together with the amendments, this clause stand part debate allows the Government to tell us how the IMA will work. I particularly want to probe them on the timetable. How quickly will they set it up? At what stage will the interim chief executive be appointed? At what stage is it expected that the body as a whole will be appointed? If it is to do a useful job it ought to be in place as quickly as possible so that it can monitor the transitional process as it takes place.

As ever, I looked in the Explanatory Notes. There tends to be two different varieties of Explanatory Notes: those that just rewrite the Bill in more understandable words and those that actually explain what is underneath it all. The notes state:

"Paragraph 1 sets out that the IMA is not to be a Crown body."

Yes, okay. I looked at the Bill, where there is quite a bit more explanation of what that means than in the Explanatory Notes. I will therefore put the notes to one side because they do not tell you anything more than you can get from an intelligent reading of the Bill.

What can the Government say about the timetable? What can they say about the estimated cost? The published impact assessment suggests that the cost of the whole Bill will be about £167.1 million, but it says:

"The bulk of the costs are due to the setup"

of the IMA. What is the bulk? Is it £150 million, for example? How much money will we spend on this? I suppose that we can make assessments of the nature of the organisation from the amount of money.

Nevertheless, how many employees do the Government expect to take on? That is important. What will be the location of the IMA and, indeed, its employees? Will some of them work in different parts of the UK? On the main headquarters, we have heard a lot recently about the new Government wanting to decentralise the Civil Service and send some departments to places such as Doncaster, Grimsby and Workington—perhaps even Nelson and Colne. However, we have heard a lot of this in the past; after the 1960s, none of it ever really came to much. Is it expected that the headquarters will be used as part of the Government's attempt to decentralise things from Westminster, Whitehall and London?

The amendment about the interim chief executive is important. It concerns paragraph 3 of Schedule 2, which suggests that the interim chief executive will be appointed before the IMA is set up; presumably, they will also take part in that set-up. Paragraph 3(1) states:

"The Secretary of State may appoint a person to be the IMA's chief executive".

Paragraph 3(2) states:

"A chief executive appointed by the Secretary of State may incur expenditure and do other things in the name and on behalf of the IMA"

until the IMA is set up. Paragraph 3(3) states:

"In exercising the power in sub-paragraph (2), a chief executive appointed by the Secretary of State must act in accordance with any directions given by the Secretary of State."

In the brief discussion about the IMA at Second Reading yesterday noble Lords talked quite a lot about whether the IMA will be genuinely independent of the Government. That is my next major question.

In the first instance, my sub-question, as it were, is this: how can the IMA be independent of the Secretary of State if the interim chief executive is appointed by the Secretary of State and has to act, as paragraph 3(3) says,

"in accordance with any directions given by the Secretary of State"?

This seems important, and it would be interesting to hear what the Government have to say.

I have a small amendment to the mention of "gratuities". It may well be that all government legislation talks about paying people gratuities as well as their salary and expenses, but I have not noticed it before. I looked in the dictionary, and it said what I thought it meant—things you give to waitresses and taxi drivers—but also payments to people when they leave. It seems to me that employees in a government-related agency ought to have a contract that tells them how much they are paid and what their conditions and expenses are, and that we ought not to be looking at lots of golden goodbyes. Perhaps I am unduly concerned about that, but I would like to know what the Government have to say.

6 pm

Amendments 54, 55 and 56 are about transparency. It is not completely clear how transparent this organisation will be. The schedule gives examples of where it has to publish its reports and send them to the Secretary of State, et cetera, but it seems not too thorough in applying the standards of transparency and integrity we ought to expect in public bodies, which, as a Member of the House of Lords and a local councillor, I certainly have to abide by.

I turn to Amendment 54. The wording in paragraph 9(6)(c) of Schedule 2 is curious. It says:

"The arrangements must oblige each member … to declare all financial interests … to declare any other personal interest relevant to the exercise of a function, and … to withdraw from the exercise of any function to which an interest of a sort mentioned in paragraph (a) or (b) is relevant".

This is all what I would expect as a local authority member, but then it says

"unless the IMA is satisfied that the interest will not influence the exercise of the function."

Either you have a declarable financial interest or you do not. That is how it works in local government, and it is fairly clear whether you have. You do not ask the council: "Can they stay after all? We really think they're honest people, so it won't influence the exercise of the function." That seems wrong. The point is that honesty and integrity have to be seen to be happening,

[Lord Greaves]
regardless of the honesty and integrity of the individual concerned. That is a fundamental principle, and I think that bit of this schedule is wrong.

Amendments 55 and 56 say that the IMA should publish the minutes of its meetings and committees, so that after the event you know what it is doing and talking about. We have to remember that this body will not take up individual cases. It is not an ombudsman-type body, as I understand it. It will take an overall review of the operations of this Bill, so it is vital to publish the minutes and the annual plan.

Amendment 57 goes rather wider. It is to challenge the Government as to whether this is really just about the operation of the provisions of this Bill or whether the IMA will be able to undertake reviews about questions connected to the European citizens it is overseeing, overlooking and monitoring—even though, strictly, other legislation might be concerned—or perhaps the way they are treated by local authorities or other public authorities. Or will it really be very restrictive and operate only within the terms of this Bill and therefore of the withdrawal agreement?

Amendment 61 is a probing amendment: will the IMA be allowed to charge for any of its services? It is a simple question. It is not very clear whether it is able to do that or whether the Government will want it to.

Finally, Amendment 68 would introduce a stricter level of parliamentary scrutiny, which would fit into the packed timetable that the noble Lord, Lord Bethell, was talking about—it will be nice to have a packed timetable in this House for a change, after the last year. I suggest the procedure that was invented in the Public Bodies Act and is now pretty well over as far as the bodies in that Act are concerned. It concerns the Government's ability to abolish, change or transfer the IMA's functions to any other body. The Public Bodies Act lays down a longer timetable that gives more time for parliamentary scrutiny. It worked very well indeed under the Public Bodies Act, which was seen through this House expertly by the noble Lord, Lord Taylor of Holbeach, quite a long time ago—eight or nine years ago. I remember his famous comment after there was a huge amount of criticism of it when it first came here; it started here. He stood up in the House and said: "It is my job to put this Bill in proper order before it leaves this House". Indeed, he did that very well. One of the things invented was this procedure for dealing with public bodies; it was all part of the bonfire of the quangos at the time. It worked very well, and the procedure is still there in that Act, although it is not used any more because that Act has done its job. It would be very helpful for it to apply to this body.

Finally, I ask the Government some questions. Why is there a provision to transfer the functions to another body? What kind of body do the Government imagine or think it should be transferred to? In what circumstances might this be thought necessary, and why?

Lord Wigley (PC): My Lords, I believe I am right in saying that Amendment 59 is associated with this group.

Lord Greaves: No, it is coming later.

Lord Wigley: It is coming later. I beg your Lordships' pardon.

Lord McNicol of West Kilbride: No, it is. The noble Lord is correct.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): I should correct the noble Lord. Amendment 59 is part of this group, and therefore if he wishes to speak to it, he should do so.

Lord Thomas of Cwmgiedd (CB): My Lords, I confess my inexperience in this court of Parliament in knowing whether it is the right opportunity to raise Amendment 59. I will do so. This may seem a very small point, but it goes to two points that underlie the amendments to which we will turn in due course. The first is the need to ensure that the Bill respects our constitution as regards devolution and that the devolution statutes that form part of our constitution are altered in a proper and constitutional manner. Secondly, going forward with our life outside the European Union, we achieve a stronger union by making sure that there is the closest possible working together of the devolved Governments, Assemblies and Parliaments with the Government at Westminster.

Although the amendment is addressed to deal with the position in Scotland, Northern Ireland and Wales together—logically it has to be—I approach this from the standpoint of Wales, for two reasons. First of all, my own experience of that devolution settlement is much clearer than my experience of the others. Secondly, I really think it of importance that in this House we try to do all we can to make sure that Wales, the Welsh Government and the Welsh Assembly understand that the union will work for the future as envisaged in the devolution statutes.

It may seem that devolution is not that important at this time in the context of this Bill, and I can well understand that view. But it is important to reflect for the future and to realise that much will need to be done to the way in which devolution operates when we are outside the European Union and with our own internal market. Those are the general points that underline my seeking to make this amendment.

The purpose of the amendment is to ensure that the principles agreed in respect of the IMA's composition, as set out in the schedule, are carried forward in the event that a new body is created pursuant to the powers that have been added to the Bill. As regards the obligation to appoint the non-executive members of the IMA, provision is made in the Bill that the Secretary of State will appoint those with experience in relation to Scotland, in relation to Wales and in relation to Northern Ireland, who understand how the systems there work. This is plainly a proper and right provision as, over the past 20 years, as any examination of the detailed operation of devolution will show, things have changed. I find it sometimes regrettable that those who occupy the ministries in Whitehall do not realise the extent of that change. I therefore appreciate what the Government have done through this provision and the further discussions they have had of the role of the Welsh Administration and Welsh Ministers in

the selection of the appropriate person. However, the provision is not carried forward if the functions of the IMA are transferred to a new body.

I accept that it is a small point, but small points can go a long way to ensure that the spirit of devolution and the constitution is respected. Of course the Government can say that there will be no change, no statement made and no clarification, but would that be wise? With the utmost respect, I suggest that it would not be wise because it would point out that even a small change that can capture the spirit of the way forward is something that the Government will not contemplate. On the other hand, if some assurance were given about any future transfer to a new body, is not that the first step in showing that the spirit of a post-devolution UK will be respected by this Government?

Lord Wigley: My Lords, I am delighted to support Amendment 59, standing in the name of the noble and learned Lord, Lord Thomas of Cwmgiedd, to which I added my name, although too late for it to appear on the Marshalled List today.

The IMA is intended to provide assurance to EU citizens who have already established their rights to live and work in the United Kingdom that, after we leave the EU, they will continue to enjoy the same rights as they do now, which flow from the principle of freedom of movement under which they first moved to the United Kingdom. The IMA will be able to investigate complaints by individual EU citizens and members of their families if it believes these complaints to have been compromised in any way.

Since such rights include access to public services, such complaints could be directed against one of the devolved Administrations. An example pointed out to me is of a Polish citizen who moved to Wales perhaps 10 years ago, and who might take up a question with the IMA if they believed that, in 2022, changes to administrative procedures in the Welsh NHS had made it impossible for them to access its services on the same basis as UK citizens. That is a matter that quite clearly has a direct relationship to the responsibilities of the National Assembly for Wales, and there will be parallels in Scotland and in Northern Ireland. It is therefore essential that the IMA has a good knowledge and understanding of the circumstances in each part of the United Kingdom. This applies to its non-executive members, as well as to its staff, who I understand are likely to be based in Wales—perhaps the Minister can confirm that.

6.15 pm

I understand that the Welsh Government have had intensive negotiations with UK Ministers to establish an appropriate role for Welsh Ministers in the appointment of an IMA member with knowledge of conditions in Wales. This does not involve Welsh Ministers appointing such a person, or them having a veto on any such appointment. However, I suggest it does require that UK Ministers seek the agreement of Welsh Ministers to the appointment of a named individual, and, if such agreement is not forthcoming, to make public their reasons for this.

When this agreement was reached between Ministers at Westminster and the Welsh Government, the draft Bill did not contain any provision for Ministers, by regulation, to transfer the functions of the IMA to another body. That is why, now, we need this amendment. It is necessary to include this provision to ensure that there is no danger of UK Ministers circumventing the appointment of members. Over the decades, there could be good reasons for a number of cases falling and for the merging of the IMA's functions with another tribunal or court. If that is to happen, it is essential that these safeguards are built in. The point of this amendment is to try to ensure that that happens, if not in the Bill then perhaps by a statement from the Minister responding tonight. That would give some assurance that the agreement reached privately in Cardiff underpins the Government's thinking at this stage in the process of the Bill.

Baroness Finlay of Llandaff (CB): My Lords, the background to this amendment has been well explained by both my friends who have spoken. I would like to stress the importance of this as signalling to the Welsh Government a way forward and a real commitment to make sure that the devolution settlement is respected, now and into the future. Amendment 59 seeks to ensure that if the functions are transferred to another body—I stress "if"—the same obligations should apply as far as is possible in respect of the appointment of a member with a knowledge of Wales.

We now have legislation and regulations in Wales which are interpreted as providing a degree of divergence in some areas; health has already been cited and other areas include education, agriculture and local environment. Therefore, a very real difficulty could arise if the function is transferred to a body that has a mandate only for England, or to a body with governance that does not involve members from Wales who have a working knowledge of Wales and understand the detail of the regulation by which the Welsh Government have overseen services and their organisation and strategy.

If the Minister believes that such an amendment is unduly detailed for inclusion in the Bill, I hope that, at a minimum, he will make a commitment before the House that Ministers intend to act in accordance with the spirit of the provisions on the IMA if functions are at any time transferred to another body.

Baroness Humphreys (LD): My Lords, my contribution to this debate on Amendment 59 will be very brief, because everyone has said what I want to say. I am grateful to the noble and learned Lord, Lord Thomas of Cwmgiedd, for tabling this amendment and giving me the opportunity to add my name to it. I am also grateful for the detailed analysis that he and the noble Lord, Lord Wigley, provided, and for the comments of the noble Baroness.

The independent monitoring authority for citizens' rights will, as noble Lords have outlined, be composed of an independent board of members with experience of matters covered by the citizens' rights agreements, and—this is important—knowledge of the relevant laws and issues in Scotland, Wales, Northern Ireland, and, I believe, Gibraltar. As the noble Lord, Lord Wigley, pointed out, it is important to note that these qualifications for membership of the IMA are the result of many hours of negotiation between the Government and the devolved Administrations. The qualifications have been

[Baroness Humphreys]
taken very seriously. The amendment seeks to ensure that if the functions of the IMA are transferred to another body, the same qualifications for membership of the new body should apply. This seems to be an eminently sensible, simple and straightforward request. I hope that the Minister can commit to it from the Dispatch Box tonight.

Lord Howarth of Newport: My Lords, I want to underscore the very important point that was very well made by the noble and learned Lord, Lord Thomas, about the need for courtesy and respect. The union is under considerable stress. The stress is perhaps less severe between Wales and England, because Wales voted to leave the European Union. None the less, we are dealing with very sensitive matters. It is surely elementary that the UK Government in London should consult and proceed with the maximum delicacy and sensitivity. There will be sensitive questions when it comes to the implementation of many of the arrangements that feature in our EU withdrawal. The right of Wales to diverge on the implementation of these regulations and other matters will obviously be important to respect.

At the same time, it will be very important that in Wales there is a recognition that divergence can be a fairly perilous course. Given this range of sensitivities, it would send a very helpful signal if the Government accepted Amendment 59. I cannot imagine why they would have any difficulty in doing so. It would signal their intent to continue in a fully conciliatory, fully constructive spirit of co-operation and respect for the rights of the devolved Administrations.

Lord McNicol of West Kilbride: My Lords, I rise to speak to Amendments 58 and 60. The noble Lord, Lord Greaves, has touched on many of his probing amendments, and there has been much debate about Amendment 59, so I do not need to cover that.

The establishment of the independent monitoring authority is an important step in implementing the UK's obligations to EU citizens under the withdrawal agreement. However, the Government's approach to the IMA leaves a number of important questions unanswered, hence the large number of probing amendments in this and other groups. There are concerns regarding the delegated powers, allowing Ministers to transfer the IMA's functions—or even wind the organisation up—by statutory instrument, hence the amendment in my name.

At ministerial briefings, the Minister has explained that, later in the withdrawal process, it may make sense for the IMA's functions to sit elsewhere. Can the Minister give an example of where those functions may be moved to, and why this would be preferable to maintaining an independent body? Can he also confirm that in the event of such transfers there will be no practical impact on citizens? Finally, can he provide assurances that, in the spirit of co-operation, the Joint Committee will be fully briefed regarding any changes to the IMA or the exercise of its functions? To touch very briefly on Amendment 59, in the name of the noble and learned Lord, Lord Thomas, again many important issues are raised regarding the transfer of functions, aiming to ensure that the new executors of such functions would need specific knowledge of UK nations and the regions.

