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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

Thursday 16 January 2020

11 am

Prayers—read by the Lord Bishop of Worcester.

Introduction: Lord Darroch of Kew

11.07 am

Sir Nigel Kim Darroch, KCMG, having been created Lord Darroch of Kew, of St Mawes in the County of Cornwall, was introduced and took the oath, supported by Lord Geidt and Lord Ricketts, and signed an undertaking to abide by the Code of Conduct.

Introduction: Lord Reed of Allermuir

11.13 am

Robert John Reed, having been created Lord Reed of Allermuir, of Sundridge Park in the London Borough of Bromley, was introduced and took the oath, supported by Lord Judge and Lord Ricketts, and signed an undertaking to abide by the Code of Conduct.

Oaths and Affirmations

11.17 am

Lord Coe and Lord Neuberger of Abbotsbury took the oath, and signed an undertaking to abide by the Code of Conduct.

Asylum Claims: Child Trafficking

Question

11.18 am

Asked by ***Baroness Doocey***

To ask Her Majesty's Government what is the Home Office's policy on the processing of an asylum claim when an applicant says they have been the victim of child trafficking.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, just under half of all child trafficking victims identified in the UK are British citizens and are not subject to immigration control. If a child is thought to be a victim of trafficking, their safety and welfare will be addressed as a priority. Where an unaccompanied child is thought to be a victim of trafficking, their asylum claim will usually be processed after a conclusive grounds decision on whether they are a victim of trafficking.

Baroness Doocey (LD): I thank the Minister for her response, but is she aware that where an individual police force fails to investigate a complaint of child trafficking, the Home Office is using the fact that the police did not investigate to discredit the victim and as a reason not to grant asylum? The victim is therefore left without any support and is denied justice. Their only option is to battle it out through the courts. Could the Minister say whether this is Home Office policy?

Baroness Williams of Trafford: It is certainly not Home Office policy that a child who has been trafficked should not receive the support they so need through the various agencies that can support them. In fact, if that child is an unaccompanied child, they will be in the care of a local authority from which they will have all the support they need.

Lord Touhig (Lab): My Lords, the United Nations reports that one migrant child goes missing or is reported dead every single day. At the end of this month, together with colleagues from both Houses, I will take a report through the Parliamentary Assembly of the Council of Europe on protecting vulnerable migrant children. Does the Minister agree that we can show the best of being British: that, although we are leaving the European Union, we can take a moral lead if we can tell our European colleagues that this Government have accepted the Dubs amendment?

Baroness Williams of Trafford: My Lords, I agreed with the noble Lord almost until the end. We can show our European partners what our record looks like on taking children who need our refuge and support. Yesterday, I gave the history of what we have done and set out what we intend to do. Next year, we intend to take 5,000 people through resettlement schemes. I am proud of our record; we are an example to all the states in Europe.

The Lord Bishop of Worcester: Will the Minister update the House on any progress that is being made on the provision of independent guardians and advocates for victims of modern slavery?

Baroness Williams of Trafford: As the right reverend Prelate may know, independent child trafficking guardians are currently operational in a third of all local authorities in England and Wales, and we currently remain committed to the rollout nationally.

Lord Kennedy of Southwark (Lab Co-op): My Lords, what would a victim of child trafficking have to demonstrate to satisfy the Home Office that they are a victim?

Baroness Williams of Trafford: Usually, a victim of child trafficking is an extremely traumatised individual; that should be evident. I am sure there are assessments of vulnerability. In particular, the circumstances in which a child arrived in the UK might indicate that they are a victim of child trafficking. It may also, however, be established through the course of their seeking asylum here that they are a victim of trafficking. It does not always come out initially.

Baroness Hamwee (LD): My Lords, like the right reverend Prelate, I want to ask about the progress of the scheme for independent child trafficking guardians, following the Independent Anti-Slavery Commissioner saying that we should

"ensure that all child victims of slavery are fully supported towards safety."

[Baroness Hamwee]
The role of the guardians is of course to support. In October, I asked the Minister whether the piloting and valuation of the scheme was going so slowly as to jeopardise the full rollout which was recommended by the recent independent review. Can she reassure me in any way that the Government have not put this into the long grass and are not seeking, by piloting for such a long period, to avoid the full implementation of the scheme?

Baroness Williams of Trafford: The noble Baroness is right to raise that point. Of course, most schemes are subject to a piloting process to enable us—as the noble Baroness says—to evaluate them and make sure they are working well before full rollout. I can confirm that that is the situation and that we anticipate full national rollout pending the full evaluation.

Lord Alton of Liverpool (CB): My Lords, will the Minister return to the answer that she gave to the noble Lord, Lord Touhig, about the Dubs amendment? Although the Government say—I believe the Minister—that they do not intend to change the policy, many of us are therefore bewildered that the amendment incorporated by your Lordships' House into the legislation will be removed. If there is a Division here next week, many will have to vote with the noble Lord, Lord Dubs, because they want to see that policy retained in law. Will the Minister go back to her colleagues, especially to the Home Secretary, explain the situation in which many here now find themselves and seek to find a way to prevent a Division being necessary?

Baroness Williams of Trafford: The noble Lord is absolutely right that the policy has not changed. Our commitment to include Clause 37 in the Bill shows our commitment to unaccompanied child refugees seeking family reunion. We have already been in touch with the Commission about how that reciprocity would work going forward.

Lord Laming (CB): My Lords, will the Minister do all she can to persuade police forces to restore the specialist child protection teams, many of which have been withdrawn and seen their work handed over to general policing at the expense of the well-being of children?

Baroness Williams of Trafford: I concur with the noble Lord that safeguarding has to be at the heart of what all public services provide, particularly for the police, because it may not be initially evident that a child is traumatised after being trafficked. I will certainly take that point back.

England Coast Path

Question

11.25 am

Asked by ***Lord Greaves***

To ask Her Majesty's Government when they expect to complete the England Coast Path and access around the coast of England.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, work is well under way on all 66 stretches of the path. By June, all Natural England's route proposals will have been published. The original target was to open the path this year. The delay has been caused by a European court case which required Natural England to reassess the impact of its proposals. I expect the whole path to be open, or to have establishment works under way, by the end of 2021.

Lord Greaves (LD): My Lords, I am grateful for that Answer. The first sections of the path were under way in 2010, when the coalition Government took over. During that time various Conservative Ministers tried to stop it, but, thanks partly to Liberal Democrat pressure—

Noble Lords: Oh!

Lord Greaves: It is absolutely true—I was at the meetings. Thanks to that, the Deputy Prime Minister was able to announce in 2015 that the path would be open by 2020. Does the Minister agree that only about a third of the path has so far been opened? Is he certain that the whole path will be open by the end of 2021, and is that a firm commitment?

Lord Gardiner of Kimble: My Lords, just to be clear, the first stretch of the path opened in 2012. I am in dialogue with senior officials at Natural England because, obviously, we wanted it to be finished this year. The Government granted a further £25 million to advance completion from 2030 to 2020. We want to keep up the pressure. I have set out very clearly the reasons for this delay; there is about an 18-month delay because of the court case and its implications for nature conservation designations. I am as confident as I can be, subject to any planning matters, that we will complete this.

Baroness Jones of Whitchurch (Lab): My Lords, this is a fantastic initiative, started by the Labour Government and due to be completed by this Government in 2020. Does the Minister share my dismay that the deadline is slipping, and can he confirm that, despite the severe cuts that Natural England has suffered, it still has the resources to drive this project through to completion and deal with the outstanding legal cases it is now having to face?

Lord Gardiner of Kimble: Clearly, I am disappointed that we have not been able to complete it, but the truth is that there was nothing we could do about the People Over Wind case in Europe. It was legally court-required of Natural England to reassess those areas of the path that have European conservation designations. Nothing could be done about that. I am confident, having spoken to the chief executive and working with her officials, that everything is being done. The £25 million is there for them; they have spent about £22 million already and are within budget.

Lord Kirkhope of Harrogate (Con): My Lords, while I welcome this Government's approach to the coastal paths and the progress we have made, would my noble friend not agree that coastal erosion in a number of parts of the country, particularly on the east coast, is denying us some of the opportunities we have to complete the paths? What is his comment on coastal erosion generally?

Lord Gardiner of Kimble: This is precisely part of the work because 85% of the coast is already accessible. The point about the coastal path is to have a rollback, absolutely in response to coastal erosion. That is why a key part of the work of Natural England is to accommodate coastal erosion.

Baroness Whitaker (Lab): My Lords, I am president of the Newhaven coastal communities team. Can the Minister say how the Brighton to Newhaven path is coming along?

Lord Gardiner of Kimble: I may have to write to the noble Baroness on that precise stretch. I have not walked it yet; I have walked some of them. There are certainly advantages in terms of physical well-being and for local economies. I hope that farmers in rural areas will find this a useful part of diversification. There is a lot to be said for walking, which is why the new national trail pledged in the Conservative manifesto—the Coast to Coast trail in the north—is a very good part of that project.

Lord Blencathra (Con): My Lords, as the deputy chair of Natural England, I support what my noble friend said. The money for this is ring-fenced. We were delayed slightly for 18 months because of the court case—that is the only reason why the path has not been completed according to the regional schedule—but we are on schedule to complete it properly and we look forward to more stretches being opened this year.

Lord Gardiner of Kimble: I am most grateful for my noble friend's confirmation from Natural England. I want to confirm the enthusiasm within Natural England to secure this path and all that it represents: 2,711 miles.

Baroness Miller of Chilthorne Domer (LD): My Lords, the Minister correctly mentioned the effect of the path on economic development. What effect have the Government found it has on remote rural areas, not just on farmers but all the local economy?

Lord Gardiner of Kimble: My Lords, the figures I have for 2017-18 state that £350 million is spent in local coastal economies; that is with what we have already. It is estimated that it directly supports 5,900 full-time equivalent jobs in local coastal economies.

Lord Tebbit (Con): My Lords, can my noble friend confirm that this is a footpath and that, therefore, these pernicious and dreadful scooters, trolleys and other things—other than wheelchairs for disabled persons—will be kept off it?

Lord Gardiner of Kimble: I can confirm that it is a footpath. However, having walked some of the stretch at Great Yarmouth, I know that parts of it absolutely are designed to enable disabled people to enjoy the wonders of the coastline.