Lord Keen of Elie: I am obliged to all noble Lords who have contributed. Like many noble Lords who have already spoken, I am conscious of the sensitivities that surround the devolved settlement that could impinge upon its success in the future.

Let us be clear: Clause 15 is essential to implement our international legal obligation under the withdrawal agreement and under the EEA-EFTA separation agreement, which requires that we establish an independent monitoring authority. I hope that it also demonstrates our commitment to protecting the rights of those citizens covered by the agreements. Therefore, it is necessary for Clause 15 to stand part of the Bill.

Of course, the IMA will offer an important layer of additional protection over and above the wide range of complaint and appeal routes that already exist for EU citizens in the United Kingdom. However, expanding the IMA scope through Amendment 57—as proposed by the noble Lord, Lord Greaves—would, I fear, divert the body's resources from its important role monitoring citizens' rights and obligations. Therefore, I would resist such an amendment. It also risks creating unhelpful duplication, with all the confusion and wasted resources that could accompany that, so I invite the noble Lord, Lord Greaves, to withdraw that amendment.

The withdrawal agreement requires that the IMA be established by the end of the implementation period; that is the goal. The appointment of an interim chief executive to the IMA—a point raised by the noble Lord, Lord Greaves—is considered vital to meeting that deadline, as it will be essential from the point of view of staffing and procurement decisions that will need to be taken in advance of that date. Indeed, there have been other examples of interim chief executives being appointed to such bodies in order that suitable preparation can be made for them to be up and running at the appropriate time. Removing that provision through Amendment 47 would jeopardise the timely establishment of the IMA, and risk putting us in breach of our international law obligations. I hope that I have explained the rationale for that approach.

In order to give full and proper effect to our obligations in international law, we have designed the IMA to be robust and independent, in line with the best practice for the establishment of new public bodies. While I understand the intention behind a number of the amendments in the name of the noble Lord, Lord Greaves, which he perceives as strengthening the independence and robustness of the IMA, I hope I can assure him that they are unnecessary. I appreciate that they are essentially probing amendments in order that we can explain the position.

Lord Kerr of Kinlochard: Perhaps I may probe a little further. The independence of this authority is important—important because we have agreed to introduce an independent authority and important to those whose affairs it will be keeping an eye on.

When I was a Permanent Secretary, I would have had no difficulty in coming to the conclusion that a number of non-departmental bodies could be abolished

and their functions transferred elsewhere because it would be more efficient, effective and economical to do so. The test in paragraph 39(2) of Schedule 2 is not hard for the Executive to meet. Does the Minister think that the body is more likely to be independent, feel independent and be seen as independent if it is continually under the threat of the sentence of death in paragraph 39(1), which says that its powers can be transferred? I agree that it is a habit for quangos to survive long beyond their natural useful lives, but what is the rationale for this power transfer by regulation? Is the Minister convinced that the test of efficiency, effectiveness and economy does not slightly conflict with the requirement for independence?

6.30 pm

Lord Keen of Elie: My Lords, the noble Lord perhaps anticipates what I shall come to in the course of my reply—how prescient he is in that regard.

The body is not under a sentence of death and the rationale for the ability to transfer was hinted at by the noble Lord when he talked about bodies that had long outlived their usefulness. I will elaborate on this point in a moment, but I certainly do not consider that the provisions of paragraph 39 impinge on the effective independence of the IMA. I would add—I will elaborate upon this—that we must have regard not only to the intentions of the Executive but to the joint committee and, therefore, to the interests of the other party to the international agreement that has given birth to the IMA.

Let me continue with the point I was about to raise on some of the further amendments spoken to by the noble Lord, Lord Greaves. First, on Amendments 52 and 53, which seek to remove certain standard provisions for remuneration in respect of public bodies, he alluded to the term "gratuity". There are circumstances in which public servants are brought into a body but, for one reason or another, their position is terminated early or prematurely and consideration has to be given to the question of gratuities. Where public servants are already employed in a position where they can be remunerated and there is a provision for gratuities to attract suitable employees into bodies such as the IMA, one must generally have regard to equivalence of terms and conditions. Therefore, because that appears in the context of other public bodies, it is repeated in the context of this legislation.

Amendment 54 would remove provisions that provide a proportionate and sensible way of approaching potential conflicts of interest for IMA members. At all times those members will be expected to adhere to the Cabinet Office *Code of Conduct for Board Members of Public Bodies*, and the approach set out in this paragraph in its unamended form is consistent with the code. For example, an individual member may make a subjective decision that they should disclose a conflict of interest but the board may determine objectively that it is not a pertinent conflict of interest and that they can therefore continue. That is why the matter is expressed in those terms.

The Government also expect the IMA to follow best practice in relation to its own transparency. Therefore, we regard Amendments 55 and 56 as unnecessary. Indeed, amending the Bill in the way proposed by the noble Lord, Lord Greaves, would take decisions around its transparency away from the IMA and thus, essentially, undermine its status as an independent body. We regard the IMA as essentially an independent body but, while enjoying the status of an independent body, it must be able to discharge certain functions as it sees appropriate, albeit while having regard to the relevant codes.

There is also a reference to not charging for the body's functions in Amendment 61. That is unnecessary because this body will not charge for its functions. They are essentially systemic—as the noble Lord, Lord Greaves, appreciated, it is not a case of individual applications and individual disposals—and there is no room for any form of charging. Again, we feel it is unnecessary to consider that amendment.

On the point raised by the noble Lord, Lord Kerr of Kinlochard, important though the IMA will be in providing additional assurances that citizens' rights will be protected, we do not expect its functions to be required in perpetuity. Indeed, the withdrawal agreement recognises that reality. Years from now, it might be more appropriate and effective to protect these rights differently. It is for this reason that we have included two powers in Schedule 2: one to transfer the IMA's functions to another body under paragraph 39 and the other to remove or abolish the IMA's functions under paragraph 40, but only following a decision by the relevant joint committees to do so.

As noble Lords have appreciated, the first power is about future-proofing to make sure that citizens' rights obligations are monitored as effectively and efficiently as possible in the future. Indeed, years from now, the type of oversight needed for the UK's citizens' rights obligations and the wider UK regulatory landscape may have changed materially from what it is today, and in such new circumstances it may be more appropriate and effective for another public body to perform the IMA's role. Removing that power, as would be required by Amendment 58, spoken to by the noble Lord, Lord McNicol, would make us less capable of ensuring that we are in a position to provide an efficient and effective monitoring of citizens' rights and obligations.

In any event, we would be sure to keep the EU and the EEA EFTA states appropriately informed of any decision to transfer the IMA's functions. Again, that would be by way of the joint committee and would not involve some unilateral executive action by the UK Government. Indeed, if this power were ever used, we have ensured that it would not affect the independence and effectiveness of how citizens' rights obligations are monitored. The Secretary of State must have regard to the need for the transferee to possess the necessary independence and resources to provide effective oversight of citizens' rights obligations.

Let me reassure the House that the commitments we have made to the devolved Administrations about their role in the Independent Monitoring Authority will be upheld in the event that its functions are transferred to another public body. We have designed this power so that the Secretary of State can make any modifications that he considers appropriate to the constitutional arrangements of the transferee. This will ensure that an equivalent to the important role of the devolved Administrations in the IMA is replicated for the transferee. I hope that reassures the noble and learned Lord, Lord Thomas of Cwmgiedd—I apologise

[Lord Keen of Elie]
if I have mispronounced the Welsh—and other noble Lords that, in these circumstances, Amendment 59 is unnecessary.

As I indicated, we have included a second power to abolish the IMA, which can be exercised only following a decision by mutual consent through the relevant joint committees, comprising representatives of the UK on the one hand and the EU and EFTA states on the other. This power can do no more than give effect to a decision at the international level. It cannot be exercised following a unilateral decision by the Secretary of State or the Executive. We would give extremely serious consideration to any decision to agree to abolish the IMA and I am confident that the EU and EFTA states would do likewise.

Lord Wigley: Will the Minister also confirm that if we were to find ourselves wanting to propose such a change to our former European colleagues there would have been consultation with the devolved authorities before that stage?

Lord Keen of Elie: My Lords, it is of the nature of the IMA's function that it involves consideration of the views of the devolved Administrations and Gibraltar. It also involves consideration of the interests of those in England. We have to have regard not only to Wales, Northern Ireland and Scotland but, in this context, England and Gibraltar. It would be appropriate to consider all their interests if we were to put forward a proposal for the abolition of the IMA. Indeed, I find it difficult to conceive of a situation in which we could put forward a proposal for the abolition of the IMA at the joint committee without having consulted the devolved Administrations. It strikes me as so improbable that one should not give much weight to it.

Baroness Finlay of Llandaff: I hope the Minister will forgive me interrupting. I was wondering whether I would wait until the end of his remarks, but this follows on from the question asked by the noble Lord, Lord Wigley. In the event of the transfer to another body and a view that the IMA could be slimmed down, can the Minister provide assurance that the required consultation of the devolved Administrations would happen—with the devolved Administrations having a say rather than it being tokenistic consulting; I am not asking for a veto—and that there would be no possibility of them then being charged in any way or being requested to provide financial support for having as a member somebody who had particular knowledge of their area, whether it is Wales, Scotland, Gibraltar or Northern Ireland?

Can the Minister explain to me—this is my ignorance—why paragraph 39(1)(b) of Schedule 2 is in italics and the other parts of the Bill are not? Is there some significance to it being in italics?

Lord Keen of Elie: My Lords, I am not immediately aware of the significance of the italics, but no doubt someone will pass me a piece of paper in a moment that explains them—or not, as the case may be.

We have not yet determined the cost—this also responds to a point made by the noble Lord, Lord Greaves—or budget requirements for the IMA. I therefore cannot comment further on that. The obligation to ensure that it is fully and properly funded lies on the Secretary of State and therefore on the UK Government. What further or future negotiation there might be about cost sharing is a matter beyond the terms of the Bill. I would imagine that if we start with an obligation that lies with the Secretary of State and the UK Government it will not easily be transferred in any form to the devolved Administrations. Perhaps one day we will have a reverse Barnett formula, but we do not have one at present.

In the circumstances I have set out I hope it will be appreciated by the noble Lord, Lord McNicol, that Amendments 58 and 60 are not required in this context. The approach that we take to exercising the powers with regard to the IMA will be proportionate and appropriate and it would therefore not be necessary or appropriate that the procedures in the Public Bodies Act 2011 should apply. The bodies to which that procedure usually applies are those established on the basis of domestic policy. It will be appreciated that this is a rather different body which is the product of an international agreement and therefore it has to comply with the obligations we have entered into at the level of international law and it should not be tied to domestic legislation.

On the noble Baroness's observations about the italics that appear in the Bill, it may well be that she alighted upon an issue that may arise later in the day, but I am advised very clearly that it is a misprint. Apparently, the entire Bill should have been in italics.

I have sought to reassure noble Lords about the concerns that have been raised and which have motivated these amendments. We have sought to design the IMA to provide robust, effective and fully independent oversight of citizens' rights and our commitment to citizens' rights. It is necessary to bear in mind that we are implementing international law obligations that we have incurred by entering into the withdrawal agreement. The clause and the schedule in their present form meet those international obligations and the demand for robust, effective and fully independent oversight of citizens' rights and obligations. I hope that noble Lords will not press their amendments.

Lord Greaves: My Lords, I am very grateful to the Minister for the time and effort he has taken to go through all the points raised and, I think, to give us a certain amount of new information or extra information about how the IMA will work and about the Government's thinking on it. This debate has been valuable. I am grateful to everybody who has taken part, and particularly for the snapshot we have had of the devolutionary thinking among Welsh Members of the House. I found it very interesting and useful.

The only question the Minister did not answer was about whether the IMA is going to be based in the north of England. Perhaps that is beyond his pay grade—I think he agrees with that.

Clause 15 agreed.

Clauses 16 to 20 agreed.

House resumed.

Iran: Joint Comprehensive Plan of Action
Statement

6.47 pm

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, with the leave of the House, I shall repeat a Statement given in another place this afternoon by my right honourable friend the Foreign Secretary. The Statement is as follows:

"With permission, Mr Speaker, I would like to make a statement on the Iran nuclear agreement, known as the Joint Comprehensive Plan of Action—the JCPOA. I addressed the House yesterday on the wider concerns in relation to Iran's conduct in the region. The strategic aim for the United Kingdom, and our international partners, remains as it has always been: to de-escalate tensions; to hold Iran to account for its nefarious activities; and to keep the diplomatic door open for the regime to negotiate a peaceful way forwards.

Iran's destabilising activity should serve as a reminder to us all of the danger to the region and to the world if Iran were ever to acquire a nuclear weapon. We cannot let that happen. With that in mind, today, the E3, consisting of the United Kingdom, France and Germany, have jointly taken action to hold Iran accountable for its systematic non-compliance with the JCPOA. As the European parties to the deal, we have written to the EU High Representative, Josep Borrell, in his capacity as co-ordinator of the JCPOA. We have formally triggered the dispute resolution mechanism, thereby referring Iran to the joint commission.

Let me set out the pattern of non-compliance by the regime that left us with no credible alternative. Since last May, Iran has, step by step, reduced its compliance with critical elements of the JCPOA, leaving it a shell of an agreement. On 1 July 2019, the IAEA reported that Iran had exceeded key limits on low-enriched uranium stockpile limits. On 8 July, the IAEA reported that Iran had exceeded its 3.67% enriched uranium production limit. On 5 November, the IAEA confirmed that Iran had crossed its advanced centrifuge research and development limits. Then, on 7 November, the IAEA confirmed that Iran had also restarted enrichment activities at the Fordow facility, a clear violation of JCPOA restrictions. On 18 November, the IAEA reported that Iran had exceeded its heavy water limits, and on 5 January of this year, Iran announced that it would no longer adhere to JCPOA limits on centrifuge numbers.

Each of those actions individually were serious. Together, they now raise acute concerns about Iran's nuclear ambitions. Iran's breakout time—the time it would need to produce enough fissile material for a nuclear weapon—is now falling, and that is an international cause of concern. Time and time again, we have expressed our serious concerns to Iran and urged it to come back into compliance. Time and time again, in its statements and, more importantly, through its actions, it has refused, undermining the very integrity of the deal and flouting its international commitments. Iran's announcement on 5 January made it clear that it was now effectively refusing to comply with any of the outstanding substantive restrictions that the JCPOA had placed on its nuclear programme.

To be clear, on that date the Iranian Government stated that their

'nuclear program no longer faces any operational restrictions, including enrichment capacity, percentage of enrichment, amount of enriched material, and research and development.'

Therefore, with regret, the E3 was left with no choice but to refer Iran to the JCPOA's dispute resolution mechanism. The DRM is the procedure set out in the deal to resolve disputes between the parties to the agreement. Alongside our partners, we will use this to press Iran to come back into full compliance with its commitments and honour an agreement that is in all our interests.

The European External Action Service will now co-ordinate and convene the DRM process. As a first step, it will call a meeting of the joint commission, bringing together all parties to the JCPOA within 15 days. This process has been explicitly designed to allow participants flexibility and full control at each and every stage.

Let me be clear to the House. We are triggering the DRM because Iran has undermined the objective and purpose of the JCPOA, but we do so with a view to bringing Iran back into full compliance. We are triggering the DRM to reinforce the diplomatic track, not to abandon it.

For our part, as the United Kingdom, we were disappointed that the US withdrew from the JCPOA in May 2018, and we have worked tirelessly with our international partners to preserve the agreement. We have upheld our commitments, lifting economic and financial sanctions on sectors such as banking, oil, shipping and metals. We lifted an asset freeze and travel bans on listed entities and individuals. We have sought to support a legitimate trade relationship with Iran. The United Kingdom, France and Germany remain committed to the deal and we will approach the DRM in good faith, striving to resolve the dispute and bring Iran back into full compliance with its JCPOA obligations.