Lord Greaves: My Lords, will the Minister join me in hoping that it is finished in sufficient time so that people with deteriorating joints, such as myself, can still walk the whole path?

Lord Gardiner of Kimble: I very much look forward to the noble Lord, who I know will be walking for many years to come, doing so. It is not my hope that this is finished; it is my intention. That is what Natural England is working on. The only thing that could hold this up would be objections to any parts of the remaining route being rightly raised through the Planning Inspectorate; they would therefore have to go through the planning process.

Convention on the Elimination of all Forms of Discrimination Against Women

Question

11.33 am

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

To ask Her Majesty's Government, following the 40th anniversary of the adoption of the Convention on the Elimination of all Forms of Discrimination Against Women, what plans they have, if any, to put forward a representative to the Committee.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the UK is fully committed to fulfilling its obligations under CEDAW and the Government recognise the important role played by CEDAW in holding state parties to account in implementing the convention. As with all UN bodies, the Government consider a range of factors in deciding whether to propose a UK representative formally and will continue to consider future vacancies that arise.

Baroness Burt of Solihull (LD): My Lords, Mrs Thatcher herself ratified CEDAW 40 years ago but we have not sent a representative since 1982. This deprives other members of our input and deprives us of our ability to offer our expertise towards resolving challenges, such as the amicus brief submitted by the BackTo60 campaign for pensions justice for women born in the 1950s. The Government have until 6 March to nominate someone. Will the Minister do all she can to ensure that we fulfil this right and obligation?

Baroness Williams of Trafford: I fully support what the noble Baroness outlines. It might give her comfort that the FCO has prioritised support for the UK nominations to the Human Rights Council and the International Criminal Court in 2020. She will also know that the chances of success are low without a significant campaign, particularly as CEDAW vacancies tend to be oversubscribed. All that said, the FCO has committed to support the GEO in backing a UK nomination for the 2022 CEDAW elections.

Baroness Gale (Lab): I thank the Minister for her replies, but I do not think it is very encouraging. Is the Minister aware that UK women's NGOs have lobbied for the development of a shortlist of suitably qualified women who could be nominated by the FCO to such bodies as CEDAW? Can she say whether that list has been drawn up and, if so, how these women have been nominated? Can she do all in her power to rectify the problem of not nominating—although she has indicated that we could do so by 2022—so that in future we can

[Baroness Gale]
ensure that the UK will be represented at international bodies such as CEDAW, bearing in mind that to date we have never nominated and it was signed by the UK in 1981? I am sure she agrees with me that there are many suitable, qualified women in the UK who could be nominated.

Baroness Williams of Trafford: My Lords, there are so many suitable women in the UK—not least the talent in your Lordships' House—that I think we would struggle to come up with a shortlist. While I completely support the tenor of what the noble Baroness says, it is important to point out that CEDAW members serve in their personal capacity and do not represent the member states that nominate them. I still take her point completely on board.

Baroness Gardner of Parkes (Con): My Lords, I served for many years as the British member on the United Nations Commission on the Status of Women. It is very important that we continue to be represented there, as we have not always been able to, because we were the first country to bring up violence against women. Since we brought that to the agenda, it has been continued and carried on. Without our input, the smaller countries would not have felt that they wanted to admit to this, which later they did. Have we continued to press to be represented on the commission?

Baroness Williams of Trafford: I hope my noble friend will be pleased to note that in 2018 I attended the Commission on the Status of Women. I found it incredibly useful, and our voice was very influential with a number of states.

Baroness Uddin (Non-Afl): My Lords, it is a pleasure to follow the noble Baroness's question. If and when our Government decide that we should have representation on the committee or on any other international bodies, will she and her Government make sure that it reflects the diversity of women in our country?

Baroness Williams of Trafford: As I said, we have so many women to choose from, not least from your Lordships' House. I am sure that the woman chosen will be the best woman for the job.

Baroness Hussein-Ece (LD): My Lords, the United Nations recommended that the UK should take steps to promote positive diversity and gender diversity in public campaigns and particularly in the media. What steps might the Government be taking to address the overt racism and misogyny present in our increasingly toxic tabloid media and online, as we have seen in recent weeks towards a woman of colour who had the temerity to marry into the Royal Family?

Noble Lords: Oh!

Baroness Hussein-Ece: Go online and see the comments referring to "monkeys" and overt racism. It is shameful and embarrassing for our country that we have a media that is allowed to get away with such racism in this way. What are the Government doing to address this?

Baroness Williams of Trafford: I agree that there is increasingly co-ordinated and effective opposition to women's rights generally. It is something that I discussed while I was at the UN commission. As for growing racism in the media towards a member of the Royal Family, I am aware of one or two comments, but I am not aware of a mass of racial opposition to any members of the Royal Family.

Baroness Crawley (Lab): Does the Minister know that there is a petition by women's NGOs, which over 10,000 people have signed, for us to have representation on CEDAW from 2020? Does she agree that it is very important that we increase our influence at the UN while we are losing it at the EU?

Baroness Williams of Trafford: I was not aware of the petition but, as I said, just because you are nominated does not mean that you are nominated for your country. You are nominated as an individual. Our influence is quite significant, even without the nomination, but I take on board that helpful comment about the petition.

Football: Racism

Question

11.40 am

Asked by ***Lord Addington***

To ask Her Majesty's Government what support they have identified that the Football Association requires to address levels of racism in football.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, racism and all forms of discrimination have no place in football or society. We must confront this vile behaviour. Last February, the Government brought together football stakeholders, including the FA, for an anti-discrimination summit, and in July the football authorities set out their list of actions to tackle discrimination, including increasing the minimum sanction for discriminatory behaviour, introducing stronger education measures and improving reporting systems. I met with the FA yesterday and discussed their actions on discrimination. While progress is definitely being made, obviously there is more to do. We will be calling on the footballing authorities for a further update shortly.

Lord Addington (LD): I thank the Minister for that response. However, can the Government give us an undertaking that they will undertake some of the activities which the Football Association has brought forward in its snappily titled "mandatory education programme offer," ensuring in particular that every fan knows what constitutes racism and the effect that it has not only on players but on fellow fans?

Baroness Barran: I understand the urgency in the noble Lord's question and encourage him to look at the FA's website—I am sure he knows it better than I do—which has excellent links to education resources. The Government cannot ensure that every person has seen it, but we are working closely with, and keeping very close tabs on, the FA to ensure that it takes this responsibility very seriously.

Lord Woolley of Woodford (CB): My Lords, does the Minister agree that the tackling of racial abuse in the Premiership and the persistent racial disparities within the Premier League is moving painfully slowly? One third of Premiership footballers are non-white—in old money, black—yet we have only one black manager, Nuno Espírito Santo of Wolverhampton Wanderers. I am not sure whether there are any Wolverhampton fans here. If so, sorry about last night. I am not sure whether there are any assistant coaches, chief executives or board members of colour. Can the Minister pledge to convene a meeting with the necessary actors, including the police, to encourage, and where possible demand, a comprehensive programme to tackle the scourge of racism and close the racial disparities? The beautiful game must confront and deal with this ugly racism.

Baroness Barran: I thank the noble Lord for his question. He raises important points about diversity across all levels and all roles within the game. For the benefit of Chelsea fans, yesterday I met Paul Elliott, who I gather was a former captain of Chelsea, and who now chairs the Inclusion Advisory Board for the FA. He felt more confident about the progress that is being made, particularly in relation to coaches. I thank the noble Baroness, Lady Bull, who is not in her place, for sending me research on the importance of this point. Sport England is investing £2 million a year in the FA to support its work in ensuring that the coaching workforce is more diverse. The board of the FA contains four women and two people of colour, so it is trying to lead from the front.

Lord Hayward (Con): My Lords, I welcome the opening comments of my noble friend in identifying that this is an issue not only of racism in football but of diversity in sport and society in general and that we have to tackle it in all forms. My own sport of rugby union faced its difficulty in relation to homophobia, and I pay credit to the RFU and other organisations last year who worked so well with my club and others to tackle such issues. However, is it not inherent in our society that if we are to give advice to others, the language used by some Members in this House should be temperate, sensible and appropriate and not what I, as a gay man, would deem to be abusive?

Baroness Barran: I will comment on my noble friend's final remark first. I can only agree with him. Each of us individually has to take responsibility for the language we use and put ourselves in the shoes of those who might find it offensive in any way. Work continues in relation to homophobia, in football specifically, and we very much welcome the Rainbow Laces campaign, which the FA led last year.

Lord Bassam of Brighton (Lab): My Lords, it is now 20 years since the Football (Disorder) Act was enacted to tackle racist thugs. Does the Minister agree that, given the shocking 123% rise in racist incidents since 2016, now might be the time to consider increasing penalties and strengthening powers to tackle this appalling problem in our football grounds?

Baroness Barran: The noble Lord is very patient. He raised this point only 19 years ago, but we are now further on. The question of the efficacy of the legislation can be divided into two parts: whether the legislation is fit for purpose and is being implemented properly, and if it is not fit for purpose whether we need to amend it. My honourable friend the Minister for Sport is seeking a meeting with the Home Secretary to discuss this.

Baroness Grey-Thompson (CB): My Lords, many acts of racism occur in grounds during matches. However, social media has become a breeding ground and some providers allow the worst abuse to remain posted. Have Her Majesty's Government considered how the online harms consultation White Paper could be used to look at this form of abuse?

Baroness Barran: Before I reply to the noble Baroness's question, I am sure the House will join me in congratulating her—she is wincing—on her incredibly well-deserved lifetime achievement award from the BBC's "Sports Personality of the Year". The noble Baroness is absolutely right. Again, from talking yesterday with the FA, it is clear that players feel racism when they turn on their phones as well as on the field. That is very much part of what we will be considering in the online harms Bill.

Coroners (Determination of Suicide) Bill [HL]

First Reading

11.49 am

A Bill to require the coroner or jury at an inquest to record an opinion as to gambling addiction and any other relevant factors in a case of death by suicide; and for connected purposes.

The Bill was introduced by the Bishop of St Albans, read a first time and ordered to be printed.

Joint Committee on Nominations to the Supreme Court Bill [HL]

First Reading

11.49 am

A Bill to amend the Constitutional Reform Act 2005 to provide that the Prime Minister must recommend the person selected by a Joint Committee on Nominations to the Supreme Court; to make provision for a Joint Committee on Nominations to the Supreme Court and its functions; and for connected purposes.

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

School Holiday Open Days Bill [HL]

First Reading

11.50 am

A Bill to provide for a duty on schools to run open days during school holidays and for free school meals to be provided for eligible pupils at the open days.

The Bill was introduced by Baroness D'Souza, read a first time and ordered to be printed.

Mandatory Training on Learning Disabilities and Autism Bill [HL]

First Reading

11.50 am

A Bill to mandate training on learning disability and autism for all health and social care staff undertaking regulated activities in England; and to provide for the Secretary of State to publish a code of practice for specialist training on learning disability and autism.

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

Pensions (Amendment) Bill [HL]

First Reading

11.50 am

A Bill to amend the Pensions Act 2004 and the Companies Act 2006 to remove the cap on compensation payments under the Pension Protection Fund and to require the approval of pension scheme trustees and the Pensions Regulator for the distribution of dividends.

The Bill was introduced by Baroness Altmann (on behalf of Lord Balfe), read a first time and ordered to be printed.

European Union (Withdrawal Agreement) Bill

Committee (3rd Day)

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

11.52 am

Amendment 37

Moved by ***Baroness Hamwee***

37: After Clause 37, insert the following new Clause—

"UK citizens resident in the EU, EEA or Switzerland: protection of rights

(1) The Secretary of State must make arrangements to preserve, as far as is possible, the United Kingdom's obligations under EU law to British citizens who are resident in any EEA country, or in Switzerland, on the day before IP completion day.

(2) The arrangements in subsection (1) must include—

(a) arrangements for people in receipt of a United Kingdom state retirement pension to continue receiving that pension under the same uprating and other arrangements as apply on the day on which this Act is passed, for the rest of their lifetimes as long as they remain resident in any EEA country, or in Switzerland,

(b) arrangements for British citizens to continue receiving the same level of publicly provided healthcare as they do currently as EU citizens.

(3) The duty in subsection (1) applies whether or not the United Kingdom reaches any relevant reciprocal arrangements with other EEA member states, or with Switzerland."

Member's explanatory statement

This new Clause requires the Government to take steps to preserve the rights of UK citizens living in the EU, EEA or Switzerland, including continuing to uprate UK state pensions and paying for publicly provided healthcare.

Baroness Hamwee (LD): My Lords, this amendment is in my name and that of my noble friend Lady Miller of Chilthorne Domer. I do not know whether she shares my feeling when I see noble Lords leaving the Chamber that we have a challenge in making this riveting. But it is a matter that was referred to by a number of noble Lords on the first day in Committee on the Bill. They rightly drew attention to the UK's responsibilities to British citizens who are now living and working in the EU. This amendment seeks to protect their rights to preserve after the implementation period the rights which they enjoyed immediately before the implementation period completion date.

The UK has responsibilities, and there are things that the Government can do. Not everything has to be reciprocal. There are about 1 million UK nationals in the EU, and it is for them that this amendment is proposed. Reciprocity is of course desirable, but it is not clear to me why technically it is essential over all policy areas, because it seems that there are choices for the UK.

I am a member of the European Union Justice Sub-Committee of the EU Committee of your Lordships' House. In October, following an evidence session on this subject, the chair wrote to the Government telling them that the sub-committee had been informed that they could do more in a number of areas, with various assurances, including that the UK should continue to fund healthcare for those to whom it is liable at Brexit until new agreements are made, and should commit to uprate the pensions of UK nationals living in the EU for as long as they continue to live there. I shall quote extensively from the letter, because it says everything, very clearly, that I want to say:

"The situation means that many UK citizens have lived in a state of anxiety and uncertainty for some time. Many moved to the EU decades ago with a reasonable expectation that the rights to which they were then entitled would not be removed without due notice and consultation."

The committee had heard evidence that

"the consequences of some of the actions of the UK Government may be actively counter-productive. For example, a failure to uprate pensions after 2023"—

the Government have committed to uprating them for three years—

"could result in UK nationals … being forced to return to the UK"—

and this is not what they would want to do—at expense, including expense to the UK Government, who would be

"required to meet the costs of their future healthcare, any welfare benefits,"

and so on.

"Many pensioners may wish to return to the UK but may realise insufficient funds and be forced to seek public sector housing."

So the questions arising from this are: what assessment have the Government made of the potential costs to the UK taxpayer of such returns, and what analysis have they conducted of the likelihood of this outcome, and of course the potential number of people involved?

The committee was concerned about the impact on individuals and UK businesses, particularly those that have offices in the EU. The committee heard how social

security rights, for example, are currently protected when workers move through the EU, but that after Brexit they will no longer be able to aggregate contributions and build up entitlements to pensions if they move between EU countries for work. So, again, there are questions about the work that the Government have done to assess the problem and seek solutions.

The point goes wider than the UK state pension and healthcare, but those are the points on which we have particularly asked for assurances. There are about 180,000 British-born pensioners living in the EU. They, like us, will have worked, or will work, paying contributions and taxes in the UK. When they left the UK, the right to pension increases for life was guaranteed. I suspect that we have all been made aware through direct representations over the years of the position of pensioners in, for instance, Australia and South Africa, whose pensions have not been uprated. Are we prepared to put many more people in the same position?

As for healthcare, I do not think that I need to stress the importance for both working and retired people. As I have said, there is a danger of the Government's actions, or inactions, being counterproductive. These are urgent matters. The individuals need to take decisions, but they should not have to. When they moved, they believed—and, no doubt, relied on the fact—that there would be no change to their situations as a result of their move.

Noon

On Tuesday the Committee debated an amendment that would have ensured that any changes relating to the co-ordination of social security systems after two years, though other possible periods were suggested, would be through primary legislation. The Minister argued then that the power to tweak via the use of regulations was

"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."

He also made remarks, which I found deeply worrying, about the lack of legislative capacity in Parliament. I am not sure that I have yet quite understood what he was saying, but he also said that

"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."—[*Official Report*, 14/1/20; cols. 606-07.]

Our amendment seeks to make that commitment legislatively—if that is a word—certain because there is considerable anxiety among people who chose to move within the EU, understanding that their entitlements were secure, but now finding that they may be standing not on a cliff edge but on the brink of a chasm. I look forward to hearing what the Government are doing so that UK citizens are reassured and can be confident that they can continue on the course that they have chosen. I beg to move.

Lord Shipley (LD): My Lords, I strongly support the amendment. Around 1.2 million British pensioners live abroad. Just over half have annual uprating of their pensions as they would if they still lived in the UK. They are in one of the 48 countries where the UK Government apply an annual uprating, and over half those countries are in the EU.

In September the Department for Work and Pensions made an announcement on the extension of uprating for a further three years to those pensioners in the EU. I quote from its press release:

"Nearly half a million people living in the EU will continue to have their UK State Pension increased every year for the next 3 years in the event of a no deal exit from the EU".

There is no explanation of why it is three years as opposed to permanently or any other figure. It goes on to say:

"During this 3-year period the UK government plans to negotiate a new arrangement with the EU to ensure that uprating continues."

I stress "plans to negotiate". The question arises as to what happens if those negotiations fail. Along with the question of why the figure of three years was selected, there is a possibility that the negotiations will fail. There is also no explanation of why the uprating should not apply to all the pensions affected for those pensioners' lifetimes.

My noble friend Lady Hamwee has mentioned the fact that if all those pensioners returned to the UK there would be substantial costs for public services, not least the NHS. I hope that when the Government calculate costs they also include the benefit that accrues to the Treasury from UK pensioners living outside the UK who do not directly use those services.

There is of course a question about those UK pensioners who move into EU countries after 1 February, because at present it would appear that they do not have a right to an uprated pension. I seek the Minister's assurance on that point. UK expatriate pensioners need and deserve greater certainty when they are living outside the UK in the EU. I very much hope that the Minister will be able to confirm that it is government policy to uprate their pensions permanently once the three-year period is over.

Baroness Miller of Chilthorne Domer (LD): My Lords, I put my name to this amendment and I remind noble Lords of my interests in that I spend a considerable amount of time in France. I should add that I have health cover in France, so when I speak on health, I do not have an interest in being covered by the UK.

First, I ask the Minister whether he still agrees with his noble and learned friend Lord Keen of Elie, who, when summing up at Second Reading on Monday, said:

"Reference was made by the noble Lord, Lord Teverson, and the noble Baroness, Lady Miller, to the status of UK citizens in the EU. However, that is … not a matter of domestic law and is therefore not a matter for the Bill".—[*Official Report*, 13/1/20; col. 552.]

The fact is that the Government have chosen not to include in the Bill either the pensions upgrade or anything about health cover; it is a choice. The Bill could encompass the rights of UK citizens should the Government choose or should we, for example, win this amendment. At the moment, it is the Government's choice to exclude any cover for UK citizens from the Bill, rather than a matter of fact.

Secondly, I want to speak about health. Many UK citizens working abroad in the EU will have health cover by virtue of their occupation or if they are a dependant of somebody in an occupation that qualifies, so they are fine. The problem is for those who are not

[Baroness Miller of Chilthorne Domer]
covered by that either because they have not yet qualified for settled status but hope to—for example, those who have been in a country for less than the qualifying period; in France that would be five years, so perhaps someone has been there for three years not five—or because their financial status is questionable because of low income. What cover from the UK can those UK citizens expect? Some are likely to have ongoing conditions such as cancer and some will develop illnesses between now and the period in which they would qualify, and certainly by the end of December.

Up until now, the S1 provision has dealt with this for a significant number of people; can the Minister say how many people are actually covered by it? If only 1% of UK citizens in the EU are thus adversely affected, that is still 10,000 people with enormous worries about their health cover. For some, this is bound to mean that they will have to return to the UK, where their healthcare will be 100% covered by the NHS. When the Minister replies, could he outline just what provisional arrangements will be in place until the arrangements in whichever EU state those UK nationals are in finally take effect because they have their settled status?

The last point I want to make is that I do not think that, at the moment, the Government have done nearly enough to publicise the fact that UK citizens living in the EU will not be able to access NHS services for free when visiting the UK after this unless they have a UK-issued S1 form. The problem is that the Government have not done nearly enough to publicise what will happen, country by country. I accept that the embassies have done some outreach work and have embassy pages, but in many cases those are pretty generic and the situation alters very much country by country. Again, at Second Reading, I asked whether the Government would provide information on where reciprocal arrangements were in place with the EU states—for example, for qualifications. The Minister made no reference to that in his summing up. The absolute least the Government could do for UK citizens in Europe would be to provide a comprehensive country-by-country guide covering all the issues that concern UK citizens abroad.