As I made clear to the House yesterday, Iran has a choice. The regime can take steps to de-escalate tensions and adhere to the basic rules of international law or sink deeper into political and economic isolation. So, too, Iran's response to the DRM will be a crucial test of its intentions and good will.

We urge Iran to work with us to save the deal. We urge Iran to see this as an opportunity to reassure the world that its nuclear intentions are exclusively peaceful. We urge the Iranian Government to choose an alternative path and engage in diplomacy and negotiation to resolve the full range of its activities that flout international law and destabilise the region. I commend this Statement to the House."

6.54 pm

Lord Collins of Highbury (Lab): My Lords, I thank the Minister for repeating the Statement, which we welcome, as well as the action that has been taken today alongside our European partners.

The joint statement by the E3 at the weekend concluded that the JCPOA plays a key role in ensuring that Iran never develops a nuclear weapon. It also expressed regret and concern about the US withdrawal

[Lord Collins of Highbury]
from the JCPOA and its reimposition of sanctions on Iran. It argued, quite rightly, that Iran must be obliged to return to full compliance with its side of the agreement.

However, the exchanges in the other place today focused not on the Statement but on the words of the Prime Minister this morning on BBC "Breakfast", during which he said, "The problem with the JCPOA is basically—this is the crucial thing, this is why there is tension—is from the American perspective, it's a flawed agreement. It expires, plus it was negotiated by President Obama." He continued, "From their point of view, it has many, many faults. Well, if we're going to get rid of it, let's replace it, and let's replace it with the Trump deal." Therefore, are we calling for the retention and restoration of the JCPOA as stated in the E3 statement or not? Does the Minister believe that it is better to build on the JCPOA or, as Trump has done, to walk away from it?

This afternoon, the Foreign Secretary referred to the discussions in Biarritz last year in which he said that the Prime Minister, the United States and our European partners are fully open to a broader initiative that addresses not just the nuclear concerns but the broader concerns about the destabilising activity that we have seen recently. He argued that we can preserve the deal but be ambitious and, if possible, bring the United States and Tehran into a broader rapprochement, dealing not just with the nuclear issue but with the wider destabilising activities.

Surely if we want to keep the transatlantic alliance together and bring about a broader rapprochement between the US and Iran, we need to build confidence and be clear about our position. I am afraid that today the one thing that we have not seen is clarity about the Government's position. Can the Minister tell us how such an alternative deal differs from the current JCPOA? Perhaps he can explain why parties to the original agreement would have confidence that any new one would be complied with.

Finally, there is one other aspect to this terrible situation and that is the plight of the nationals and dual nationals from our country and other countries around the world held in detention. The Foreign Secretary said that their plight is at the forefront of the Government's mind. Can the Minister update us on the efforts and progress that have been made to secure their release? The Foreign Secretary said that Iran cannot continue its appalling behaviour in the treatment of dual nationals without being held to account. Therefore, I hope that the Minister will tell us precisely how we intend to do that.

Baroness Northover (LD): My Lords, I too thank the Minister for repeating the Statement. Does he notice the marked difference in tone between that Statement and the joint statement from the E3 to which the noble Lord, Lord Collins, has referred, which is from the Foreign Ministers of France, Germany and the United Kingdom? He will doubtless say that he does not see a marked difference.

The E3 statement is clear and unequivocal but statesmanlike. It argues that we

"share fundamental common security interests, along with our European partners. One of them is upholding the nuclear non-proliferation regime, and ensuring that Iran never develops a nuclear weapon."

That is absolutely right. It argues that the JCPOA

"plays a key role in this respect, as our Leaders have just unambiguously reaffirmed."

It states that the JCPOA is

"a key achievement of multilateral diplomacy".

It therefore goes on to say:

"Together, we have stated unequivocally our regret and concern at the decision by the United States to withdraw from the JCPoA and to re-impose sanctions on Iran. Since May 2018, we have worked together to preserve the agreement. The E3 have fully upheld our JCPoA commitments, including sanctions-lifting as foreseen under the terms of the agreement."

It continues by saying:

"In addition to the lifting of all sanctions, required by our commitments under the agreement, we have worked tirelessly to support legitimate trade with Iran."

The E3 states that, since 2018 and especially recently, we

"have worked hard to address Iran's concerns"

and

"sought to persuade Iran to change course"

in relation to it not meeting some of its obligations. It states that the E3 is referring Iran to the dispute resolution process

"in good faith with the overarching objective of preserving the JCPoA".

I have quoted at length so that noble Lords can see the difference between what the Minister has just read out, and the E3 statement. Does he agree that the E3 statement is reasoned and reasonable? He must do so because our Foreign Secretary agreed to it. We claim in the E3 statement that we are referring Iran to the dispute resolution mechanism in good faith because we support the JCPOA. How does that square with what we have just heard is coming from the very top of the Government: that they agree with the US that this is an inadequate deal?

Does the Minister agree with the noble Baroness, Lady Ashton, who played such a key role in the negotiation of this agreement and described it as a "boulder in the door"? How are we seeking to de-escalate tensions when at the same time, we accuse Iran in the Statement he has just read out of "nefarious" intentions? Does the E3 statement square with what the Minister has said about this being a "shell of an agreement"?

It is two and half pages into this Statement before we hear that the UK is "disappointed" that the US withdrew from the JCPOA in May 2018. We rightly seek that Iran comes back into compliance, but where is the request that the US comes back into compliance? We have indeed upheld our commitments, but does the noble Lord not accept that the US's legal reach means that companies do not want to trade with Iran lest they end up in the US courts, and that, therefore, the bringing of Iran back into the global fold has been severely damaged by US actions? How does the Minister square that with what is being asked of Iran?

Which line do the Government support—the EU-supported JCPOA or Trump's point of view? Meanwhile, we see convulsions in Iran over the shooting down of the Ukrainian plane and the lies that followed that. Does the Minister agree that the strong reaction

in Iran is encouraging and reflects, as ever, the complexity and levels of education and information prevalent in Iranian society?

Might this not be a time to be statesmanlike and request, for example, that the Iranians take this opportunity to release dual nationals on compassionate grounds? It is highly likely that many in the Iranian population are well aware of their plight and would have sympathy with the release, for example, of Nazanin Zaghari-Ratcliffe, so that she can rejoin her husband and little daughter. As we seek to make such a case, can the noble Lord tell me precisely when the Prime Minister will meet Richard Ratcliffe to take this forward?

The Government are right to urge de-escalation. Does the Minister agree that it is vital that we work internationally and with our EU partners to assist that process, or does he think we should be moving away from this position and towards that of President Trump?

Lord Ahmad of Wimbledon: My Lords, I thank both the noble Lord and the noble Baroness for their comments and the general thrust of support from both Benches.

In picking up on some of the questions and issues raised, I first note that both the noble Lord and the noble Baroness mentioned the E3 statement of 12 January. It is right: we are members of the E3 and the mechanism has been invoked in partnership. It is an E3 decision. The noble Baroness felt there were nuanced differences between the Statement I read out and that of the E3. The language is of course agreed with our partners, but the general thrust of both statements is very much inclined towards ensuring a diplomatic solution and that the diplomatic channel with Iran remains firmly open.

It is with deep regret that this mechanism has been invoked. The noble Baroness spoke of the sterling work of the noble Baroness, Lady Ashton, who I know and respect greatly, and yes, she played an instrumental part when the JCPOA came to fruition. However, as the Statement outlined, we have seen in recent months—I outlined specific dates—Iran's continuing non-compliance. On the issue of squaring off and my speaking of "nefarious activities", it is obvious that the dispute mechanism would only have been invoked because of non-compliance. It is regrettable, but Iran has taken steps which justify the action that we have taken, not alone but in partnership with the E3.

I turn to another issue that the noble Lord raised concerning the Prime Minister's Statement this morning, which I have just read out. The Prime Minister has been very clear and the E3 statement of 12 January—from Chancellor Merkel, President Macron and our Prime Minister—was also clear about our position and continued commitment to the JCPOA. We have had various debates in your Lordships' House in which we have all agreed that even at its outset, the JCPOA was limited in certain respects and did not cover the full range of the challenges faced, ballistic missiles being one notable example. Nevertheless, it remains the only deal in town. It is therefore right that we invoke this mechanism, not to end the deal but, I say to both the noble Lord and the noble Baroness, to ensure that we can leave that diplomatic channel open. The mechanism was set up for that very reason.

The noble Baroness rightly spoke about de-escalating tensions. I am proud of the role that the United Kingdom has played in what has been a very challenging situation in the region and in Iran specifically, together with our partners, most notably Germany and France. In this respect, I would suggest that we are in a better place today than we were perhaps 24 or 36 hours ago. However, notwithstanding the tensions being de-escalated, when it comes to the JCPOA deal itself, it is of deep regret that the actions of Iran have led to the action we have had to take.

The noble Lord and the noble Baroness both rightly raised the issue of dual nationals. I assure all noble Lords that we will continue to take all action on all consular cases in Iran, in line with what we believe will produce the right outcomes. On 6 January, the Foreign Secretary spoke to Foreign Minister Zarif in Iran and again raised the very serious concerns that the noble Lord and the noble Baroness raised today—and rightly continue to raise—about Iran's practice of detaining foreign and dual nationals. As noble Lords are aware, Iran does not recognise dual nationality. However, notwithstanding that point, we continue to raise these issues consistently. I cannot give the noble Baroness a specific date for any future meeting between the Prime Minister and Richard Ratcliffe, but I assure her that we continue to engage with and support all families that seek support. I last met Richard Ratcliffe in September, during the UN high-level week. We will continue to support the families and to stress upon Iran the need for their immediate release.

The noble Baroness raised the tragic shooting down of the Ukrainian jet. I am sure I speak for all noble Lords across this House when I say that first and foremost, our prayers and thoughts are with those families. In one particular instance, there was a couple who had just got married. We have not just relayed messages to our partners. The Prime Minister has spoken to President Zelensky of Ukraine and I know the Foreign Minister has engaged with all Foreign Ministers in this respect. I myself earlier this week visited Canada House to pay respects to the Canadian victims of this tragedy. It is important that we work together. We have made it clear to the Ukrainians as well as the Iranians that we stand ready to assist with the expertise that we can provide to ensure a full, transparent and complete investigation of this incident. I assure the noble Baroness that we will continue to make representations in this regard.

I hope I have answered the questions and concerns that have been raised. This is a very serious situation. The JCPOA was negotiated through great compromises that were made. It remains, as I said, the only deal on the table, and we will continue to work to retain it.

7.11 pm

Lord Lamont of Lerwick (Con): My Lords, I draw attention to my entry in the register of Members' interests. I am the unremunerated chairman of the British Iranian Chamber of Commerce and, as my noble friend knows, the Government's trade envoy to Iran.

I associate myself completely with what the Minister said condemning Iran's destabilising behaviour and its treatment of dual nationals. I particularly condemn

[Lord Lamont of Lerwick]
the arrest of our ambassador, Robert Macaire, which was a dreadful act. Having said that, is this Statement not rather one-sided, as the noble Baroness pointed out, in saying that Iran has undermined the JCPOA without equally and first stressing that the US withdrew from the JCPOA and then, even though Iran was in compliance, imposed punitive sanctions depriving Iran of any benefit at all from the agreement? Is it not also rather hollow to claim that Europe has kept its side of the agreement because it has lifted sanctions when, as we all know, the effect of American sanctions on Iran has been that the lifting of European sanctions has been completely ineffective? Trade with Europe has completely collapsed, the currency has collapsed, basic foodstuffs in Iran have increased in price by 100% and poverty has risen to some 30% of the population. It is not surprising that Iran feels that it has got nothing out of the agreement.

The Minister rightly listed all the different respects in and occasions on which Iran has openly and deliberately broken the agreement, but is it not the case that on each occasion Iran has said that the step breaching the agreement would be reversible if Europe was able to make the agreement effective and kept its side of the bargain? Is it not therefore understandable that Iran feels that the ball is somewhat in Europe's court because Europe has not made the agreement effective?

Lastly, is there not a real danger in invoking the resolution mechanism, whose outcome we know is completely predictable, that we are driving Iran towards leaving the non-proliferation agreement, which it still complies with? It would be a great mistake if that happened.

Lord Ahmad of Wimbledon: My Lords, on my noble friend's final point, as I said regarding the listing of the contraventions on the Iranian side, it is right that we, of course, have not taken this action on our own; as I said, we have done so after careful consideration and in line with our partners in Europe—namely, Germany and France. I said during the Statement that, while agencies still have access to Iran, we cannot continue with the state of non-compliance on the Iranian side.

My noble friend rightly raises the issue of the US pulling out of the JCPOA. We have been consistent: we did not agree with the US's actions, but that was a matter for the US. Having said that, we also strengthened our work with our European partners to ensure that we keep the JCPOA alive. As noble Lords will know, we have been exploring the INSTEX mechanism to see how we can alleviate the impact and implications of the US sanctions on Iranian society, the Iranian people and key sectors such as pharmaceuticals. We continue to work. The mechanism has not yet originated any particular deals, although there are several in the pipeline.

I also fully accept that there are very challenging circumstances facing the Iranian people. That is why we continue to stress to the Iranians—and yes, we raise it with our American allies as well—the importance of the diplomatic channel to reduce tensions and ensure that in the first instance we get Iran back to the table on the JCPOA, as well as, as the Prime Minister said back in September, looking towards the future and the long term to see how we can strike wider deals in this respect.

Lord Judd (Lab): My Lords, does the Minister agree that, at the very least, there is a significant difference in emphasis between what the Prime Minister said this morning and the Minister's very measured and careful words in this House? On such a crucial issue, is it not essential that the Government sing from the same sheet and that we know clearly, with absolute certainty, what the Government's position is? That must mean that the Prime Minister gives it his full approval.

Surely this whole situation brings home that we have no alternative but to stay very close to our European partners, in this as in other matters. Does the Minister also agree that, on the wider issue of non-proliferation across the world as a whole, it is crucial that we do not get into a situation where we appear to be telling the rest of the world what they must do without ourselves giving full regard to the undertakings that we have given in the non-proliferation treaty, and that those undertakings become more important than ever because we have to win collective, international, shared responsibility to handle the whole future of this in the interests of humanity?

Lord Ahmad of Wimbledon: I agree with the noble Lord. It is important that we stay in lock-step with all our allies, and on this particular issue I think we have shown and demonstrated that. With the rising tensions in the Middle East, my right honourable friend the Foreign Secretary has undertaken a series of shuttle diplomacy and he has been travelling quite regularly to Brussels to speak with European partners. The action that we have taken in invoking this particular mechanism reflects the strength of the relationship within the E3.

The noble Lord raised the Prime Minister's statement. The Prime Minister is very committed. In the joint statement with President Macron and Chancellor Merkel over the weekend he committed to ensuring that we keep the diplomatic channel open with Iran, and that the mechanism that has been invoked leads to Iran coming back to the table. On ensuring the non-proliferation of nuclear weapons, we remain very committed across the world that the JCPOA is the deal on the table when it comes to Iran. Since its inception it has provided the very mechanism and means to ensure that Iran does not develop a nuclear weapon.

Lord Hannay of Chiswick (CB): My Lords, first, while I thank the Minister for repeating the Statement, would he not agree that it is a little rash to jump to the conclusion that this move to trigger the dispute settlement process will be a positive one which brings positive results? It is far too soon and time alone will show that.

Secondly, would the Minister not agree that the one thing that is least likely to happen is that a way out of the problems we are all in, which are extremely serious, will be found through the dispute settlement procedure? Frankly, that is not credible because it is a confrontational procedure between those who have triggered it and the

Iranians, and even more so because a party which has certainly transgressed the JCPOA will not be there. Perhaps the Minister will tell us that the United States will turn up all of a sudden, having walked away from the deal, but I doubt it.

Thirdly, could he tell us whether the Foreign and Commonwealth Office is now giving some serious thought to making best use of any time gained by scaling down the confrontation in this way or any other to addressing some of the serious substantive issues that are at stake? In particular, will it address some of the sunset clauses in the JCPOA, which quite rightly give all of us considerable concern and which will have to be addressed in a timescale that is getting shorter all the time?

Lord Ahmad of Wimbledon: My Lords, I assure the noble Lord that we remain very much committed to the JCPOA. He says that the triggering of this mechanism was perhaps premature. I do not agree. I think we took a very considered position, one which is very much aligned with that of our European partners. The triggering of the provisions within the mechanism is done to bring the respective parties to the JCPOA to the table. In this case, after careful consideration, we believe that this is necessary for the very reasons I listed: the various instances of non-compliance from Iran on Iranian enrichment and so on.

The noble Lord talked about de-escalation and using this as an opportunity to address substantive issues in the region. We remain very much committed to that. When asking his question earlier, my noble friend referred to the detention of the British ambassador. This was totally against any diplomatic convention. It was unacceptable and that point has been relayed to Iran in very clear and unequivocal terms. Notwithstanding this action from Iran, we retain our diplomatic mission there and the strength of our diplomatic engagement. I cannot agree with the noble Lord; we hope and believe that the triggering of this mechanism will result in Iran reconsidering its non-compliance and returning to the table. I stress again that while there may be other deals in the future, the current deal is the JCPOA and we must do our utmost to ensure we sustain it.

Lord Campbell of Pittenweem (LD): My Lords, I am very tempted to say that I agree with everything that has been said in response to the Statement and sit down. However, I want to make one or two points. First, inconsistency at the heart of government on a matter of such enormous significance in foreign policy is simply unacceptable. Somehow, somewhere, there has to be consistency. It may not be for the noble Lord to bring that about, but perhaps he might advise those who have some responsibility for it of the general attitude of those who have responded to the Statement.

Secondly, until the United States unilaterally withdrew, Iran was in full compliance. Thereafter, as the noble Lord, Lord Lamont, pointed out, the United States embarked upon a severe programme of sanctions. In addition, there was common talk in Washington that the real purpose was regime change. Given that, is it any wonder that Iran should not continue with what might seem to it to be the only way of exercising influence: namely, failing to fulfil its responsibilities under the treaty?

Not only was the question of sanctions enhanced, there was the threat of regime change and, of course, it culminated in assassination. We must ask ourselves this, if I may put it this way: what possible incentive does Iran have to return to compliance so long as the United States has the avowed intentions which it has previously displayed in such a dramatic and effective fashion?

Lord Ahmad of Wimbledon: My Lords, what I can say in response to the noble Lord is that we consistently make the point to the United States, in all our exchanges, about the importance of retention. We have a different view on the JCPOA. Obviously, the United States left the JCPOA, and that was very much its unilateral decision. We do not agree with that. We still believe that there is a role for the JCPOA. It has been shown to work. The triggering of the mechanism will, we hope, also allow a continued commitment to the JCPOA.

The important issue in all this is that we need to see a decrease in tensions. The noble Lord talked of Qasem Soleimani; we debated that in your Lordships' House. I speak for Her Majesty's Government, and at all times the role we have sought to play in the first instance is one of de-escalation and in the second of ensuring that we keep all diplomatic channels fully open, whether we are talking about the current tensions or the situation around the JCPOA.

Lord Polak (Con): My Lords, I welcome the decision to trigger the dispute resolution mechanism. The suggestion from some noble Lords that Iran has kept to its side of the JCPOA in full is deeply questionable. One of the major criticisms of the JCPOA at the beginning was that it allowed Iran to continue its destabilisation of the region, so does the Minister agree that the only way forward is a complete redrafting, with provisions to curtail Iran's international aggression and financing of terror that were omitted from the original agreement?

Lord Ahmad of Wimbledon: My Lords, I agree with my noble friend that we have triggered this particular mechanism for the reason I reiterated. I do not think that the Statement I repeated from my right honourable friend could be any clearer; it was very clear in the detail. I state again that this was not a UK decision but one that we took in absolute lockstep with our European partners: namely, Germany and France.

We have been deeply concerned by Iran's continuing destabilising influence in the wider region as well and continue to make that point. My noble friend talked about limitations in the original deal. I have already said during this discussion that there were limitations to that deal. It did not cover certain elements, including ballistic missiles. I have also alluded to the fact—my right honourable friend the Prime Minister also made this point in September—that the JCPOA is the deal that we currently have. There may well be a time in the future when we look at a more all-encompassing deal that ensures that the United States can return to the table as well as Iran. It is the United Kingdom's view that we will continue to ensure that every element of

[Lord Ahmad of Wimbledon]
this deal is sustained and that we do not leave out any avenue that can ensure its retention, but at the same time we will work towards diplomatic solutions to what are rising tensions in the region.

Viscount Waverley (CB): My Lords, I of course wish that there be de-escalation, which is absolutely critical. The Government might wish to consider all means by which to achieve that. However, building on the point made by the noble Lord, Lord Lamont, in wishing to de-escalate has sufficient attention been paid to the authorities in Tehran and their view on what they would accept in order to fall back to compliance with what we would rightly call the norms?

On the point made by the noble Baroness, Lady Northover, and the noble Lord, Lord Collins, about dual nationals, it will be remembered that a British court has ordered the UK Government to return monies to the Iranians, for reasons that it felt were necessary, for the tank negotiations that fell foul. Can the Minister enlighten the House on what exactly the Government will do to comply with the UK court on this matter? This might help the process and the dual nationals whom everyone is very concerned about.

Lord Ahmad of Wimbledon: On the noble Viscount's final point, at the moment we are a fair way off discussing those kinds of matters in detail, but he is right to raise the court decision, which remains pending. The fact remains that there is no reason to detain these dual nationals. They have been held, we believe, against every norm of international law and Iran's repeated failure to recognise dual nationals—British nationals among them—is a major challenge.

The noble Viscount asked whether we have reiterated these points and taken the temperature of the situation with those leaders in Iran. In the last week or so, on 6 January my right honourable friend the Foreign Secretary spoke to Foreign Minister Zarif and on 9 January my right honourable friend the Prime Minister spoke to President Rouhani. We have also worked in co-ordination with our European partners, and they have been making their representations. There is a role to play in looking towards a future for Iran that reflects the will of its people, who I am sure want to see Iran's return. It is a rich country with rich history; the Persian culture has enriched the world. We shall certainly work towards ensuring that, along with those who seek diplomatic solutions and have the right intention for the Iranian people, we see a fully integrated Iran return to the global stage in a manner where it can play its part based on its history and enrich cultures around the world.

However, in ensuring that that happens, the first steps must be about ensuring what happens when you sign an agreement. I accept that there have been pressures from the US withdrawal because of the JCPOA, but that is one member of it and we have retained our commitment to it. Iran's continued denial, and now non-compliance, has resulted in the action we have taken. But I stress, in everything I have said, the importance of keeping diplomatic channels open and we will continue to stress that.

European Union (Withdrawal Agreement) Bill

Committee (1st Day) (Continued)

7.32 pm

Clause 21: Main power in connection with Irelandl Northern Ireland Protocol

Amendment 12

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

12: Clause 21, page 25, line 5, leave out "(including modifying this Act)"

Member's explanatory statement

This amendment would remove the ability to amend the European Union (Withdrawal) Act 2018 itself by statutory instrument in connection with the Ireland/Northern Ireland Protocol.

Baroness Hayter of Kentish Town (Lab): I think we have got here earlier than some other noble Lords anticipated, which is why I may be speaking a bit slowly. They still have not arrived, so I give in—no, it is all right. Help is arriving at this moment. Amendment 12 stands in my name as well as those of the noble Lord, Lord Tyler, and the noble Viscount, Lord Hailsham. I shall also speak to Amendment 15, which is also in my name and those of the noble Lord, Lord Beith, the noble Viscount, Lord Hailsham, and the noble and learned Lord, Lord Thomas of Cwmgiedd.

Clause 21 is, as one of our committees describes it, a major clause adding significant new provision for Ministers to make regulations to implement the withdrawal agreement's Irish/Northern Irish protocol, including

"any provision that could be made by an Act of Parliament,"

including modifying the 2018 Act. Unsurprisingly, our Delegated Powers and Regulatory Reform Committee, in its report of 9 January, therefore describes this provision as,

"a most potent form of Henry VIII clause, allowing regulations to modify their parent Act in addition to creating a new legal regime that would otherwise require,"

an Act of Parliament. Amendment 12 would remove the ability in the current Bill to amend the 2018 EU withdrawal Act by statutory instrument in connection with the protocol. Amendment 15 would place a series of limitations on the regulation-making powers allowed for in this clause.

First, Amendment 12 would, as I say, remove the ability to amend the 2018 Act. It is both unusual and unexplained as to why the Government want to give themselves a power, with only the most cursory scrutiny, to amend primary legislation. I know certain newspapers took umbrage this morning at my warnings to the Government yesterday against ramming through legislation even if it contains deficiencies, and of them being unwilling to listen to reason. But here we appear to have a provision almost certainly written as a failsafe; I think the Government know that they will almost certainly have got things wrong. This is not a way to make good law. We do not like it and it should come out.

Amendment 15 is needed as, for unexplained reasons, there are no restrictions on the scope of the Henry VIII powers in respect of implementing the Northern Ireland protocol. That is in contrast to all the other Henry VIII powers in the 2018 Act and elsewhere in this very Bill—for example, in Clause 18. Amendment 15 would add the same restrictions as are in the 2018 Act, and indeed elsewhere in the Bill, on making relevant new criminal offences, setting up public bodies or imposing fees and taxation by secondary legislation. Given what is elsewhere in the Bill and in the earlier Act, I hope that the Government will accept these changes.

Crucially, Amendment 15 would also ensure that neither the Human Rights Act nor the devolution Acts could be amended or repealed by secondary legislation. It is probably the view of the whole House that changes to fundamental rights should be made only by Parliament through primary legislation, not by Ministers through secondary legislation. As the noble and learned Lord, Lord Thomas of Cwmgiedd, whom I am glad to see in his place, said yesterday, it would be,

" a terrible precedent … if we altered the devolution legislation other than by primary legislation".—[*Official Report*, 13/1/20; col. 532.]

Unsurprisingly, the Welsh Government particularly support proposed new paragraph (f) in Amendment 15, with its restriction to prevent UK Ministers using such powers as are allowed in this clause to amend the statutes that embed the devolution settlements. There is already a perfectly viable way of amending the Welsh statutes without primary legislation, where the National Assembly itself agrees to the change: through a Section 109 Order in Council.

Why have the Government written themselves these powers in Clause 21? Should the Government refuse to accept Amendment 15, particularly its proposed new paragraph (f), they will by that refusal feed the suspicion that they want this power to make changes to devolution settlements even where the National Assembly and the Welsh Government are opposed to such changes. I therefore trust that the Minister will accept this amendment and, today, rule out any chance of the Government using these powers to amend the Government of Wales Act without the consent of the National Assembly. I beg to move.

Lord Tyler (LD): My Lords, I wish to speak to Amendment 12, to which my name is attached. This is quite different from most of the other amendments which have come before the Committee. It is in no sense political; it is a matter of process, not politics. Its significance lies only in the clause's defiance of our normal parliamentary processes and the danger of establishing a very unfortunate precedent. There are two consequences: first, this modest improvement cannot be characterised as holding the Bill up; and, secondly, it cannot be said to be a wrecking amendment because it is nothing of the sort.

I am disappointed that the noble Lord, Lord Cormack, is no longer in his place—he was there just a few moments ago—because I listened carefully to his speech yesterday and I was struck by a point he made which then seemed to be followed by a number of noble Lords, albeit a small minority. I refer to the point he made about the Salisbury-Addison convention, which was agreed between the leader of a small group of Labour Government Peers and a large group of hereditary Conservative Opposition Peers after the 1945 election. The name is significant because it was a deal made between two individuals appropriate to those precise circumstances. It has limited relevance now, as was so comprehensively analysed by the 2006 Joint Committee on Conventions, on which I served.

That committee reiterated:

"In the House of Lords: A manifesto Bill is accorded a Second Reading; A manifesto Bill is not subject to 'wrecking amendments' which change the Government's manifesto intention as proposed in the bill; and A manifesto Bill is passed and sent (or returned) to the House of Commons, so that they have the opportunity, in reasonable time, to consider the Bill or any amendments the Lords may wish to propose."

In passing, I note that the noble Lord, Lord Strathclyde, the then Leader of the Opposition, was on record as stating that the doctrine needed to be re-examined:

"Election promises can be vague and easily manipulated by governments, who reserve the right to jettison manifesto promises if things change. If governments can have the right, why cannot Parliaments too have a say on circumstances as they change?"—[*Official Report*, 24/1/01; col. 294.]

Similarly, the Joint Committee took a great deal of evidence on the issue of secondary legislation. It was told by all parties that the Salisbury-Addison agreement did not apply. In relation to this clause and this protocol, we therefore have to conclude that Salisbury-Addison is totally irrelevant.

This is not a wrecking amendment. The provision was not spelt out in the manifesto, and in any case secondary legislation was specifically excluded from the convention—and that was just a bilateral agreement excluding other parties and the Cross-Benchers and was overtaken by events precisely as Lord Strathclyde pointed out.

I emphasise these points for two reasons. First, yesterday a few noble Lords seemed to be dangerously near to suggesting that your Lordships' House should forgo its proper constitutional role in scrutinising this Bill, not least in relation to its significance in terms of the relationship between the Executive and Parliament. Indeed, one or two noble Lords seemed to be on the verge of bullying us with threats of reform to this House. As a very long-term advocate of reform, I say, "Bring it on". The 2012 reform Bill, with which I was much involved, received a massive majority of 338 in the Commons with all parties giving it majority support—so it is over to you, Mr Cummings. Indeed, I would repeat Mr Clint Eastwood's remark: "Go ahead, punk, make my day."

Secondly, we must distinguish between on the one hand this amendment and the few others which seek to instil proper parliamentary process, avoiding precedents which future Governments could exploit, with more substantial political changes to the Bill on the other.

7.45 pm

As the noble Baroness just said, there is a formidable recommendation from the Delegated Powers and Regulatory Reform Committee, on which I have had the great pleasure to serve but no longer do so—but I have the greatest respect for the work it does on behalf

[Lord Tyler]

of the House. It needs to be said that the committee's recommendations are made in completely stark terms. For example, at paragraph 21 the committee states:

"Even if the House accepts that there is a good reason for Clause 21 to allow regulations to modify the 2018 Act, the power should, in our view, be limited to the minimum necessary. We therefore recommend that the Bill should spell out the purposes for which the power is to be used rather than leaving the matter at large."

It goes on to say:

"Clause 21 allows regulations under Section 8C to make any provision that could be made by an Act of Parliament, but without limiting that provision (in the way that section 8(7) of the 2018 Act currently does and new section 8B(5) would do) so that it cannot be used to: … impose or increase taxation or fees, … make retrospective provision, … create a relevant criminal offence (i.e. with a penalty exceeding 2 years imprisonment), … establish a public authority, … amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it, or … amend or repeal the Scotland Act 1998, the Government of Wales Act 2006 or the Northern Ireland Act 1998."

The committee concludes this section by saying:

"The Government have not justified the difference in approach as between Sections 8 and 8B of the 2018 Act (on the one hand) and Section 8C (on the other). The House may wish therefore to seek a justification from the Minister for this difference in approach."

I acknowledge that last night the Minister did attempt a justification, but I think noble Lords will agree that it was inadequate.

The Constitution Committee of your Lordships' House said this morning:

"We agree with the DPRRC that the powers in Clause 21 to modify the 2018 Act should be limited to the minimum necessary and that the purpose of the power should be made clear. The Government must justify the powers in new section 8C(1)–(2) and explain why they are not subject to the same limits as those in section 8 and new section 8B of the 2018 Act."