Lord Steel of Aikwood (LD): My Lords, I have not yet spoken on the Bill, preferring to leave it to the experts —of whom there appears to be quite a lot on these Benches—but I want to speak in support of these two amendments which my noble friends have tabled.

I have a holiday house in Languedoc—not the fashionable part of France. Every time I have gone there during the last three years since the referendum, the people who live and work there, as my noble friends have described, have said to me, "Come on, you're a Member of Parliament, even in the upper House. Can you tell us what is going on? What are our rights?" I have given them a truthful answer: "I'm sorry. I haven't a clue and, what is more, neither have the Government". That is the position we have arrived at today. They have all made the point that during the last three years we have had no fewer than three different Cabinet Ministers responsible for exiting the EU. That was their job, but never, in the whole time of our membership of the European Union, have we ever had a Cabinet Minister whose sole responsibility was to stay within the EU and to make sure it developed in such a way that it improved our relationship with it and that its terms and condition and its new regulations were those that we found acceptable. That was an extraordinary omission that we made during that time.

Some of the people whom I have met are thinking of, as one of my noble friends said, taking out French citizenship. If they have lived there for more than five years, they can do that. Another one has found an Irish grandparent and is thinking of taking out Irish citizenship. It is a tragedy that we are possibly losing these people and losing them from the citizenship of our country. It is not desirable at all. A lot of them are aware that I took an active part in the 1975 referendum. I keep pointing out to them that I am sorry because there was a huge difference between the two referenda. In 1975, there were huge public meetings in every town and city in the land; there were huge arguments about our role in Europe, and about the reasons why we were having European unity and the European Economic Community as it then was. This time, it was all about a grubby figure on the side of a bus. It was a very different atmosphere, and one they found very difficult to understand. These people have been treated rather shabbily, and I hope that the Minister, in his reply, will be able to give them some words of comfort.

Baroness Altmann (Con): My Lords, I shall speak particularly to the pensions aspect of Amendment 37, and I draw the House's attention to my interest in the register. I say to my noble friend on the Front Bench that I understand the dilemma faced by the Government on this issue. There are more than half a million pensioners around the world who have frozen pensions. There has been a sustained and impressive campaign by the International Consortium of British Pensioners to try to persuade the Government to uprate the state pensions of people who live in the 150 countries, of the 200 countries around the world, in which there are not reciprocal arrangements to uprate state pensions and therefore their pensions are frozen. So this issue goes much wider, and I applaud the Government for at least agreeing to uprate the pensions of those citizens who live in the EU, regardless of reciprocation in the meantime. I would encourage my noble friend, and the Government, to consider this in the context of the overall uprating issues for people with frozen pensions around the world. If you live in the US, Mauritius or Jamaica, your British state pension is uprated; if you live in places such as Canada, Australia, the Falkland Islands or Antigua, you do not receive any pensions uprating.

The important issues here are, first, to look at it in the context of the overall policy. That is why I understand the Government's position in not having committed to uprating at this point. Secondly, it should be borne in mind that these EU citizens—at the very least, those who already live abroad or are over pension age—will have made a decision to relocate on the understanding that their pension would be uprated. They could not possibly imagine a position in which it would not be. I hope that the Government, in their future negotiations on and considerations of this issue, will bear that in mind, but I understand the position that my noble friend on the Front Bench is in.

12.15 pm

Lord Teverson (LD): My Lords, I very much support Amendment 37, tabled by my noble friends, but I want to talk to Amendment 44, which is in my name and in this group. It concerns retaining European citizenship for UK nationals. I do not expect this provision to appear in the final version of the Bill when it becomes an Act, as in a way this is a probing amendment, but it is of huge importance and something that many people feel strongly about.

I remind the House of the privileges that come with European citizenship. We know about the freedom of movement, which is often discussed, but there is also the freedom to establish a business. There is the freedom to carry on your education in the whole of the European Union, and there is the freedom of being able to buy property without permit within the European Union. On the health side, we have our European health cards. We also have consular protection from other EU member states, should we need it. We have visa-free travel in 153 other nations. We have no customs queues as we come into the then-to-be 27 member states and, of course, we have voting rights in a number of elections. Those are fundamental rights that we have had as European citizens and that we will lose as UK citizens once we leave the European Union, which we will do on 31 January.

By an accident of birth in the 19th century, I am able to retain my European citizenship, as I think a number of Members of the House are through various other historic reasons. But that ability is entirely random and not available to the vast majority of our citizens who wish to do that. I recognise entirely, as the constitutionalists will say, that it is generally agreed that it would require a treaty change for full European citizenship to be bestowed upon UK citizens once we are a third country. However, there are perhaps alternatives to that, such as associate citizenship, and there is a will among certain European institutions to allow it or to find a way for it to move forward over time, once we have left.

I thank the Government in that, when I have raised this in the past, they have been very open and said, "It's not within our power as such, but if that offer came to the United Kingdom then we would not necessarily shy away from it". I congratulate the Government on that quite brave statement, and I hope that they will continue to have that attitude in future. I also think, perhaps strangely and counterintuitively, that if a way were to be found for some form of associate citizenship, it could be one way in which the country could come back together again, because it would clearly not be compulsory. Those who do not want their European citizenship—I recognise that, for many years, many people have treated that status with disdain and have said they do not want it—can keep that "non-citizenship". Only those who want to volunteer for this citizen status need take up the offer.

This is perhaps a way forward; it is one method by which the country could come together, so that people feel that they have not lost all of those rights that are so important to them. Yet those people who feel strongly, and who were the majority in the referendum who wanted to exit their citizenship, will indeed still be in that position. I would like to hear from the Minister that this is something on which the Government will keep their mind open, should such an approach ever come from the European institutions—many of us may continue to encourage that.

Baroness Buscombe (Con): Before the noble Lord sits down, can he tell me: do you have to pay tax in any EU country in order to obtain EU citizenship?

Lord Teverson: Well, at the moment, you are automatically a European citizen if you are a national citizen of one of the member states, so your tax position is no different to your position as a national. You are subject as an individual to the treaties and the book of law of the EU and its member states, so I do not see that it makes any difference. If you become an associate citizen, then clearly it will depend on the details of that associate citizenship.

Baroness Buscombe: So the answer is that you do not necessarily have to pay tax in any EU country in order to obtain that citizenship. You could be claiming benefits in—or, in other words, not contributing to—any one of those countries.

Lord Teverson: No, it just stays as it is.

Baroness McIntosh of Pickering (Con): I congratulate the noble Baroness, Lady Hamwee, on shining a light on this particular difficult policy area. I follow on from the remarks made by my noble friend Lady Altmann, but on a slightly different question, regarding a case study with which I am all too familiar because it concerns my own pension, so I hope that noble Lords will forgive me for raising this.

One area of EU law that has long concerned me is the free movement of pensions and that the pension to which one contributes while living and earning money in another EU member state should be recognised when one returns to the UK. In my case, I remember only too well that I contributed on two occasions, once as an employee and once as a self-employed independent lawyer. On one of those occasions, my contribution was taken and has simply not been recognised. I am sure that this is a common problem; I cannot believe that it applies only to me.

I am in a privileged position as regards my pension, other than the fact that I am told I cannot take my state pension until a slightly later year than I was expecting. When summing up on this small group of amendments, can my noble friend give the House an assurance that, where an individual of whatever nationality —British, in my particular case—has contributed to a pension scheme in, for example, Belgium, France, Germany or Denmark and at some future date wishes to return to the United Kingdom, there is a guarantee that their pension will be recognised and will be paid as part of either a private or occupational or state pension at the time of retirement?

Lord Whitty (Lab): My Lords, I had not intended to speak on this amendment: indeed, I did not speak at Second Reading and have concentrated in my own amendments on some fairly technocratic issues. However,

[LORD WHITTY]
my noble friend Lord Teverson—or, rather, the noble Lord, Lord Teverson, who on occasion is my friend—has provoked me. One reason I did not speak at Second Reading is that I now recognise that Brexit is going to happen on 31 January and I am feeling emotionally negative about it. I shall not be joining any celebrations, even if they raise the money for Big Ben to bong.

Lord Steel of Aikwood: Does the noble Lord agree that the slogan, "Get Brexit Done" is completely wrong? What is happening on 31 January is that we will get Brexit started.

Lord Whitty: That is absolutely true and I believe that it is gradually being realised by large sections of British society, business and individuals. Nevertheless, 31 January is a symbolic date in that we leave the political institutions of Europe, and that upsets me as it does the noble Lord, Lord Steel. I was very positive in the 1975 referendum, although my party was of a rather different view, and I have remained a committed European since. Sometimes I got fed up with Europe, but one of the issues referred to by the noble Lord, Lord Teverson, that of EU citizenship, is making me seriously emotional because it concerns my grandchildren.

My grandchildren were born into European citizenship. They are too young to have voted in referenda or general elections, but we are depriving them of all the benefits of European citizenship that the noble Lord spelled out. There must be a way of their being able to reassert their birthright at some future date, through arrangements between ourselves and the institutions of the European Union. I therefore very much support the intent of the noble Lord's amendment. How it is actually worked out has yet to be made clear to me, but I hope that Ministers will at least take on board that, whatever view we took of Brexit, we are depriving some people of rights through a decision over which they had no say. That is one of the things I will be thinking about on 31 January, and it could be resolved in the long term by future arrangements between ourselves and the European Union.

Lord Kerr of Kinlochard (CB): My Lords, I support the amendment in the name of the noble Baroness, Lady Hamwee, and I use that as an excuse to ask the Minister what the status is, from 1 February, of the EHIC card. I had assumed it would remain valid until the end of the year, but I have seen suggestions in the press in the last few days that it will be invalid from 31 January.

On the point made by the noble Lords, Lord Teverson and Lord Whitty, of course my heart is with them, but as the noble Lord, Lord Teverson, said, this is a matter of treaty amendment and it does not seem likely to me that it will go very far. It is of course driven by good will in the European Parliament, created in part, no doubt, by the noble Lord, Lord Teverson, during his time there. Reading the debates in the European Parliament, it strikes me as significant that the arrangements we have in this country for obtaining settled or pre-settled status are not seen as satisfactory. There are a number of reports in the continental press from which I draw one common factor: it is the absence of any documentary proof of one's status that is particularly worrying for EU nationals living in this country.