Some Members of Your Lordships' House may regard Clause 21 as a trivial departure from usual practice or they may try to pretend that, since it relates directly to Northern Ireland, with all the sensitivity that that implies, it is of no consequence more generally. However, nobody can deny that it would establish a very retrograde precedent. I am reminded of the authoritative warning of the noble Lord, Lord Anderson of Ipswich, referring to this clause yesterday:

"This is Henry VIII on steroids."—[*Official Report*, 13/1/20; col. 472.]

Ministers could accept this modest improvement without in any way endangering their legislative timetable.

I and my assistant have been trawling through apposite statements of principle illustrating the proper role of Parliament in our current situation. For the last four years, one journalist and politician has been consistently outspoken on this issue—taking back control. Out of many articles and speeches, I give a simple summary as follows:

"Only this Parliament can make this new relationship the work of the nation, and so Parliament should be at the heart of decision making as we develop our approach. I acknowledge that in the past we have perhaps not always acted in that spirit.—[*Official* Report, Commons, 19/10/19; col. 572.]

That was Boris Johnson, speaking last year. He acknowledges the true sovereignty of Parliament. This House, as well as the other place, cannot afford to neglect our own role in preserving that reality.

Baroness Finlay of Llandaff (CB): My Lords, I suppose I should declare an interest as regards Clauses 21 and 22 because I live and work in Wales, so the stability of the devolution settlement is therefore important to me personally, especially as my work is in areas of the devolved competences.

I should point out that, along with a clear majority, I was alarmed at the prospect of a no-deal Brexit and therefore relieved when the Prime Minister and the EU negotiators managed to agree a process for an orderly EU withdrawal. Clearly, the Northern Ireland protocol is critical to that, and I am sure that no one wishes to imperil the withdrawal agreement by wilfully obstructing the implementation of that protocol.

Nevertheless, the Henry VIII powers in respect of doing so are wholly unrestricted—something which other Members have quite understandably expressed disquiet over. The concern is that such powers would enable Ministers of the Crown unilaterally to amend the devolution settlement as laid down in the Government of Wales Act—and the equivalent legislation for Scotland and, indeed, Northern Ireland itself—or to enable Ministers to make such changes without any scrutiny by the legislature.

I understand that Ministers may conclude that it is necessary to adapt devolved competences; for example, to underpin the unfettered access of Northern Ireland agricultural produce to the market in Wales, even if it fails to meet the standards which have been adopted in Wales itself or across Great Britain as a whole. I also understand why they might not want to follow the cumbersome route of primary legislation to achieve this.

But where the National Assembly—or Senedd, as it will be known—agrees with changes to its own competence, there is a perfectly acceptable route, as the noble Baroness, Lady Hayter, has said, via a Section 109 Order in Council to achieve this without primary legislation. I would argue that any attempt to proceed in a matter of this kind without securing the agreement of the devolved Government and legislature in question would be likely to ignite a major constitutional conflict. No one should underestimate the tensions there are at the moment around the devolution settlements.

The aim of the amendment is therefore to promote an exception to this power in respect of the Government of Wales Act and, for the sake of logical consistency, the equivalent legislation in respect of Scotland and Northern Ireland. If the Minister does not concede, or at least provide reassurance, that these powers will not be used to change the devolution settlements without consultation and agreement by the institutions affected, it will inevitably fuel suspicions, as has already been said, that the UK Government want the power to make changes to the devolution settlements even when the National Assembly and Welsh Government are opposed to such changes.

As I said at Second Reading, it is about ensuring consultation, not veto. In many areas the item of negotiation is very likely to straddle devolved and reserved competences. The use of an overriding Henry VIII power—rather than a Henry VIII power in conjunction with a Section 109 Order in Council, or simply the Order in Council—would be completely inappropriate. It would ride roughshod over the settlement

we currently have. It would appear to be a potential abuse of power. I am not saying that this Government intend to abuse their power, but we have to be concerned that whatever we put in legislation now could produce unintended consequences in the future.

Lord Howarth of Newport (Lab): My Lords, earlier in our deliberations we debated some relatively small-scale Henry VIII powers that the Government were seeking to arrogate to themselves. We listened to entirely unsatisfactory explanations from the Front Bench attempting to justify them. But here we have a really egregious set of Henry VIII powers—the most whopping great Henry VIII powers.

If you look at Clauses 21 and 41 together, you see that the Government are proposing to take to themselves a power not only to amend primary legislation but even to abolish any statute that may have been enacted in centuries past to right up until the end of this year. I do not for a moment think that is what the Government specifically intend to do but it is offensive in principle that they should draft legislation of this character.

Let us bear in mind that the purpose of Brexit is to restore parliamentary government. It is not a decent thing for the Government to do to take this opportunity to make a large power grab on the part of the Executive. The Government should be respectful of Parliament. They should be prepared to work with Parliament. If they have significant changes of policy and legislation that they wish to propose, I do not doubt that Parliament will engage very constructively with the Government in their purposes.

Henry VIII powers are objectionable in principle and it is essential that the Minister gives us a full explanation and, if he can devise one, a justification for the taking of these extraordinary powers, which are constitutionally improper. It will not do if he seeks to argue that circumstances in Northern Ireland are peculiarly sensitive and complex. They always are, but there are certain abiding constitutional principles that the Government should respect, and that should be the spirit of this new Government's approach in their dealings with Parliament.

Lord Thomas of Cwmgiedd (CB): I will make one or two observations, if I may. I accept that it is plainly the obligation of the United Kingdom Government to take steps to implement their international obligations—the justification given by the Minister in his summing up yesterday evening. It is also right that there may be circumstances in which changes to the devolution legislation are needed. But there are ways of doing this, which have been admirably explained.

This Henry VIII clause is extraordinary because it enables the Government not merely to amend the Act but to repeal it. I cannot conceive that anyone who was drafting this with a degree of sense would ever have thought the Government would repeal the Act. When you look at the wording—it is quite useful to look at wording—this has been drafted without any regard to the realities of a union Government. This clause is manifestly deficient in that it goes way beyond anything that could conceivably be needed, even if you ignore the argument about the precedent being set.

The Government should think again. There are proper ways of doing things. I respectfully ask them to see whether they can come back with something different, or, at the very least, explain fully what they intend to do—what consultation they intend to carry out—before they repeal the Act. It is difficult to see how you would ever think that the Act needed to be repealed. One must always recall that the union of England and Wales was brought about by Henry VIII. It would be an extraordinary irony if a Henry VIII clause was used to begin the undermining of that union.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy and Northern Ireland Office (Lord Duncan of Springbank) (Con): My Lords, this has been an interesting discussion, which has focused on a broad range of issues affecting the wider devolution settlement.

Some things need to be set out very clearly at the outset. The first thing is that the purpose of the protocol, which was not mentioned a great deal in the discussion, is to ensure the delivery of clean access within the island of Ireland between Ireland and the UK. This is to ensure the integrity of the customs union of the United Kingdom but also that we have the powers available as we go forward in the calendar year ahead to make necessary amendments in real time to the various elements that will be required as we seek to deliver on the Northern Ireland protocol. The important thing to stress is that we are in a situation in which time is of the essence, but that can never be an excuse.

Secondly, a number of noble Lords have spoken of the repeal of the devolution settlements almost as a Domesday scenario. There was a reference to Henry VIII powers being used, in essence, to eliminate the devolution settlement with Wales or anywhere else. It is important to stress that this clause is in no way designed for, or seeks to achieve, that purpose. Where there are elements of primary legislation which are to be amended, this will be done through the affirmative procedure, which allows significant scrutiny to take place in both this House and the other place. It is important to recognise that we are not just talking about the letter of the law here, but the wider settlements which we have discussed more broadly with regard to Wales and Scotland. The very notion that we can, by some fiat, undo that which has been set in place through the devolution settlements is, frankly, borderline ludicrous. It is not going to happen.

8 pm

Lord Howarth of Newport: Is the Minister therefore saying that the Delegated Powers and Regulatory Reform Committee is incorrect? Paragraph 9 of its report notes that Clause 41

"contains a Henry VIII power for a Minister of the Crown by regulations to repeal or amend any Act of Parliament … Such regulations are made pursuant to the negative procedure."

Lord Duncan of Springbank: To be clear, the information I have from my officials is that this will be done by the affirmative procedure. It is important to stress that point. Further, returning to the protocol, which has not been fully discussed in this particular debate, the question is: what do the two amendments

[Lord Duncan of Springbank]
seek to do? While we have no intention of in any way seeking to unravel the Wales Act or the Scotland Act, there will necessarily be elements in the Northern Ireland Act which will have to be explored and addressed, with full consultation—I express that clearly—with the restored Executive and Assembly. They will have this element for the first time: it was not there before. For example, the issue of democratic consent to the wider Northern Ireland protocol would represent a necessary adjustment to the Northern Ireland Act. This could only be taken forward by full dialogue and discussion with the restored Executive to ensure that the four and eight-year cycle that needs to go forward is inside the heart of this approach. There are also going to be elements, which we have anticipated, of disapplication of certain elements of retained EU law as they affect Northern Ireland. They too, in a domesticated form, would need to be adjusted using these powers.

We fear that there may be a hindrance of our ability to adopt the decisions of the Joint Committee, bearing in mind that that committee was established between the UK and EU. We will need to be able to move that forward in real time and this too will require a power similar to that which we have set out. Another thing we must be on top of is that we have, in this scenario, a potential restriction which might impact on the very issue which I thought might be more expansively explored—the unfettered access part—for reasons which will be touched on in the debate to follow. This debate has taken a turn that I had not anticipated—the notion that a power is now being granted to the Government to undo that which has been set before: if you like, the magisterium of the law which sets up the elements of Northern Ireland, Scotland and Wales. That is not the purpose of this rule. Rather it is to allow the Government, where necessary and through full consultation with the powers of Northern Ireland, to deliver the elements that will emerge in the ongoing negotiations and in any other concomitant parts, to ensure that we are ready to deliver the required elements by one year from today. If we fail to do that, we run the risk of undermining our international obligations. That would then create the problem that this is designed to try and avoid.

It would be very easy for me to say: "You have just got to trust me". That is not what I am trying to say, and it would be foolish as noble Lords should not try to trust me. The important thing is to test me, and to test the Government. That is why, as well as putting these points to the House now, and setting out the areas in which we do need these necessary powers, I am happy to put that in to a note which I will supply and make available to all noble Lords who are interested in this, so they can see where we believe this power will be required to deliver the very thing that Northern Ireland wants: safety and security within the United Kingdom of Great Britain and Northern Ireland. That is its purpose and that is, principally, why we are here tonight. I am tempted to quote from Clint Eastwood, but the only quotes I could come up with are:

"Do you feel lucky, punk?"

and "Make my day." I am not sure either one is particularly relevant.

In conclusion, the purpose of this is to ensure that Northern Ireland is safe and secure as we move forward and is in such a place that the protocol will function in its entirety. Equally, and most importantly—it is a genuine pleasure to say this—there is now a restored Executive and an Assembly where these matters should be discussed and whose voices must be heard and heeded. In the year ahead, we commit to ensuring that Northern Ireland is a full component part of the debate and discussion on the issues of Brexit. That is something which I have not been able to say for a very long time.

On that basis, I cannot support the amendments as they have been tabled. I understand where they have come from, but I am afraid I cannot give comfort in that regard. However, I am committing to set out exactly why we believe these powers are necessary in the area of Northern Ireland and why they are there. I hope that, on that basis, the noble Baroness will recognise where I am coming from on these matters.

Baroness Hayter of Kentish Town: I am afraid that that does not answer the points noble Lords have made. It is not so much that the powers are needed for Northern Ireland, but there should be restrictions on them. I am sorry, because the Minister is normally brilliant at the Dispatch Box and very well briefed. However, had he read Amendment 15 he would have seen what we were trying to write in by restricting those powers, such as not undermining the Government of Wales Act. He would have understood that we were not questioning that some of the powers will be needed for Northern Ireland—we will come to that in a different debate—but the way they have been set out in this clause. Unlike Clause 18, which I quoted, Clause 21 does not have the restrictions on those powers that exist in the other clauses in the Bill or, indeed, in the 2018 Act.

Our concern remains. It is good to have a northern voice. Most of us here are Welsh or from the West Country, where we feel this very strongly. The Minister is saying that these powers were not designed to undermine devolution and that the intention is not to use them that way, but that is not good enough. When something is put in an Act of Parliament, it is a power. No matter that it is not intended to be used that way, the power is there. As the noble Baroness, Lady Finlay, said, there is already another way. Although I cannot see that the Government of Wales Act would need to be altered for Northern Ireland, if it does there is a perfectly good way of doing it. Denying the restriction, whether it is new criminal offences or anything like that, which exist for all the other Henry VIII powers, is very hard to substantiate, simply because it is to do with Northern Ireland. Not accepting that the other devolution settlements should be in any way accessible to these powers is unsatisfactory. As other noble Lords have said, even the word "repeal" is like waving a red flag at the way these powers could be used.

Having heard from the noble Lord, Lord Tyler, my noble friend Lord Howarth, the noble Baroness, Lady Finlay, and the noble and learned Lord, Lord Thomas, I hope that the Minister might look again at the wording of these amendments and understand why we have real worries about them. Perhaps he would be

willing to meet before Report. Otherwise, it will be necessary to try to circumvent these powers in a way that happens elsewhere, but not in relation to the Northern Ireland protocol. I leave the Minister with that thought and beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Amendment 13

Moved by ***Lord Hain***

13: Clause 21, page 25, line 6, leave out "may" and insert "must"

Lord Hain (Lab): My Lords, at the request of my noble friend Lady Ritchie of Downpatrick, who has to attend a funeral tomorrow, I wish to move Amendment 13 and speak to Amendments 14, 16, 17 and 20 appearing also in the names of the noble and right reverend Lord, Lord Eames, and the noble Lord, Lord Empey, and with the blessing, I know, of the DUP, Sinn Féin and the Alliance Party.

We all welcome the restoration of devolved Stormont government and wish the Assembly and Executive well in taking Northern Ireland forward to what we all hope will be a better and more stable future. I have always maintained that, where there is deadlock in the political process, as we have seen over the last three years so tragically, it can be resolved only when the British and Irish Governments work together in a focused and positive way. There are former Secretaries of State in this House who I think will not disagree with that. I particularly commend the way in which the current Secretary of State, Julian Smith, approached the outstanding issues, working closely with the Irish Foreign Minister, Simon Coveney, ably supported by the noble Lord, Lord Duncan, and the Minister in the Commons. The Secretary of State has brought energy and commitment to the negotiations that, sadly, his predecessors lacked, and he was doing so even before the political arithmetic changed with the election last month.

It is in the context of the restoration of the institutions in Northern Ireland and, more crucially, their prospects for long-term stability that I urge the Government to accept these amendments. After all, they achieve what the Government themselves profess to support: namely, no impediments to trade across the Irish Sea. The purpose of these amendments is to protect the Northern Ireland economy from the clear and inevitable damage that leaving the European Union in the hard Brexit way seemingly envisaged by the Government will otherwise cause. They are not delaying or wrecking amendments—nor are they the last frantic efforts of deluded remainers or remoaners to thwart the democratic process. They are essential damage-limitation measures, supported by all the political parties in Northern Ireland. Let us pause on that: all the political parties. How often do we see that? And joined by businesses and civic groups, too.

Amendments 13, 14, 16, 17 and 20 hang together as a package. Amendment 13 replaces "may" with "must" in Clause 22, Part 1C, and new Clause 8C in Clause 21 in order to stiffen the drafting of the regulations that will be made under these provisions of the Bill. Otherwise, the problem is that the protocol either places Northern Ireland in a good place or between two bad things, where it will have its largest internal sales market putting barriers up to it and it will not have genuinely unfettered access to the EU market. That will put businesses in Northern Ireland at serious risk of competitive disadvantage on all sides.

Amendment 14 ensures that, in accessing the market within Great Britain, businesses in Northern Ireland must continue to be able to sell their qualifying goods to Great Britain without tariffs, origin requirements, regulatory import controls, dual authorisations or discrimination in the market. Also, Northern Ireland businesses will enjoy these rights to free access regardless of whether they trade directly with Great Britain or via an Irish port or airport.

Amendment 16 would ensure that any relevant regulations for new requirements on goods traded to and from Northern Ireland to Great Britain cannot come into force without the consent of the Northern Ireland Assembly—and, furthermore, that there must be no additional charges or administrative costs for the businesses involved in this trade. The reason for Amendment 16 is that, in their own impact analysis, the UK Government note that exit summary declaration forms will be needed for goods moving from Northern Ireland into Great Britain for the purposes of security and safety, listing the type and weight of goods in order to keep track of what kind of imports or exports are crossing economic borders. The Government estimate the costs as ranging from £15 to £56 per declaration. This too will add costs and friction to the movement of goods. Businesses will need support to adjust to these new requirements. They will also need proper training to adapt to them, and of course any additional costs will inevitably be passed on to consumers, unless the Government ensure there are no such additional costs, which is precisely what this amendment does, and what the Bill does not do.

Amendment 20 requires the Government to develop mitigations to protect Northern Ireland businesses and consumers within the UK internal market. By mitigations we mean demonstrable steps to safeguard their position. But we are not being overprescriptive—I urge the Minister to note this point—as to how this is done. We are simply asking for effective mitigating steps to be delivered by the Government in the way they choose. What objection to that could there possibly be?

8.15 pm

It was always going to be the case that the United Kingdom, in moving away from regulatory alignment with the European Union, would put Northern Ireland under strain. The provisions of the revised protocol mean that the full force of this strain will not occur between the United Kingdom and Ireland at the Irish land border, but within the United Kingdom, because consequential checks and controls will be placed on the movement of goods between the rest of the UK and Northern Ireland. The implementation of the protocol has the potential to see Northern Ireland, over time, face increasing barriers to trade with, and be at a competitive disadvantage to, both the internal UK market and the European Union market.

[Lord Hain]

The likelihood of such a situation arising has increased with the UK Government's dropping of commitments to maintaining regulatory alignment with the European Union in those areas where Northern Ireland is to remain aligned. If the deadline for concluding and ratifying a future UK-EU free trade agreement is 11 months from the date of withdrawal, it is likely to be a very low-ambition free trade agreement, with a range of sensitive products excluded—for example, agri-food products, so crucial to Northern Ireland's economy. This would lead to significant disruption of the internal UK market and likely lead to increased economic divergence between Northern Ireland and the rest of the UK.

The fundamental point of risk for Northern Ireland arising from the withdrawal agreement is that having differentiated arrangements for Northern Ireland remaining aligned to the EU for the movement of goods allows the rest of the United Kingdom to pursue a hard Brexit, with increasing regulatory divergence from the EU—seemingly the Government's intention—with inevitable consequences for intra-UK movement between Northern Ireland and Great Britain. Hence, again, the necessity for these amendments.

The risk is compounded by the uneasy position Northern Ireland now finds itself in over access for goods moving to and from the Great Britain market. Northern Ireland will be in a place between Britain and the EU and, as such, its businesses and consumers will be dealing with the effects of Brexit in a unique and possibly quite complicated way. There will be checks and controls, the extent and nature of which have yet to be exactly determined. But what we do know is that most businesses in Northern Ireland are small and medium-sized enterprises, SMEs. What additional bureaucracy will be imposed on them? How much will it cost them? We and, more importantly, businesses in Northern Ireland simply do not know.

It is likely that all commercial goods coming from GB into Northern Ireland will be subject to customs declarations and there could be tariffs on those goods which are deemed to be at risk of entering the EU single market across the Irish border from Northern Ireland. We and, more importantly, businesses in Northern Ireland do not know what particular goods will be at risk. There may be a process to pay rebates. How long will it take rebates to be paid? We and, more importantly, businesses in Northern Ireland do not know. While it is right that there should be democratic controls through Stormont built in to any new and developing post-Brexit arrangement, to tell SMEs that, perhaps every four years, all might change or all might not change by a vote of the Assembly, is setting forward business planning into a context in which the churn and turbulence of the normal commercial cycle is a mere trifle. It will create huge uncertainty for business investment and planning. As if all this was not difficult enough, the transition period, we are told, will end on 31 December 2020—no ifs, no buts—even though it is starting many months later than originally envisaged. But we are where we are.

This degree of ambiguity for businesses which operate on very small margins is simply not right, especially for a region of the UK whose economic base is far from robust. These amendments are essential to mitigate the adverse impact on those businesses to the greatest extent possible. Crucially, they have the backing, as I said, of every commercial and business interest in Northern Ireland. When the right honourable Member for East Antrim was speaking in the other place in support of similar amendments last week—in uncharacteristically temperate and measured terms—he was speaking not just for the DUP. Indeed, I understand that he even gave way to an intervention from the SDLP, the honourable Member for Belfast South. Whose memory goes back far enough to remember the last time that happened?

However, the Government have so far rejected out of hand any attempt to amend the Bill. The pleas of business, commerce and consumers in Northern Ireland, which know what the consequences will be and will have to live with them, were summarily dismissed in the other place last week. "You will just have to trust the Prime Minister", they were told. Noble Lords from the DUP will have their own views on that proposition: a Prime Minister who told the DUP that he would never agree to a border down the Irish Sea and then did.

If the Government are not to repeat the mistakes of the last 10 years in Northern Ireland, they must not only hear but listen, and not just when crises threaten to engulf the political process. Recently on individual issues, to their great credit, they have listened: on payments to the victims of terrorism and on historical institutional abuse, for example. That is commendable, and I pay particular tribute to the Minister, the noble Lord, Lord Duncan, on those two key issues of social justice.

I appeal to Ministers to listen again to the critical questions addressed in these amendments. The Government need to listen and treat Northern Ireland, as well as the rest of the UK, with understanding and respect for its place in a UK of equals. Otherwise, the problem with landslides, in politics as in life, is that people get buried underneath them. If what is buried are legitimate hopes and aspirations, whether unionist or nationalist, then that can and will have severely adverse economic and political consequences.

As things stand, one of the best confidence-building measures for the *New Decade, New Approach* agreement in Northern Ireland, signed the other day, would be for the Government to show that they have listened to business leaders and political representatives right across Northern Ireland, understood their real and valid concerns and will act on them by accepting these very modest but essential amendments.

There is nothing in any of these amendments which should cause the Government any concern—if, that is, Ministers really mean what they say: that any extra administrative processes associated with trade in goods or services across the Irish Sea will be smooth, barrier-free and cost-free. I understand that there are no technical questions of drafting to concern the Government—except maybe the insertion of "must" for "may"—so I trust that the Minister will indicate he can accept these amendments. Otherwise, our intention is to put them to a vote next week. I beg to move.

Lord Eames (CB): My Lords, I have added my name to those proposing these amendments. There must be times when your Lordships' House feels, "Northern Ireland comes again with a special pleading for special treatment"; were I to come from elsewhere in the United Kingdom, I would have great sympathy with that view. On this occasion I want simply to put two realities to this debate and appeal to the Minister, who has often, if not always, listened with sympathy to the voices from Northern Ireland.

The first reality is that the business community of Northern Ireland has been suffocated by the uncertainty over the Brexit debate, which has been the result as much of its geographical position as of political factors. That uncertainty is now manifested in the debate we had earlier today on the protocol. We are left wondering as a community what unseen consequences could come from the sort of debates that will take place on future trade agreements once we leave the European Union.

The second reality is what I call the reality of reassurance. That reassurance can come only when we listen on the one hand to the repeated assurances of the Prime Minister that we will leave Europe as a United Kingdom. If that is followed up, I beg to suggest that the reality we face from the uncertainty surrounding the business community in Northern Ireland is that, when we leave as a United Kingdom, there will definitely be problems unique to Northern Ireland. If he can assure those of us who support these amendments that the Government will at least listen and not just give us trite phrases or slogans to live with, and that very definite attention will be given to the particular sensitivities of doing business in Northern Ireland post Brexit, many of our fears will be answered.

Lord Empey (UUP): My Lords, I will speak to this group of amendments, so forensically and comprehensively addressed by the noble Lord, Lord Hain. The underlying problem that many of us have with it is the following. I served as a Trade Minister for a number of years, and I was able to set up InterTradeIreland, the body designed to promote trade between north and south, and which still exists. It has not been as successful as I would have liked; nevertheless, there is still huge potential there to grow trade. However, our problem is what we are told, not only by the Prime Minister but by the Government more generally, as against our experience with the reality of doing business across boundaries and between different economic units.

Whether we like it or not, from 2 October of last year, when the Prime Minister produced the first phase of his proposals with the European Union, it was obvious that Northern Ireland would be in a different regulatory environment, and once that was conceded, the customs environment was added to it. While there are reassuring words and undertakings, people like me and the businesses that have been referred to cannot just reconcile the aspiration to have free movement without any inhibitions or difficulties and the practical realities of being engaged between the European Union single market and an economy no longer in the single market. We are therefore in this kind of hybrid, of which there is no current example that I am aware of, and where there is the potential, as time passes, for the gap to grow.

We start off the negotiations early next month in the transition period with exactly the same regulatory environment that we have all become used to—there are no differences. That distinguishes the United Kingdom in its negotiation with the European Union from other examples, whether Canada, Mercosur or whatever. We have exactly the same regulatory environment as the rest of the European Union. However, the Prime Minister and others have said that they see things changing over time. The single market, which was invented by this country, is a noble idea, but to retain the integrity of that single market, the consumer protection requirements and standards must be verified in some way.

8.30 pm

To look at the practicalities of it, let us take a 40-foot trailer. A carrier moving from England to Northern Ireland may pass through Scotland and will pick up loads in various locations, as groupage companies do. As has been pointed out, some of those goods would clearly be for consumption in Northern Ireland, which is fine, and some may be for transmission on to the Irish Republic. But what about a box of widgets, some of which will be consumed in Northern Ireland and others that will be put into other manufactures that are subsequently exported? There will be a mixture in any lorryloads that come over—that is how the system works. You pick up from different locations with different routes and, as noble Lords know, ports in Northern Ireland are export ports for many goods from the Irish Republic, and ports in the Irish Republic are used for exports not only from the Republic but by traders from Northern Ireland. I pose the question to the Government: when you have this mixture, how will it be possible, in whichever direction you travel, not to have some accountability mechanism for that? I do not doubt that there is trusted trader status and that there are pre-clearance capabilities, for which systems already exist. In fact, it happens regularly. However, in any system, at some point somebody has to undertake a check, otherwise its integrity is compromised. When we deal with sensitive issues, such as agri-foods, pharmaceuticals and other things, the sensitivities are even more acute.

I therefore draw the Committee's attention to the fact that, while I would not under any circumstances wish to stand in the way of the Government's objective of achieving our departure from the European Union by 31 January, I am trying to get my head around how we reconcile what the Prime Minister and others have told us with the realities of commerce and business on the ground. Take trade coming from Northern Ireland to Great Britain: people have said with a sweep of the arm, "This is unfettered access." I understand the objective and I support that. I believe everybody in the Chamber supports that. As the noble Lord, Lord Hain, rightly said, we very rarely get such consensus—dare I use the word; a bolt of lightning will come down in a minute, I think—on anything. I hope that the Minister will take that back to his colleagues. This is not a partisan issue; it goes way beyond that. It goes beyond parties and politics; it goes into business and the community. Jobs are also at stake, as well as all that paraphernalia.

[Lord Empey]

Take goods coming from Northern Ireland to Great Britain. Those goods are produced under a regime, the regulations of which are determined by Brussels and the European Union. Now, are those goods moving from the European Union, and will they be treated by the European Union as exports from the European Union? Will our small economy be included in the economy of the European Union when it is totalled up, or will it be in some kind of hybrid situation, such as that of some of the Caribbean islands or north African colonies that are linked to the European Union? How will it be accounted for? Are we seriously saying that if we send goods from Country Antrim to South Ayrshire, they are exports? We must answer these questions. We do not have the answers.

The amendments in no way attempt to fight some kind of rearguard action. We have such a mixture of views that we would not be associated with that. That unusual fact should send a message to Her Majesty's Government that an issue here has not been addressed properly—yet. I accept that we will have opportunities in the coming year in this House and elsewhere to negotiate the best arrangements that we can. The Government will have everybody's support in doing that, but I ask them to address the practical situation.

I am sure that someone will eventually write a doctorate explaining the difference between being in a customs territory and being subject to customs regulations determined elsewhere. I do not get it. I am trying to think of things on a practical basis for a small company. As the noble Lord, Lord Hain, said, most of our companies are small. They can be one-person bands, for example. More than 90% of our businesses are very small businesses. How will those people deal with this? Bear in mind that, over time, the difference between the regulatory regimes will grow. That is just practical politics.

I suggest, and appeal, to my noble friend the Minister to get this message across: we are not interested in thwarting what the Government are trying to achieve this month. We are interested in sending a message to him and his colleagues—not only on our own behalf or as politicians, but to represent the business community and the community in general—that there is widespread concern. Secondly, we do not understand the practical ramifications—for example, if we face increased costs for our businesses, which it appears this will produce. I had the pleasure of being responsible for inward investment in Northern Ireland for some years. We were able to go along and say, "Look, we're the gateway to Europe. We're an English-speaking community"—I did not make the point that we are also an Irish-speaking or an Ulster Scots-speaking community; I made the point that we are an English-speaking community—"and we have unfettered access to half a billion people".

Now, what does my successor say? He says, "At the moment, for the next year, we're in the European Union and we have free unfettered access to that. At the end of that period, we're still in the UK customs territory but our regulation is X and theirs will be Y and, in four years' time, we might decide that our position will be the same or that our position will be different." So you are sitting there with your officials, looking at people and saying, "We want you to come and invest." Come on. If you want to put a millstone around somebody's neck in trying to sell their country as a perfect investment location, that is tough stuff.

I simply say to the Government: please look at these amendments not as some kind of stunt or attempt to in any way thwart or obstruct what they are trying to do. They are designed to try to prevent potential further obstacles and barriers to the free and unfettered access of trade. If you effectively create a trade border between Belfast and Cairnryan, you have caused huge political damage to the Province, because it would be the first time since the union that we would be economically separated from our largest market in the rest of the United Kingdom.

This is big stuff. I hope and pray that the Committee will see it in those terms and that, over the weekend, the Minister will be able to persuade his colleagues of the significance of there being unanimity among the political parties at home, backed up by the business community and others. The trade unions are involved; everybody is on the same page. I ask him to take those matters into consideration when he replies.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, before the election, the whole Brexit debate was coloured by the Prime Minister's call for certainty, his demand for the certainty that the business community throughout the United Kingdom was looking for. That demand for certainty concerning Brexit resonated in the general election, and we know the result: the Government received their majority, and a handsome majority it is.

I will address the amendments so ably and professionally outlined by the noble Lord, Lord Hain. Consistency in message is not only desirable but, I believe, imperative. Inconsistency in message undermines confidence and trust within society. Of course, there is a lot of mistrust out there between the community and politicians. Many suggest that history will tell you that Governments promise to do one thing out of office and then do the very opposite when they get into office. But during the debates about Brexit, specifically concerning Northern Ireland as regards what happens from the day we leave Europe, the Prime Minister has said one thing and the Brexit Secretary a completely different thing.

I am led to believe that Mr Barnier said in the European Parliament this afternoon that there will be checks within the United Kingdom. How does that equate with what our Prime Minister has promised the people and the business community of Northern Ireland, not only during the election but right up to the present? It is hard to reconcile what is being said and what is being put into legislation. Business leaders and political leaders have declared unitedly that the present situation, as outlined before this House, is not acceptable.