My last point concerns an area in which I am very supportive of what the Government are trying to do and I urge them to go on trying to do it. For UK nationals resident in continental Europe, the absence of any continuing right of onward movement, even if their status in an individual member state is secure, is a very serious defect. I encourage the Government—I know this is their aim—to go on seeking to have that defect remedied.

Lord McNicol of West Kilbride (Lab): My Lords, I declare an interest—unfortunately, it is not a house in France or Italy. My uncle, Neil McNicol, is an expat who lives in Spain and if these amendments were to go through, it would affect him.

Amendment 37, in the name of the noble Baroness, Lady Hamwee, would require the Government to take steps to preserve the rights of UK citizens living in the EU, EEA or Switzerland. Proposed new subsection (2) cites the uprating of pensions and the continued availability of public healthcare as priorities, but importantly, there would be flexibility for Ministers to act in additional areas.

12.30 pm

In an earlier group of amendments, I expressed regret that the Government had waited so long to make a unilateral guarantee to EU citizens living in the UK. The main justification given for this delay—even if it was later dispensed with—was that the issue of citizens' rights depended on reciprocity. However, as we heard in the opening remarks of the noble Baroness, Lady Hamwee, reciprocity is desirable but not necessary. During the passage of the Article 50 Bill, my colleagues argued that by offering a unilateral guarantee for EU citizens here, the UK would generate good will and swiftly secure reciprocity from the EU 27. There is still quite a bit of work to be done in that area. However, the sad reality, as we have heard in this debate, is that the failure of the Government's approach has left UK citizens who live in certain EU countries fearing for their future rights, especially as our formal exit from the EU draws near.

Amendment 44, in the name of the noble Lord, Lord Teverson, returns to a topic covered during the passage of the original European Union (Withdrawal) Act: associate citizenship of the EU. While some figures in the EU suggest that this may be an option, it has always been clear that the Government have no interest in pursuing this line of inquiry. It is regrettable that the Government have not been more open-minded. In responding to the amendments, I hope that the Minister will focus on the substantive—that is, people's sense of belonging and their genuine concerns about the future—rather than just the technicalities.

To touch on the final point of the noble Lord, Lord Kerr, in yesterday's debate we discussed hard-copy documentary evidence. I hope that we can make progress on that as well.

Lord Bethell (Con): My Lords, I am enormously grateful for the opportunity to respond to the noble Baronesses, Lady Hamwee and Lady Miller, and to all noble Lords who have contributed to this debate on Amendments 37 and 44.

Amendment 37 refers to UK nationals in the EEA and Switzerland and protections to their state pensions and healthcare. I hope that the debate will provide a valuable opportunity to give some reassurances on some of the key and important points made by the noble Baronesses, Lady Hamwee and Lady Miller, and the noble Lords, Lord Shipley, Lord Steel, Lord Kerr, Lord Whitty, and other noble Lords.

The noble Baroness, Lady Hamwee, is quite right to state that confidence in the system is absolutely essential. This has been a difficult period for those who have felt, at times, that their benefits and arrangements might have been in jeopardy. The noble Lord, Lord McNicol, spoke movingly about the concerns of UK nationals in the EU, and EU citizens in the UK, who have cross-border lives and who are seeking reassurance that those healthcare and state pension rights will be protected. I reassure the House that that protection has been a high priority for the Government.

We have delivered certainty for the 1 million UK nationals that the noble Baroness, Lady Hamwee, referred to, and to the 3 million EU citizens in the UK, via the withdrawal agreement which we have reached with the EU. We have also reached a separate agreement on citizens' rights which, in great detail, protects the rights of EEA, EFTA and Swiss nationals in the UK, and UK nationals living in those states.

Certainly, it is absolutely critical that people should feel at ease about their futures—the noble Lord, Lord Steel, touched on that point movingly. I will offer the crumb of comfort that he asked for. These agreements give citizens the certainty that they need about their rights going forward and ensure that they can continue to live their lives as they do now. That includes, importantly, the right to live, work, study and access healthcare; to receive an uprated UK state pension in the EEA and Switzerland, in line with the triple lock; and to access valued benefits.

I will tackle the question of the three-year period. I reassure the House that the uprated pension in these areas is not just for three years; that was a proposal floated under a possible no-deal arrangement. This is an uprated benefit for life. These are the key components of what I believe the noble Baroness is trying to achieve in her amendment. I make it clear to the House that these are already protected.

The Government have also gone further than the withdrawal agreement and the proposed new clause require, protecting the rights of UK nationals in the EU where it is unilaterally possible to do so. In April last year, the Government published a policy paper, *Citizens' Rights—UK Nationals in the EU*, which supplemented the rights contained in the withdrawal agreement for UK nationals resident in the EU at the implementation period. I will give a few examples. In respect of family reunification when UK nationals return to the UK, there is an additional seven-year period from the end of the implementation period for UK nationals living in the EU to access higher and further education in the UK under home fee status, and with support from student finance. This offer on education has also been applied by the devolved Administrations.

I will address the proposed new clause in Amendment 37 and the specific arrangements referred to by the noble Baronesses, Lady Hamwee and Lady Miller. I reassure the House that the citizens' rights provisions in the agreement already ensure that those who have made their lives in or plan to retire to the EU by the end of the implementation period will receive an uprated UK state pension in the EU and any associated reciprocal cover while they have the right of residence in that member state. The provisions of the agreement will protect approximately 500,000 state pensioners already in receipt of a UK state pension and approximately 190,000 UK state pensioners and their dependants for reciprocal healthcare cover across the EU, EEA, EFTA states and Switzerland.

The current arrangements go further than the amendment itself. The proposed new clause in Amendment 37 falls short of the protections offered by the agreements. That is because they ensure the protection of not only UK nationals currently in receipt of a UK state pension in the EU, but UK nationals resident in the EU who are not yet of state pension age but who might be considering retiring in the country in which they live: for example, someone who has retired early to the EU once they reach UK state pension age. I reassure those who, like the noble Lord, Lord Steel, are concerned about our EU friends. The agreements will also protect reciprocal healthcare for all those in scope of the agreements, regardless of whether they are UK nationals.

The noble Baroness, Lady Hamwee, asked about the aggregation of pensions and benefits. I reassure the House that all contributions today, made from whatever country in the EU or EFTA, and Switzerland, will be protected by the Bill. The noble Lord, Lord Kerr, referred to ongoing negotiations about those who look to make onward movements beyond the implementation period. I reassure the House that those negotiations are being carried out with energy and enthusiasm. I also reassure him that his EHIC card will be valid until the end of the year—as it will be for the Bethell family, including my four children, on our forthcoming holidays.

Lord McNicol of West Kilbride: The Minister said that UK pensions will be uprated "while they have the right to reside in that state"—I think I quote him correctly. But what if they move to another EU state?

Lord Bethell: Those parts of the pension that are already in the bag, as it were, will continue to be uprated, depending on where they move to. If they move to another area where there is a treaty arrangement, they will continue to benefit from the uprating arrangements relevant to the country to which they move. However, as my noble friend Lady Altmann referred to—a point I shall move on to—if they move to an area which does not have a treaty arrangement, their future contributions to the pot will be relevant to that country's arrangements.

Lord Shipley: Can the Minister clarify something that I think he said? He referred to UK citizens who are not yet of retirement age but become entitled to a UK state pension and then move to one of the 27 countries of the EU. Will their pensions be uprated?

Lord Bethell: I am not sure that I completely understand the question. If they have qualified for the UK state pension while still in the UK, of course they will take their pension with them. If they are currently living in the EU but contemplating retiring in that country, the arrangement that we have had means that their benefits will continue while they are in that country. I hope that answers the question.

Lord Shipley: My question was whether, if someone who is currently working and then retires, receives the UK state pension outside the European Union after 1 February but then moves to an EU country after that date, their pension will be uprated in that country. Is that what the Minister said?

Lord Bethell: That is a question of sufficient complexity that I am reluctant to commit to an answer at the Dispatch Box, but I will be glad to come back to the noble Lord with a detailed response.

The noble Baroness, Lady Miller, made a good suggestion when referring to the concerns of EU citizens living in the UK about their arrangements. I reassure those citizens that the arrangements in place will preserve their current situation, so they should feel confident and reassured. Her suggestion of a country-by-country guide is a good one, which I welcome, and I will pass it on to the department as a recommendation.

My noble friend Lady McIntosh talked about the fair recognition of pension payments in the round. I cannot comment on the precise arrangements for her pensions, but I reassure her that everything that is contributed to pension pots in any EU country before the end of the implementation period will be recognised as contributions to the pension.

Lastly, my noble friend Lady Altmann talked movingly about the uprating of pensions for those who live in countries with no suitable treaty. That is way beyond the scope of this agreement. I have sympathy for those people who live in countries where there is no pensions treaty, but as she quite rightly explained, they did make that move knowing what the arrangement was. Bringing in uprating for such people would add an enormous cost to the Treasury of around £600 million a year, but it is something that remains on the Government's radar screen.

The new clause proposed by Amendment 37 is well intentioned and is entirely supported in spirit by the Government, and that is why we have put in place the arrangements set out in the Bill. However, it is unnecessary as the agreements that the Bill will implement safeguard both healthcare and state pension rights for UK nationals living in the EU, and therefore I will ask the noble Baroness, Lady Hamwee, to withdraw it.

Before I do so, I will address the points made by the noble Lord, Lord Teverson, on his amendment. I thank him, the noble Lord, Lord Whitty, and others who also spoke to it. The proposed new clause is a well-intentioned and creative move. I acknowledge that there are some people in the EU, as mentioned by the noble Lord, Lord Teverson, who would like such a measure to be enacted. But I want to be really clear with the Committee: EU treaty provisions on this matter are very straightforward. Only the nationals of EU member states are able to hold EU citizenship. When the UK ceases to be a member of the EU on 31 January, UK nationals will no longer be able to hold EU citizenship. For those who have dual nationality with another EU member state—I would guess that the noble Lord, Lord Teverson, is in this group—it will be different. However, those with only British citizenship will not be EU citizens.