We find that the amendment that simply asks to change the word "may" to "must" seems to cause consternation within the Government. Of course, certainty is something that the Prime Minister said the United Kingdom was going to get with him. Certainty was going to be the very cornerstone of his Administration. Well, "may" is not certain; "may" can mean that it may happen or, of course, it may not. But "must"

declares that it must happen. It is interesting: the Prime Minister has told us that there is a departure date, but it is not a "may". As far as he is concerned, it must happen on that date. He has told the whole of Europe that there is no possibility of an extension. We can surely not be blamed, in the light of statements that have been made, for being deeply concerned.

8.45 pm

Bear in mind also the statement made in the recently published *New Decade, New Approach* document:

"To address the issues raised by the parties, we will legislate to guarantee unfettered access for Northern Ireland's businesses to the whole of the UK internal market, and ensure that this legislation is in force for 1 January 2021. The government will engage in detail with a restored Executive on measures to protect and strengthen the UK internal market."

I suggest that what we are doing in these amendments is simply putting in legislation what was promised, having taken that promise to be genuine.

Take, for example, the promise made in the Conservative manifesto:

"Guaranteeing the full economic benefits of Brexit: Northern Ireland will enjoy the full economic benefits of Brexit including new free trade agreements with the rest of the world. We will ensure that Northern Ireland's businesses and producers enjoy unfettered access to the rest of the UK and that in the implementation of our Brexit deal, we maintain and strengthen the integrity and smooth operation of our internal market."

How can we set that statement, which is the guiding principle of the Government, along with the declaration in the European Parliament today that there will be checks in the United Kingdom, and therefore checks between Northern Ireland and the rest of the United Kingdom?

The internal market is vital for the economic well-being of Northern Ireland. We trade more with the rest of the UK than with the entirety of the rest of the world combined. I believe that the amendment before the House tonight not only has cross-community support but goes further: in Northern Ireland, it has all-party support. Cross-party support is regarded as not only rare but unprecedented, but here we have something further. Surely the Government of this United Kingdom must therefore listen to the voice of the people and ensure that no impediments, and no financial burdens and costs, are put in the way of businesses in Northern Ireland.

Trade is one of the key planks in the United Kingdom which binds us together as a nation. Without delaying the House further, I ask the Minister to take back what has been said by Members who have already spoken—and by those who will speak, I am sure—and listen, and put into legislation that which is required to assist us.

Baroness Altmann (Con): My Lords, very briefly, I want to add my support to the thrust of these amendments. I express sympathy with my noble friend the Minister. I suspect that, having listened to the arguments around the House, he would very much welcome the opportunity to try to keep to the manifesto commitments, which were so ably outlined by the noble Lord, and recognise the will of the people of Northern Ireland, who, as we have heard from across the House, support the thrust of these amendments, so brilliantly moved by the noble Lord, Lord Hain.

This does not delay the legislation but is about damage limitation. I implore my noble friend to take this back to the department and champion this House's role of ensuring that the other place properly considers the implications of what is being proposed in this legislation. From looking at the debates in the other place, I do not believe that the sentiments expressed across this House and the wisdom that we have heard this evening were fully reflected there.

Lord Teverson (LD): My Lords, the EU committee of which I am a member has spent a lot of time on Northern Ireland issues. Although I do not visit the Province regularly, I used to do business there and greatly enjoyed it; it is a fantastic part of the United Kingdom.

What really worries me goes back to what was said by the noble Lord, Lord McCrea: this denial by the Prime Minister that there is any problem here, when clearly there is. Yes, we have it in the protocol that the Province is to be part of the UK customs territory—but in reality it is part of the single market and the European customs union. It is de jure part of the UK and de facto part of the EU in terms of its economy.

The recent report by the EU committee stated:

"Notwithstanding the statement in Article 4 of the protocol that Northern Ireland is part of the customs territory of the UK, the practical implication of the protocol's provisions on customs will be the introduction of a regulatory border for goods travelling from Great Britain to Northern Ireland. The introduction of such a border within the UK will have financial and political consequences"—

which is probably an understatement.

I was in the EU committee when the current Secretary of State for Brexit, Stephen Barclay, said, on the advice of his senior civil servants, that there would indeed be that border down the Irish Sea, and that there would be documentation; it would not be frictionless. So I find it very difficult to understand why we have this very trite statement, as always, by the Prime Minister, when that is not the case.

To emphasise what the noble Lord, Lord McCrea, said, I will quote what has been said today by the EU's chief Brexit negotiator, Michel Barnier. He stated that the protocol on Northern Ireland outlined in the withdrawal agreement means that checks on goods moving from Great Britain to Northern Ireland would have to be in place. He said:

"The implementation of this agreement foresees checks and controls entering the island of Ireland. I look forward to constructive co-operation with the British authorities to ensure that all provisions are respected and made operational."

We have not heard a great deal from the European Union on this issue. I suspect that it is very wary about entering the politics of Northern Ireland. But that silence has now broken, and it is very firm. So it would show respect to the Province if the Government could be honest about what is foreseen.

Lord Bruce of Bennachie (LD): My Lords, I very much support the amendments moved by the noble Lord, Lord Hain, and I am very grateful for the detailed way in which he explained them. It could not be clearer; he covered pretty much every aspect. This has been reinforced by everybody else who has spoken. It is difficult to avoid the reality.

[Lord Bruce of Bennachie]

Let me first address the political dilemma. The Government have had an election, they have a majority of 80 and they can do what they wish in the House of Commons; we know that. The Minister has effectively got instructions that all amendments must be resisted. However, the Prime Minister's personal reputation and integrity rest on this issue. He has explicitly said that there will be no checks—and in a sense, these amendments are trying to put into law the Prime Minister's promise of what the protocol would mean. We all know the difficulty is that any analysis of the protocol does not square with the promise—unless the Prime Minister has got some way of explaining that which none of us has yet come across.

A useful analysis of the protocol has been produced by the Institute for Government, which makes it clear that the protocol means that while Northern Ireland will remain part of the customs territory of the UK, customs checks and controls will apply for goods moving from Great Britain to Northern Ireland because that ensures that customs checks or controls are not required between Northern Ireland and the Republic. That is the essence of the protocol in a nutshell.

The consequences of that, therefore, are that not only will there be checks but that exports into Northern Ireland from the rest of the UK will be subject both to customs checks and, potentially, tariffs. There is an argument that these tariffs could be reimbursable, but that immediately introduces a bureaucracy of having to regulate them, and apply, and when and how long that takes. So let us be honest; we are facing a dilemma.

As has been said, the Northern Ireland economy is one of small businesses and is vulnerable and fragile. For many of those businesses, the practicalities of dealing with this could be life-threatening and could effectively destroy their viability. Indeed, one begins to wonder how the pattern of trade might change, inasmuch as businesses in Northern Ireland may find that trading with the mainland of the UK is just too difficult; and, indeed, businesses on the mainland of the UK may decide that Northern Ireland is too much trouble. Somebody trying to order something online through Amazon may find that it does not supply Northern Ireland, or will only supply it at a premium, or will charge a tariff which may or may not be reimbursable. These are the kinds of complexities that we are facing and envisaging, and everybody who has spoken recognises that to be the case—and I think it is reasonable.

I do not envy the Minister's position, but I would love him to have a conversation with the Prime Minister and say, "Prime Minister, you have categorically stated that there will be no checks or tariffs. It would be helpful if everybody else in the Government could have it explained to them how this is going to be achieved, because I have not come across anyone who yet knows how it can be done". So the amendments are well-intentioned and constructive. They are about saying, "We have a promise and this is how it should be delivered."

Given the Benches I am speaking from, I should make it clear that I accept that we are leaving the European Union at the end of January and that the Bill needs to be passed in good time and in good order. I certainly do not regard this as anything other than a genuine recognition of a crucial issue that needs to be addressed on behalf of the people of Northern Ireland. I do not have to repeat, but I will, that it has cross-party, business, and community support—literally, unanimity—across the entire Province that says, "Please help us through this dilemma." I hope that the Government will recognise that they have an obligation to do so.

Perhaps I might raise one other slightly unrelated issue in relation to these clauses. The commitment to non-diminution of rights within the agreement is enshrined in Northern Ireland legislation—in other words, it applies to it—but there has been some concern, particularly in the debates we have already had about Henry VIII clauses and other clauses, that this does not apply to any other legislation passed by the United Kingdom Government. Does the Minister accept that if the UK Government can amend aspects of legislation in Northern Ireland—or, for that matter, elsewhere, but Northern Ireland in this context—the non-diminution of rights would be meaningless if UK law could compromise that and only Northern Ireland law is protected? I hope I have made myself clear and I would be interested to hear the Minister's comments on that.

In conclusion, the Minister can be in no doubt about the feeling across the House. I have said, both publicly and privately to the Minister, that his engagement on these and all other issues is warmly admired and respected—there is no question about that. His commitment and sincerity in wanting to get the right results is not in doubt or in question, but he is defending a difficulty here on behalf of the Government.

He has between now and next week. It is probably a forlorn hope, but I think he should have a conversation with the usual channels and the Government to say that this issue is really causing a great deal of fractious difficulty and the Government need to show in very real terms that they are going to address it. If they could in some way or other accept these amendments or bring forward a government amendment that followed that through, a lot of mistrust might be evaporated and the situation might be regarded as one in which the Government have demonstrated a genuine determination to get to the right place, which is unfettered access.

9 pm

Baroness Smith of Basildon (Lab): My Lords, this has been an interesting debate, and I do not think its implications could at any point be overestimated. I am grateful to my noble friend Lord Hain, who moved the amendment on behalf of the noble Baroness, Lady Ritchie of Downpatrick. Noble Lords will be aware that she has a family funeral tomorrow and has to be back in Northern Ireland this evening. I think she would have been very pleased to hear the detailed, comprehensive explanation given by my noble friend Lord Hain of the implications of the Government's legislation and the amendments that have been suggested tonight.

It is worth saying that we are having this debate against a backdrop of a changing political situation in Northern Ireland, one that all of us wholeheartedly welcome, which is the return of the Assembly and the

Executive. I congratulate the Minister, his colleague the Secretary of State and the Northern Ireland parties because compromise was essential to get to this point. It could not have been achieved had not all parties come together, as we have seen in the past, to compromise to ensure that the Assembly is up and running again and the Executive has been established.

It is in that spirit of compromise that I appeal to the Minister tonight, because it is only by having the kind of compromise that has returned the Assembly and the Executive that we can make progress on this issue. We know—and people in Northern Ireland have been told—that the message from this Bill is no compromise, no amendments, nothing must change. That is a wholly unacceptable way to approach any legislation. The noble and right reverend Lord, Lord Eames, said that people will say this is special pleading for Northern Ireland. I do not think it is. It is pleading not to make life more difficult than it is going to be already. If the Northern Ireland political parties can compromise in the way we have heard about from the noble Lord, Lord McCrea, I am sure the Government can take a step in that direction as well. I am slightly concerned that there has been no Statement from the Government about the progress made in Northern Ireland. I hope one will be forthcoming shortly.

If anybody in government is concerned that this is a series of amendments about not accepting the result of the referendum—my noble friend Lord Hain and the noble Lord, Lord Bruce, made this point—if it were not for accepting the result of the referendum, these amendments would not be required. It is because we are leaving the EU that they are so essential.

I do not want to go through the purpose and the details already outlined by other noble Lords; I want just to re-emphasise three points. First, as the noble Lord, Lord McCrea, said, these amendments have not just cross-party support, but all-party and none support from people in Northern Ireland. I have not come across anything from anybody in Northern Ireland that says that the purpose behind these amendments is something they reject. It is universal. The Government have to listen to that. The people on the ground understand the implications of Brexit. Whether they support Brexit or not, they still support these amendments.

Secondly—this point has been made—this reflects the promises and commitments that the Government have made to the people of Northern Ireland. We all know that the Prime Minister gets a bit flamboyant during election campaigns, but let us bring it back to what he actually said. Basically, he said, "There will be no checks or tariffs, and if anyone has a problem with that, come and see me—phone me about it". If that is the case, will the Government publish the phone numbers of the Prime Minister and his deputy, Dominic Cummings, so that people can phone them directly? Nobody is clear about the situation and there is a great deal of mistrust when flamboyant statements are made with no facts behind them.

Thirdly, Northern Ireland needs a level playing field if it is to protect businesses and consumers, as all of us in this House will understand. A trade expert, Professor Alan Winters, has undertaken an analysis that concludes that, taking into account both GB and international goods, a total of 75% of Northern Ireland's imports could be subject to EU tariffs on arrival. That is a phenomenal amount. It will be damaging to the economy, as we have heard—I will say more on that in a moment—and it will also be quite complicated. Perhaps the Minister can comment on how this will work, but my understanding is that goods entering Northern Ireland from Great Britain and deemed at risk of being moved to the Republic will be subject to tariffs, but those could be rebated if it could be shown that the goods were consumed in Northern Ireland. How on earth is that going to work? Are we going to check what is consumed or part consumed? It is a recipe for disaster for the economy.

The integrity of Northern Ireland as part of the UK internal market is integral to the success of the Northern Ireland economy. To put additional costs on the economy, whether on the consumer or on businesses, is completely unacceptable. Looking at the political and financial implications of what is being proposed, the Government need to give absolute clarity that there will be unfettered access on trade. If they are unable to do that, they have to accept the amendments.

I say to the Minister that I do not think that the Government's approach is good enough. I know that he will have a folder of briefing notes. I have been there—I have been a Minister. The notes on the amendment say "resist", but there are times when that is the wrong course of action. It is not good enough to say that we need a clean Bill. We have heard that in this House before. These amendments can help the Government. They assist them in what they are seeking to do and they assist Northern Ireland. There is no good reason to oppose them, other than trying to take a macho approach to the legislation, but that just will not work. I am sure that the Minister personally is sympathetic, but we need more than warm words. We need to know that the Government are prepared to accept the amendments or come forward with their own suite of amendments.

Lord Morrow (DUP): My Lords, I should like to speak before the Minister responds. I want to make a few brief remarks, not least on what has already been said. In Northern Ireland we are continually lectured and told, "If you could only speak with one voice, how different things would be." However, we speak as one voice tonight. We speak not only politically, but for the business community, and I include all those who have spoken on this matter.

I know that the Minister is a listening man, but I want him to go a step further and implement the proposed changes. The noble Lord, Lord Hain, the noble Baroness, Lady Smith, the noble Lords, Lord Bruce and Lord Empey, my noble friend Lord McCrea and others have said very clearly what Northern Ireland expects. We must be allowed to function as a country and as a trading partner with the rest of the United Kingdom.

There is no doubt—and those who do not agree with my politics at all have clearly outlined—that what we are being told by the Prime Minister is one thing, but actions always speak louder than words. We need the Prime Minister, the Government and the Minister, the noble Lord, Lord Duncan, to take on board very clearly that there are serious issues at stake here.

[Lord Morrow]

It is ironic that one part of the United Kingdom will have a border with the rest of the United Kingdom. How can that ever be right? Even common sense will tell us that that is not functional; it will just not work.

It has already been stated that Northern Ireland's economy is built on a multiplicity of small businesses—those which employ and engage fewer than 10 people. That is what our economy is built on; that is the backbone of our economy. We do not disparage the large companies that bring massive employment to our shores, but it has to be said clearly, and I do not exaggerate when I say it this evening, that those small businesses are watching every move, because their future is at stake—not only their future, but that of many homes.

It is no secret that wages in Northern Ireland are lower than those in other regions of the United Kingdom. Many families struggle. Many are in the poverty trap. Many live on the margins, as I call it. Are they not deserving to be treated equally? Is there not a strong case for saying that we need to look at this again? As my colleague and noble friend Lord McCrea has said, there is an ocean of difference in the meaning of the word "may" as compared to the word "must", which the noble Lord, Lord Hain, has asked to be put in. You have an option if you may; you do not have that option if you must.

I concur with those who have said that this is not in any way a wrecking attempt. We know where we are in the whole Brexit debate. We know where we were in relation to Brexit. This is not a last-gasp, desperate attempt to do something over the Government. This can be implemented very easily and respectfully. I associate those remarks with the amendment in my name and the names of my three colleagues. We have absolutely no difficulty in supporting the amendments that have been tabled, and I trust that there will be no difficulty in supporting our amendment. It is there for the right reasons; there is nothing sinister about it. We are absolutely sincere. I plead with this House and with the Government to take it sincerely, because there is so much at stake.