We have worked hard to ensure that the effect on people's lives will be minimised. The withdrawal agreement we have reached is a fair and reciprocal agreement with the EU on citizens' rights. It provides certainty and a means for all UK citizens living in the EU and EU citizens resident here in the UK at the end of the implementation period to be able to continue to live their lives broadly as they do now. These rights as provided by the withdrawal agreement will take the status of international law, having a direct effect in EU member states under EU law and in the UK under Clause 5 of the Bill. These provisions are meaningful and give people who are concerned about this the security that they need.

12.45 pm

Will the attitude to citizenship ever change? The British Government will of course always listen to the EU about benefits that might come to UK nationals. However, as the noble Lord, Lord Teverson, alluded to, to date, associate citizenship has not been formally proposed to the UK in the negotiations as we leave the EU and I do not believe that it is our place to propose new policies that would require making changes to fundamental and significant EU legal principles such as EU citizenship. But we always keep an open mind to suggestions from our EU partners and I reassure the noble Lord, Lord Teverson, that that open mind remains.

Finally, it is worth repeating a point that has been made several times in Committee. It is vital that we restore the traditional division between government and Parliament to ensure that the negotiations ahead can be carried out with flexibility. With that in mind, I ask the noble Baroness, Lady Hamwee, to withdraw her amendment.

Baroness Hamwee: My Lords, I knew that once we got going on this subject it would reel in Members from across the Committee, and I am grateful for their observations and contributions, as well as to the Minister, of course. He started his response by referring to confidence in the system being essential and finished it by referring to the need for flexibility. I am not sure that those two notions can live together very comfortably.

On the issue of uprating for life, the Minister said that that is being protected where it is unilaterally possible to do so while the person remains in an EU state. That raised the question that the noble Lord, Lord McNicol, intervened on, which is: what if the individual moves? At the moment the protection would be in place. He also used the phrase "in scope" but I am not sure what that means in this context. But perhaps

most importantly, he talked about the protections broadly remaining the same, which is the terminology used on the government website, which refers to, "broadly the same entitlements". What is also apparent when one looks at the website more closely, and certainly as I understand the position, is that the withdrawal agreement protections are dependent on there being a deal. I end by echoing my noble friend's plea made for the Government to make detailed information much more widely available and comprehensible. These are technical issues and I accept that finding the right language is a problem, but if there was no problem, we would not have been receiving representations about the issue. If all that comes out of today is better communications, that will actually be a good deal of progress. Leaving the Minister with that plea—it is more than a request—I beg leave to withdraw the amendment.

Amendment 37 withdrawn.

House resumed.

Northern Ireland Executive Formation

Statement

12.49 pm

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy and Northern Ireland Office (Lord Duncan of Springbank) (Con): With the leave of the House, I will repeat a Statement made by my right honourable friend the Secretary of State for Northern Ireland in the other place:

"Mr Speaker, prior to Christmas the UK Government initiated a period of political talks to get Stormont back up and running in Northern Ireland. Following nine months of negotiation and nearly four weeks of intensive discussions over the Christmas period, last week the Tánaiste and I tabled a draft text to all parties and made that text available to the public. The document, entitled *New Decade, New Approach*, sets out what we assessed to be a fair and balanced deal based on all the discussions between ourselves and the parties and what the parties told us would represent the right deal for Northern Ireland.

I am delighted to tell the House that all five of Northern Ireland's main parties accepted this deal as a basis to re-enter devolved government. Ministers have been appointed, an Executive have been formed and the Assembly is open for business. Devolution is restored in Northern Ireland. The Prime Minister visited the Assembly and met with the Executive on Monday to mark the positive moment of restored devolved government.

I know the whole House will join with me in welcoming and celebrating the return of devolved government in Northern Ireland, and will join me in congratulating party leaders on their confident decision to make this happen. I would also like to take this opportunity to thank my team and the UK Civil Service for the months of work to make this deal happen. I would also like to put on record the debt that I owe to my two predecessors: my right honourable friend the Member for Staffordshire Moorlands, Karen Bradley, and my right honourable friend the Member for Old Bexley and Sidcup, James Brokenshire.

The Good Friday agreement, signed over 20 years ago, brought with it an unprecedented period of peace, prosperity and growth for Northern Ireland. That progress, however, always has and always will be underpinned by the institutions that it created. Now that those institutions have been restored to full working order, we can carry on with the important business of moving Northern Ireland forward and bringing the people of Northern Ireland together. The institutions for north/south and east/west co-operation can work again as intended.

The *New Decade, New Approach* deal sets out a range of commitments for the Executive, the UK Government and the Irish Government. It commits a new Executive to addressing the immediate challenges facing the health service, reforming the education and justice systems, growing the economy, promoting opportunity and tackling deprivation. The deal does not seek to restore the Executive for its own sake; it offers real reforms aimed at making it more sustainable and transparent, so that the institutions can begin to rebuild trust and confidence with the public. The deal also gives the Executive a seat at the table when we discuss the Northern Ireland protocol with the EU. It solves outstanding cases which have been causing real concern to families, so that all people of Northern Ireland are treated in the same way when bringing family members to this country, akin to Irish citizens in Great Britain.

Yesterday, the Government also announced that we will provide the restored Executive with a £2 billion financial package that will deliver for the people of Northern Ireland and support delivery of the deal. The UK Government's financial commitment represents the biggest injection of new money in a Northern Ireland talks deal in well over a decade. The funding has already allowed the Executive to pledge to deliver pay parity for nurses in Northern Ireland—the first such intervention in a devolved area—and it will continue to support the Executive to deliver on the priorities for the people of Northern Ireland.

Provided over five years, it will include a guarantee of at least £1 billion of Barnett-based funding to turbocharge infrastructure investment, alongside £1 billion of new resource and capital spending. This will include significant new funding of around £245 million of support for the transformation of public services, including transformation across health, education and justice, and a rapid injection of £550 million to put the Executive's finances on a sustainable footing, including £200 million over three years to help resolve the nurses pay dispute immediately and deliver pay parity.

Alongside this, the UK Government will ring-fence £45 million of capital and provide resource funding to deliver a Northern Ireland graduate entry medical school in Derry/Londonderry, subject to executive approval. The UK Government will also provide £50 million over two years to support the rollout of ultra low emission public transport, and the agreement will also provide £140 million to address Northern Ireland's unique circumstances. The money will help to strengthen our union and will support the four key areas set out in *New Decade, New Approach*.

[Lord Duncan of Springbank]

I hope the whole House will join me in welcoming this announcement. I commend this Statement to the House."

12.54 pm

Lord Murphy of Torfaen (Lab): This is a great and considerable achievement, and I place on record the Opposition's congratulations, in particular to the Secretary of State, Julian Smith, who has done a fabulous job. He has worked at this extremely hard and in great detail. He really is to be commended for the energy and commitment he has put into achieving this. I also congratulate the Tánaiste and Foreign Minister of Ireland, Simon Coveney. After all, the two Governments brokered this deal with the others whom we must congratulate: the political parties in Northern Ireland, together with the civil servants, headed by Sir Jonathan Stephens, and the others who have made this a reality.

I have personal experience of talks in Northern Ireland. They are never easy. Over the past three years, I and others have been taunting the Minister about the slowness of progress in Northern Ireland, but the Statement brings us great hope. As I said, I congratulate him and his Secretary of State on it.

Some questions arising from the Statement still need to be answered. On the financial settlement, the Minister will be aware that the Deputy First Minister and the First Minister have both written to the Prime Minister with some questions on the £2 billion that the Minister mentioned. He knows, of course, that £1 billion of that is a result of Barnett consequentials that would have come to Northern Ireland anyway. Of the remaining £1 billion, I think that £250 million was planned to come as a result of the deal between the DUP and the previous Government. Can the Minister tell us whether, in his view, all the commitments in the settlement will be dealt with by that £2 billion?

A rather novel institution is also being created: a joint board between the Northern Ireland Executive and the United Kingdom Government. I have not seen this at all in 20 years of devolution, where spending has been subject, if that is what the case is, to a board that represents the reserved powers of the Government here in Westminster and, in this case, in Belfast. Perhaps the Minister could elaborate on that.

We have of course been discussing Brexit in this House for some days. Only yesterday morning, we looked at the issue of Brexit and devolution. I am glad that there will now be a Northern Ireland Executive at the table dealing with the negotiations over our leaving the European Union. However, I hope that, bearing in mind that debate yesterday, that presence at the table will be meaningful and that the Government will actually listen to the Northern Ireland Executive, as I hope they will listen to the Welsh Government and the Scottish Government as well.

One of the central parts of this agreement, of course, is cultural and linguistic matters. I am sure that the Minister would agree, being a Scotsman, that the Scottish and Welsh Governments would be more than happy to help the new commissioners in their jobs to ensure that we deal with these issues.

One thing that really is pleasing in the agreement is that there is now a constitutional and legal mechanism, which I hope will be dealt with pretty quickly, that means an Assembly and Government cannot collapse in the same way they did three years ago. This mechanism will ensure a greater guarantee of stability for those institutions in Northern Ireland.

Despite the questions I posed to the Minister, I congratulate him and the Government on a really great breakthrough.

Lord Bruce of Bennachie (LD): My Lords, we on these Benches certainly welcome the Statement and the fact that the Assembly is up and running and that a new Executive have been formed. It has been a long time coming, but it is welcome. I guess that a buzz of activity will now return to the corridors of Stormont.

There can be little doubt that last year's elections, for local government and the European Parliament and the general election, have contributed to this outcome. The people of Northern Ireland have made it clear, not only in switching votes away from the two largest parties but in what they told candidates of all parties, that they were fed up with the failure and intransigence of their elected politicians and wanted them to get back to work. They will now need to do so. However, it surely behoves all the parties to give priority to making up for lost time, commitment and resources on the fundamental issues in Northern Ireland.

For example, the figures for the health service in Northern Ireland are truly shocking and would be utterly intolerable if they were apparent on the mainland. The fact that nurses have been reduced to striking because of the of absence of a pay settlement—a strike that is unprecedented—is surely a demonstration of how dangerous the state of things has become. So it is welcome that priority has been given in the Statement to resolving the dispute and delivering pay parity. But I am sure that people, especially those in need of treatment, will want to see a rapid improvement in the delivery of healthcare.

The crisis in education is also serious. Most schools are in deficit and are having to appeal to parents for funds to provide the most basic of services and equipment, including such things as toilet rolls. On a positive note, having visited the Magee campus of the University of Ulster, I very much welcome the £45 million ring-fenced capital resource funding for a graduate-entry medical school and hope that, with agreement, this will go ahead. The university has said consistently that it is poised and ready to do so.

For us, it is particularly good to see our Alliance colleague Naomi Long take up the post of Justice Minister in the Executive. We offer her our heartfelt congratulations. Naomi has been a Member of the House of Commons and a staunch defender of the rule of law. She has often put her personal safety at risk to stand up to criminal and paramilitary elements in Northern Ireland. She will be a committed and effective Minister, and we wish her the very best in her new role.

I particularly welcome the news that integrated schools, such as Cliftonville Integrated Primary School and Glencraig Primary School, will receive a share of the £45 million school enhancement programme that

has been announced. The community in Northern Ireland benefits greatly from educating children together. These are great examples of schools where children of different religions, traditions and cultures are welcomed and treated equally. I have visited integrated schools and can see the positive environment they create. Can the Government provide more information on steps that will be taken to improve community relations in Northern Ireland and how they will work with the parties to ensure there is a genuine shared future for all? The Secretary of State made clear that this was not just about getting the Assembly back but trying to move forward to a more positive future.

As the Northern Ireland protocol unfolds and Brexit moves into a detail phase, it is of course welcome that the people of Northern Ireland will have a voice and a seat at the table. But the challenges are immense, new funding is essential and we must avoid backsliding into the old ways. Can the Minister explain how the proposed UK Government-Northern Ireland joint board referred to by the noble Lord, Lord Murphy, will operate, who will be on it and what its authority will be?

In conclusion, we all welcome a fresh start. We do not underestimate the challenges of restoring normality or dealing with Brexit but sincerely hope that, rather than just a "New Decade, New Approach", this will stick and deliver for the people of Northern Ireland and the UK for the long term, and that we will not face the prospect of a collapse of the Executive and Assembly again.

Lord Duncan of Springbank: My Lords, I welcome the supportive comments of both parties sitting opposite. I have stood here so many times, trying to find new ways of saying that not much has happened. Now, finally, there appears to be the very thing we have all so vehemently wished for, which is a restored Executive.

I will go straight into the questions to allow maximum time for discussion. The joint board itself is an innovation; that is absolutely correct. On the question of who will sit upon it, that will be the First Minister, the Deputy First Minister and the Secretary of State for Northern Ireland. Its purpose is to promote sustainable public services and to bring about transformation. There is a recognition that, after such a long period of time, a number of issues have become bogged down in the absence of decision-making by Ministers and a different momentum is needed to underpin that. The board should meet on a quarterly basis. Noble Lords will also be aware that the Stormont agreement anticipates a fiscal council, which will provide further details of ongoing developments in the budget and useful information to that joint board.

As to the question raised by the noble Lord, Lord Murphy, of how much of the £2 billion is fresh, rather than reheated, money, it is important to stress that the Barnett consequentials have for the first time been guaranteed at £1 billion, irrespective of whether they reach that amount. That is the first element. The second is that there remains £237 million outstanding from the supply and confidence arrangement with the DUP—a separate sum of money that is still, and will be, available to the Northern Ireland Executive. That means that the moneys which I iterated in my remarks are broadly fresh money in that regard. I see the noble Lord, Lord Hain, hovering, or perhaps not; his time will come. It is important to recognise that this is indeed new money, which will do a great deal of good. I am very pleased to announce that the strike by nurses has now been called off because of the acceptance of the settlement, which restores a parity between the different nursing operations across the Irish Sea. That is very important in itself.

The noble Lord, Lord Bruce, raised the question of waiting times. They are a scandal and, in Northern Ireland right now, a serious issue that needs to be addressed. That is why the incoming Health Minister has made this one of his priorities and why money has been put in place to recognise that this does need to be one of the first areas where serious action can happen.

Again, the graduate medical school is an important step forward. It begins to address one of the deficiency problems: that there are not enough health and medical practitioners coming through the system. This will be a small step in that direction.

The question of the integrated schools will now rest with the devolved Minister, so for once I can say it is really over to him to take this matter forward—do I mean him or do I mean her? There is a question, but hopefully *Hansard* will correct that if I have given the wrong gender. The point is that this is a devolved matter and will be taken forward in that context.

The coming of Brexit, which has been Banquo's ghost throughout this entire period, now means that the Assembly will have an opportunity for serious discussion and the constitutional arrangements that have been put in place in relation to the legislative consent Motion and procedures around it will now be available and can be operated by the Assembly and the Members of that institution. These developments will go some way to moving this matter forward. I will stop there and let other questions be asked.

1.06 pm

Lord Caine (Con): My Lords, as somebody who spent the best part of two and a half years working on this agreement, I warmly welcome the Government's Statement today and congratulate them on their tremendous achievement in restoring devolved government in Northern Ireland. Like other noble Lords, I also commend the work of the Secretary of State for Northern Ireland. I know from long experience how much effort has gone into this, not just from the current Secretary of State but from his immediate predecessors. Indeed, the text of the agreement reached last weekend is to some of us strikingly familiar.

I have a couple of questions. Does my noble friend the Minister agree that this agreement and financial package finally afford us the opportunity to put the political paralysis of the past three years firmly behind us and to start to build a brighter, more prosperous future for Northern Ireland? Does he agree that devolved power-sharing government is the surest foundation for the governance of Northern Ireland within the United Kingdom?

Finally, on the point raised about the joint board by the noble Lord, Lord Murphy, I spent many years in the Northern Ireland Office. If there is a department

[LORD CAINE]
that is sometimes guilty of "devolve and forget", it is the Northern Ireland Office. So I welcome the establishment of the joint board as a very positive development.

Lord Duncan of Springbank: I put on record my thanks to my noble friend Lord Caine. I know how much he has done in the Northern Ireland Office to bring about what has been achieved today. The success is owed not to any one individual but to a number of individuals over a very long period of time who have put their shoulder to the wheel. Again, I agree that this should allow us to move from that political paralysis. The key thing here is the sustainability of the institutions, which we must now ensure goes forward. We do not wish to be in anything like this situation again—ever, let alone any time soon.

As to the joint board and the notion of "devolve and forget", the joint board, I hope, will provide that momentum and push to ensure that, where there are issues that require early engagement on a ministerial level, this will take place and will allow filtering down into the Civil Service on both sides of the water to ensure that we are able to get Northern Ireland back to where it belongs, which is what the people of Northern Ireland richly deserve.

Lord Hain (Lab): I echo the congratulations that I made fulsomely in my speech during the withdrawal Bill on Tuesday evening. Is this executive joint board a form of conditional devolution? I do not necessarily ask that critically, because the Northern Ireland Executive have had a record of not making tough decisions. Being in government involves choices and, sometimes, tough decisions. I speak from 12 years of my own experience in government. For example, I introduced water charges before we got the settlement of 2007. They were very unpopular and acted as a spur to the agreement we got. They were immediately abolished by the new Executive, which deprived the water industry of the capital investment and finance it needed to modernise, and the consequences are to be seen. Also, combined water charges and household taxes in Northern Ireland are half the average across England, Scotland and Wales. They need to raise more of their own revenue.

Lord Duncan of Springbank: The noble Lord is right to bring this matter before us. Restoring the Executive might end up looking like the easy bit of the operation when we start to see what serious challenges over revenue the incoming Executive are confronted by. Very difficult decisions will need to be taken, and I hope that the joint board will be able to operate in a spirit of consensus in that regard. It is the job of the Secretary of State for Northern Ireland not to instruct this process but to support it as it goes forward. There will be difficult decisions in health and on the wider education question, and each will require Ministers to step up to the plate, which is how it should be. They must then face the electorate in due course to see whether they have done what they wanted done; they will be judged not by us sitting in this place but by the elections yet to come.

Lord Maginnis of Drumglass (Ind UU): My Lords, I do not disagree with anything that has been said about the agreement and I am pleased to see a working Assembly once again. However, it concerns me as someone who was involved in the Belfast agreement that we appear to have had an inefficient Administration while the Assembly was not in place. We have not resolved the RHI issue, and it is important that we do. It is impoverishing farmers, in so far as we have not had equality on it with the rest of the United Kingdom or, indeed, with the south of Ireland. When will that be resolved?

Further to that, it appears to someone who was involved in 1998 that the Irish Government have been allowed to infringe strand 1 of the agreement. I hope that the Minister can address this. Moreover, why has nothing been done to discipline those responsible for finding money under the counter and paying £10,000 to someone who claimed to be annoyed by the Queen's portrait hanging in their building? I advise the Minister, with respect, that those issues cannot be brushed under the carpet as they have been year after year. If we are to have a successful Assembly, we need a degree of openness. That starts with government here at Westminster.

Lord Duncan of Springbank: The noble Lord is right to remind us that the RHI scandal has been a challenge for all in Northern Ireland, not least those affected by it financially. The agreement brokered with the five parties recognised that issues were brought to the fore as the inquiry unfolded regarding the working of government and the responsibility and role of special advisers and the Civil Service. Within the agreement that has been reached is a strong view that this needs to be reconsidered and examined in a way that provides a proper structure to ensure that such a situation never happens again. I believe the report of the RHI inquiry will be published soon, but that is a matter for the Northern Ireland Executive—it is quite nice to be able to say that for the first time in a very long time. As to the other questions raised by the noble Lord, he has raised them in the past, and I understand why, but at this moment I will comment on them no further.

Lord Hay of Ballyore (DUP): My Lords, like other noble Lords I welcome the Statement. The Minister has come to this House on a number of occasions with negativity on Northern Ireland. This is a very positive Statement, and I and my party see it as a new beginning for Northern Ireland. After three years we now have a working Assembly and in particular an Executive made up of the five main parties in Northern Ireland. We have Ministers elected by the people of Northern Ireland and accountable to them, which is vital.

Yes, this Executive will face many challenges; there are huge challenges out there, but I have no doubt that they will face them with good will, whether in health, education, economic development or investment. I have no doubt whatever that they will do what they can to represent all the people of Northern Ireland. This Executive can show a lead to the people of Northern Ireland on how both communities in every community can live in peace and harmony. That is what this Executive need to be about.