Lord Duncan of Springbank: My Lords, this has been an expectedly wide-ranging debate because, when it comes to Brexit, the Northern Ireland protocol is where the rubber meets the road. I take on board the comments made this evening in that light. I also note the cross-party support for the amendments before us and I acknowledge that that is a unique occurrence.

I will try to give some context to where I think we need to take the debate. First, there is the question of unfettered access. It is straightforward for me to say that, as part of my party's election commitment, we spoke of "unfettered access" in our manifesto. Further, my right honourable friend the Prime Minister has given a personal commitment on the notion of unfettered access; he is already on record as doing that. Further again, it is important to recognise that the world has changed since this matter was discussed in the other place. Over the weekend something—I will not say "miraculous", and I do not mean it unkindly—extraordinary happened. We have restored the Executive and the Assembly, so the debate has gone on since then. It is important to note that *New Decade, New Approach* sets out explicitly that legislation to secure unfettered access will be in force by 1 January next year. Each of these are indeed new elements regarding this matter. It is important to stress that, between now and 1 January, there needs to be a serious and detailed granular dialogue with all of the business community of Northern Ireland as this matter evolves. For the first time we will have the voice of Northern Ireland in its right place—in the Assembly and the Executive. This Government commit to full engagement with the relevant Ministers and the wider Assembly in these matters.

9.15 pm

It will be important to recognise that this is an evolving state of play because the other factor that I cannot fully comment on is that what will happen on 1 February, or soon thereafter, is a serious negotiation between the UK and the EU over the trade relationship that will ultimately determine the nature of the border between Ireland and Northern Ireland and, ultimately, between the UK and the rest of the EU. It is vital that we have a Northern Ireland Executive, and now an Assembly—thank goodness it is there—to be part of that dialogue. We need to recognise that there will be elements that are vital to take on board from the business community, and I give the commitment now that that will be a serious ongoing dialogue with all those who have something to say. It is vital that we do that.

I want to touch on some of the remarks made by the noble and right reverend Lord, Lord Eames. Once again, he reminds us that what we say here is not just for our own consumption but is consumed more widely. He gave us the expression "the reality of reassurance". The difficulty that we have as a Government is trying to reassure Northern Ireland when it appears that the amendments before us have certain flaws in them that would not allow us to support them. The reality of reassurance is therefore a test for us: to be able to ensure that those people in Northern Ireland, the business community and the Members of the Assembly and the Executive, hear that we are seeking to undermine these amendments not because we do not like them in the context in which they have been put together, nor indeed because they do not aim for the same direction that we wish to get to, which ultimately is unfettered access. It is because the amendments themselves have elements that would cause the Government concern in the delivery both of the protocol and of the elements required for the future negotiations between the UK and the EU. It is for that reason that I cannot support the amendments. I want to go through that in greater detail to bring that element to life.

There is a wider discussion of the question of "may" versus "must", "must" being a much more certain word, but the question is more fundamental: what "must" be done by that point? That is the point where we reach a certain challenge in terms of legal challenge, litigation and judiciable expectation. One of the reasons we have put in "may" is to allow for the voices now empowered in Northern Ireland to be part of that discussion in the calendar year ahead. Rather than setting these elements in stone from here, we are facilitating a proper discussion with those newly installed individuals so that those voices can be heard. The reason

we are saying "may" is that there may be elements that we do not need to take forward at all in that context, and there may be some that we do need to take forward. The thing to remember is that our ambition remains the same around all sides of this House: to secure unfettered access.

A number of noble Lords have asked detailed questions about the future trading relationship. Blessedly, I am not in a position to give an answer to that because much will depend on the negotiations not yet begun. It is important for us to recognise that we have to be clear about what we can say, which is regarding the customs territory that we are ourselves a part of: the United Kingdom of Great Britain and Northern Ireland. That is where we have the authority to be clear about what we are seeking to do. For example, the noble Lord, Lord Empey, asked the elusive and mythical "widget" question about the notion of mixed elements and how they end up. Part of that is for us to determine—namely, the part within the area that we recognise as the customs territory of the UK in its widest sense. The notion of what happens thereafter will ultimately be for that joint committee between the UK and the EU to take these matters forward. That is something I cannot comment on because I am not yet clear how that will move forward in that direction.

I am aware that, as a number of noble Lords have said, this is a matter in which we need to recognise the commonality of the position of all the parties, but certain of those elements create an issue for us. One would be that one of the amendments would in essence create a veto for the Executive, which would then undermine our ability to deliver the protocol and, potentially, our ability to secure the agreement between the UK and the EU, which must rest in international law if it is set out as it is now.

Further, if we set very clear definitions, as some of these amendments seek to do, the danger we face at that point is that some of those definitions may need to be addressed in the ongoing dialogue. When we start looking at that in detail, we may begin to recognise that these are areas in which the important voice will be that of Northern Ireland, not our voice alone. On that basis, in light of the agreement we reached at the weekend, it is important for us to ensure that there is an opportunity for those voices to come together. To give that reassurance—

Baroness Smith of Basildon: I thank the Minister, who is obviously trying to give some reassurance in his comments. He has said that it is the terms of the amendments—their wording—that cause some difficulties. However, I think he is conceding, and understands, the points and concerns raised, and why there is so little trust and a need for that reassurance in Northern Ireland. I apologise if he is going to come to this in a moment, but does it follow from what he is saying that he is therefore prepared to bring forward his own amendments that would give the certainty and reassurance required but deal with his concerns about the wording of these amendments?

Lord Duncan of Springbank: The important thing here is twofold. First, we agree on the destination—on where we are trying to go. Secondly, what we just said is that the amendments as drafted, from our position, undermine what we set out in the initial clause. We have said that the initial clause now delivers what we believe is right for Northern Ireland, both in terms of the wider dialogue and the ongoing evolution regarding the joint committee. That is why I would not propose replacing them with our own government amendments, but rather recognise the vitality of the original clauses.

I thank the noble Lord, Lord Hain, because he has put in place a very clear recitation of where he is coming from and, as he said very clearly, I anticipate that this matter will be pressed to a vote next week.

Lord Bruce of Bennachie: I want to pick up what was said about the United Kingdom's customs rules being entirely under the jurisdiction of the United Kingdom—I paraphrase what I think the noble Lord said. However, the agreement is summarised as saying:

> "The Joint Committee will establish further conditions under which goods coming into Northern Ireland from Great Britain would have to pay the EU tariff."

This suggests to me that it is not in fact our exclusive responsibility, but will be jointly determined between the UK and the EU.

Lord Duncan of Springbank: In response to that, of course it will be our exclusive view in that negotiation to determine our own position as we respond to that. Again, it rests with us to try to move that in the direction in which we wish it to go.

Again, I am very grateful to the noble Lord, Lord Hain, for being so candid; I welcome that candour, as I always have. In winding up, I say that we need to be able to send the message to Northern Ireland that, through this process, there will be a deep dialogue with each of the affected parties and we will not place any prescriptive elements that will impact on their ability to determine the future that rests before them in terms of how their businesses will work. They need to have very frank discussions with the Government and ensure that, through each stage in that negotiation, there is transparency so that nobody is left behind or surprised, and the reality remains transparent for all to appreciate. I do not believe that it will be straightforward. It is important to emphasise that the protocol itself sets out very clear decisions, but there are still decisions which must be taken by the joint committee of the UK and the EU and which will have to be worked through as we go forward. There is no point in my trying to pretend that that will not be a challenging position.

The important thing to stress is that we are guided by certain principles that rest on the question of unfettered access. I was struck by the word "unfettered"; it is almost a Victorian term. Where did the notion of "unfettered" come from? What on earth is a fetter? It is a shackle, a thing that is linked around your ankles to stop you escaping. We are looking for a situation in which trade can continue in the customs area that the UK sits within, but which also recognises a democratic element in Northern Ireland, to ensure that it is content with the way this matter progresses in the Province of Ulster, and that businesses are content, too. With the newfound Assembly and Executive, this situation will ensure that Northern Ireland has a voice to register

[Lord Duncan of Springbank]
this content or discontent and that there is at no point a democratic deficit in Northern Ireland over what the protocol seeks to deliver or, ultimately, what Northern Ireland wants for itself. That will be important as a very strong check on where we go next.

Lord Empey: I apologise for interrupting the Minister. The Joint Committee has the capacity to widen the scope of its activities and what matters may be included. That disturbs a number of us, because what we see today could change. I do not think that any of us particularly want to get involved in votes, if that is avoidable. In consulting his colleagues over the next few days, will the Minister see whether some expression could be included which would effectively reassure people? A lot of the angst that we all feel would then dissipate. The last thing we want is to have any confrontations between the Houses, but this is heavy-duty stuff. The ability of the Joint Committee to expand its areas of operation and what is included, and not included, is a very big step over which we would have no veto or control. That is driving a lot of the uncertainty which we all feel here tonight.

Lord Duncan of Springbank: As always, the noble Lord brings an interesting perspective to this. I appreciate the fear that the Joint Committee may extend beyond its rails and somehow move into different areas. Within that Joint Committee is the United Kingdom itself, and the purpose there is to hold to account the United Kingdom as it seeks to engage directly with the wider EU. I note underlying that, however, the more important point: the question of reassurance. I hope that the words I can use will give some reassurance today. Equally, I think we will come back to this matter next week when the House will demand of me further reassurance. It is important that I am able to put clearly before this House, and as it echoes beyond this House into Northern Ireland, these reassurances: it has not been overlooked; the newly established Executive will have a strong voice in what goes on, going forward; and the business community can expect to be significantly engaged with each element of the question of unfettered access, to make sure that this is in no way an attempt by the Government to hoodwink either the people or the businesses of Northern Ireland.

If I may conclude, the important point is that I believe we are in common agreement that unfettered access is required. We have the assurance of the Prime Minister and we ultimately have—

Baroness Smith of Basildon: Since the Minister said that he was concluding, can I ask him this? He said that he wants to give reassurance. The noble Lord, Lord Empey, raised the point that we would rather not have disagreement between the two Houses. We would rather get the issue resolved, especially since I understand that in the other place they will have either no time for debate or so little time that it will move to a vote forthwith. Whether this House passes an amendment or not, we do not really have faith that this will be properly considered in the other place. It would be good to fully understand what the Minister is saying. Can he commit tonight to write to us with the details and place a copy in the Library, so that we can fully consider these matters before we come back? I urge him to think that the House is seeking reassurance from him because this matter has to be resolved. The consequences for the people of Northern Ireland if it is not resolved adequately are really very serious. Can he write by close of play on Thursday, so that we can fully debate it next week?

Lord Duncan of Springbank: Yes, I am content to put in a letter the elements I have set out today, with the appropriate detail and clarity which I may have lacked in my explanation this evening, so that the Committee can see exactly what I seek to put on the record. I am occasionally guilty of being expansive—I know that my Chief Whip looks daggers at me occasionally—but I am happy to put that down in a letter in appropriate time, so that the Committee can consider it and make sure that there is no dubiety in what I seek to put forward. I am happy to give that commitment and I will ensure that it is there in good time.

Again, I bring myself back to the important point: I believe that we seek the same outcome, which is to secure Northern Ireland's place within the family of nations that is the United Kingdom, and to ensure that there are no impediments to the trade within the Province of Northern Ireland as it seeks to trade within its important relationships with the rest of the UK. On that point, I am sorry that I am not able to give more positive support, but I will do all I can in the next few days to set out in writing the Government's position.

Lord Teverson: For simple clarity, can the Minister confirm whether he agrees with Monsieur Barnier in his analysis?

Lord Duncan of Springbank: Having been a Member of the European Parliament, I know that one of the challenges is that Commission officials can sometimes be too expansive in the way that they express themselves, for purposes that are not always clear. I am afraid that I do not know exactly why Monsieur Barnier said what he did but he may well fit into that category. I am also conscious that I did not answer the question of the noble Lord, Lord Bruce. If he will forgive me, I will write to him, and on that point, I conclude my remarks.

9.30 pm

Lord Hain: My Lords, I congratulate the Minister on a beautiful response to the question put by the noble Lord, Lord Teverson. I must say that the skill with which he did it was admirable. I am grateful to all noble Lords who have contributed to the debate. The noble Lord, Lord Empey, made a truly excellent speech, the key message of which was that this is not a partisan issue. This point was reinforced by the noble Lord, Lord McCrea—he has not often praised me, especially when I was the Secretary of State for Northern Ireland, even though his leader did from time to time—so when the Minister consults with the Secretary of State and No. 10, can he make that point? We are

not trying to re-fight a battle that dates from before the election; we are trying to resolve a problem that uniquely affects Northern Ireland. The point was reinforced by the noble Baroness, Lady Altmann, and the noble Lords, Lord Teverson and Lord Bruce, who put it very succinctly when he said that all we are asking is to put into law what the Prime Minister has promised. That is what it is.

My noble friend Lady Smith urged the Government to compromise, like the parties in Northern Ireland have compromised. Perhaps we can urge No. 10 to compromise. Your Lordships' House has been put in a difficult predicament in this situation; it is like a sword of Damocles hanging over us. Unlike with other Bills, where we can make a logical and reasonable case, as we have done on Northern Ireland in recent times—I acknowledge that the Minister has been good enough to respond creatively, with the Government behind him—and there is then a bit of give and take, this does not even seem to be in the arena. It is as if we might as well not have this debate because the Government are not going to consider it anyway. I therefore urge the Minister to transmit in crystal clear terms what has been said right across the House in this debate. It is actually a question of trust, as a number of noble Lords said. I have tried to go into the detail in a reasonably forensic way, but it does not seem that what has been said in public by the Prime Minister—I am not taking a party-political pop at him because that is not what we are about this evening—actually reconciles with the facts on the ground.

I come to the Minister's admirable summing up. To be perfectly frank, what he is really saying is, "Trust us because we are going to talk to the Assembly. It is going to be in business and that is a good thing. The Members can have their say and it will all work out on the day." Well, there are certain brick walls here, and hard places and collisions between the two, so I am not convinced by that. I am not convinced that a process of sweet dialogue between the Government and the Assembly will necessarily solve these problems. The purpose of the amendment is to solve them, so that there will not be any costs on businesses and no impediments to trade between Northern Ireland and its brothers and sisters in the rest of the UK. That is what it is about. Therefore, I think that there is bound to be a sense of distrust if the Government are not willing to accept the amendment. As my noble friend Lady Smith said, if the Minister comes back and says that the Government would like to rejig the amendment to achieve what we want to achieve by using the expert help of his officials in the Box, of course we will look at that, because we want the same objective. Otherwise, we will be put into the position of having to consider a Division—which we do not want to do.

Can I just ask specifically: will there be direct Northern Ireland representation on the Joint Committee, to actually deal with this issue? Will there be direct input for the Executive and, sitting behind it, the Assembly, reflecting businesses? Will that be possible? Will the Minister clarify that point?

Lord Duncan of Springbank: I do not know the answer right now, but when I come back I will know the answer and I will set that out next week.

Lord Hain: I am grateful. As always, the Minister is very helpful.

We have a dilemma here. At the moment, we are intending to retable the amendments and we will have to decide what we want to do, and what the feeling of the House is. We all saw that the feeling in the Committee tonight, including on the Conservative Benches, was pretty unanimous that these amendments and the principles behind them are ones that the House wants to see.

Unless the Minister wants to add anything before I sit down—no? He is being diplomatic and possibly prudent in not doing so. But on that basis I will withdraw Amendment 13 in the hope that we will get something practical that is actually in statute on Monday or Tuesday before we consider this matter again.

Amendment 13 withdrawn.

Amendments 14 to 16 not moved.

Clause 21 agreed.

Clause 22: Powers corresponding to section 21 involving devolved authorities

Amendment 17 not moved.

House resumed.

House adjourned at 9.37 pm.