I welcome the funding coming with the package. I know there may be some questions as to whether it is new money or from the Barnett formula or whatever, but it must be welcome. I also welcome, at long last, the £45 million of capital ring-fenced for the medical school in my own city of Londonderry. This has been ongoing for some time and I welcome it very much. I know that many, if not all, of the politicians in this city will welcome what has been achieved. I pay tribute to the Minister, his officials and the people who were at the coalface of getting this agreement over the line; after several weeks, several hours and several days, we got there. This whole House and the other place should welcome this agreement in moving Northern Ireland forward.

Lord Duncan of Springbank: The noble Lord is right that this agreement can move Northern Ireland forward. The important thing to recognise is that, because of the absence of an Executive, it has slipped back. In moving it forward we are just trying to bring it into parity with the other nations in the United Kingdom. That is important to emphasise. A journey now has to be taken, and it will not be achieved quickly or in a single step. I am pleased to be able to welcome the £45 million for the city of Derry/Londonderry, given the number of times I have not been able to talk about it because I was never able to make that clear. Now I can make it very clear indeed. I also personally pay tribute to the officials in the Northern Ireland Office. I know how much they care, how hard they worked on this and how much they have helped me as I have tried to deliver on these issues as well. I hope now that this deal does what it says on the tin and makes us move into the new decade in the right way.

Baroness Armstrong of Hill Top (Lab): My Lords, I too welcome this very much, but I hope that the Government have learned lessons. You do not just sign a peace agreement and then forget about it. The Good Friday agreement continues to need daily work from all the people involved. Also, we should have learned from the last three years that if a Government look as though they are favouring and making a particular relationship with one party, as against working with and treating all parties equally, which the Good Friday agreement said that both Dublin and London should do, those parties then have no incentive to get back together and really make sure that they run affairs and are accountable for how things are run in Northern Ireland. I hope that the Government have learned those lessons and that we can all work to make sure that we do whatever we can to support and enable that Executive to work.

Lord Duncan of Springbank: The noble Baroness is absolutely right. There are lessons to be learned for this Government and for the parties in Northern Ireland; indeed, some of them are quite hard lessons. It is the people of Northern Ireland who often make the judgment, as they have done in elections gone by.

I am aware that this process is at a very delicate stage. It is almost like the stage when you see the first green shoots of your seeds coming through and you think that you have a harvest, but that is actually when you need to tend to them most carefully. We must all do that now to ensure that we reap the harvest of what we have achieved over the past few days. I am aware that each party will now be judged on how it tends the crop before we reach the harvest.

Lord Cormack (Con): My Lords, I congratulate my noble friend warmly. Does he acknowledge that some important unfinished business has been taken forward in your Lordships' House in the absence of the Executive? In particular, I refer to what I call the Hain initiative on providing proper compensation for those who suffered so much during the years of anguish and trouble. Can he assure the House that there will be no further impediment to implementing those measures?

Lord Duncan of Springbank: My noble friend is right to raise this issue. He will recall, as I am sure other noble Lords will, that the legislation we took forward before Christmas was taken forward by this House and this Government. It was not dependent on the outcome of a new Executive. As a consequence, it will continue to the timetable that we set. I believe—again, I pay tribute to the noble Lord, Lord Hain, for his work on this—that the compensation for victims should be in place no later than May this year. That is something to be welcomed by all in the newly reformed Executive, I hope.

Lord Empey (UUP): My Lords, I say as one who participated in the establishment of these institutions that they should never have been collapsed in the first place, but I am glad to see them returned.

However, I draw the House's attention to the part of the Statement that says that this deal was accepted by the main parties

"as a basis to re-enter devolved Government."

That is not true. This is not an agreement. It is a government Statement and a Statement of the British and Irish Governments collectively. It was shoved into our hands at 8.30 pm last Thursday. We had never seen a number of the matters contained in it before. Our participation in the Executive is based exclusively on our rights under the Northern Ireland Act 1998, whereby our position in the Assembly is related to our electoral support. We have taken on the health portfolio, which I have drawn to the House's attention on many occasions because it is in such a terrible state. I hope that we will succeed in that endeavour but I want to make it clear that, for instance, we have never seen the legacy proposals and this business of 100 days before—and we do not accept the legacy proposals. We never have. We have argued against them since Stormont House in 2014.

However, there are many good things in the Government's Statement. There is potential. But do not create the impression that everybody accepts everything that is in this paper—we do not. It would be unfortunate if we clouded people's thinking into believing that that is the case.

Nevertheless, we are there because we want to solve the problems that I and others have brought to the House's attention time and again, such as the disgraceful state of affairs in our health service and many of our

[LORD EMPEY]
other public services. We will play as positive a role as possible but we will not be tied down to a Statement by two Governments containing provisions of which we had no knowledge and over which we had no say.

Lord Duncan of Springbank: In many respects, the noble Lord echoes the words of the noble Baroness, Lady Armstrong: this is at a delicate stage and we have to see how it will grow into a new, fully fledged, functioning Executive addressing each of these matters. I am pleased in one respect, in the light of the remarks of the noble Lord, Lord Empey, that the health portfolio is now held by his party. I suspect that the incoming Minister, Robin Swann, will be getting letters from his friend, the noble Lord, which he can look forward to as much as I did.

Noble Lords: Oh!

Lord Duncan of Springbank: I meant that in a nice way, not a bad way. Again, I note that there will be challenges. The noble Lord is right to note that the legacy question will be one of them. There is no question but that will be a challenge but I hope that we can see the direction of travel and I hope, in the light of the document before us, that we can achieve the outcome we all so dearly wish for.

Lord Dubs (Lab): My Lords, I congratulate the Government on achieving this agreement. It represents a good news day. Some of us have not had a good news day for many years, so it is a nice thing. I want to raise an issue that I have raised with the Minister before, but it is particularly relevant in the new context. Can he get the Home Office to approach the Health Minister, I think, and get Northern Ireland to agree to take some child refugees? It has told me that it will; I am assured by both Belfast and Derry that there is a willingness to do this. Can the Government please initiate that process?

Lord Duncan of Springbank: It is a good news day. That issue is now available for the Northern Ireland Executive to push forward. The noble Lord will be aware that one of the challenges we faced—we wrestled with it in different directions—was accommodation in different parts of the Province. I hope that the incoming Executive can make progress and that they recognise their wider responsibilities under the Geneva convention, as well as the wider question of young people and children in this regard.

Lord Dunlop (Con): My Lords, I add my voice to the warm welcome for the restoration of the devolved institutions in Northern Ireland and for a common programme for government that focuses on the priorities of the people of Northern Ireland. Does my noble friend agree that, to achieve better results, the Executive need to operate in less of a departmental, siloed way and adopt a greater sense of collective responsibility, which I hope will be reflected in a reformed and strengthened Ministerial Code?

Lord Duncan of Springbank: I could not put it better myself. I pay tribute to my noble predecessor's endeavours in this regard. There needs to be greater recognition of collective responsibility: of pulling together and pulling on the rope in the same direction. I hope that is embedded in the newly established Executive.

Drones: International Law

Question for Short Debate

1.27 pm

Asked by ***Lord Hodgson of Astley Abbotts***

To ask Her Majesty's Government what assessment they have made of the implications of the use of drones to assassinate Qasem Soleimani for existing agreements on the use of drones.

Lord Hodgson of Astley Abbotts (Con): My Lords, I begin by drawing the House's attention to two of my interests. I am an officer of both the All-Party Parliamentary Group on Drones and the All-Party Parliamentary Group on Extraordinary Rendition.

The expanding use of drones and its implication for the legal framework that covers their operation raises a series of serious policy issues. Before I come to the substance of my remarks, I need to make one point of principle clear: the first duty of a state is to protect its citizens. We live in a difficult, complex and dangerous world where many issues are not as black and white as we might wish them to be. I therefore accept that forming policies to deal with shades of grey will always be challenging. However, the fact that it is challenging cannot mean that we do not strive to achieve the appropriate level of democratic accountability and control. Accordingly, the standard government answer that is used too often to close down discussion on these points—"We never comment on intelligence matters"—cannot always be allowed to pass unchallenged.

My purpose in initiating the debate is to enable the House to discuss: first, the effectiveness of the legal and operational framework that covers the UK's drone programme; secondly, the extent of safeguards built into our arrangements with our allies as regards drone operations to ensure that the UK remains in compliance with its international legal obligations; and finally, whether the present arrangements provide a proper degree of public scrutiny and accountability.

We must begin by accepting that, in recent years, drone operations have experienced a high degree of what is known as mission creep. First, the United States has dramatically expanded its drone use by unilaterally declaring certain countries as containing what is described as an "area of active hostilities". That definition gives local commanders the latitude to act without having to believe that targets threaten the United States itself. Secondly, the use of a Reaper drone to assassinate Qasem Soleimani, the head of the Iranian revolutionary guard while on a visit to Baghdad in Iraq earlier this month raised the pressure still further. This was the first time the US had used drone technology to kill another country's senior military commander on foreign soil.

What is the legal framework that covers the use of force on foreign soil? There are three elements: first, that it has been authorised by the United Nations; secondly, that it has the consent of the state in which the force is to be used; and finally, that it is used in self-defence. This right of self-defence depends on the imminence of any threat. The US interpretation of imminence has to date been a good deal more expansive than this country's, but in recent years there appears to have been a series of subtle shifts taking us closer to the US position. As an example, the then Attorney-General, in evidence to the House of Commons Justice Select Committee in 2015, said:

"One of the things we … need to think about … is what imminence means in the context of a terrorist threat".

It would be most helpful if, when my noble friend winds up, she could shed some light on the detail of the Government's current thinking on the definition of imminence.

Even if we were to stick with the narrower definition we have used hitherto, there are still other issues we have to consider. First, there is our supply of information. The United Kingdom operates an outstation of GCHQ in Cyprus to record and analyse messages, information and traffic in the Middle East. It is clear that this information is shared with the US and our other allies, notably through certain RAF stations used by the CIA in the UK: RAF Menwith Hill, RAF Molesworth and RAF Croughton. UK staff based on these stations are said to have what is called a red card, which can be used if they believe the information provided is likely to be used for purposes that would be illegal under UK law. My second request to my noble friend is that she shed a little light on the frequency and extent of the use of red cards. I make it clear that I am not asking her to explain the location or nature, merely the extent of their use.

In addition to the supply of intelligence, there is our commitment of personnel. There is now a high degree of interoperability between US and UK forces operating drones in the Middle East, and how the red card system works there—if at all—is not clear.

Finally and most importantly, there is the role of UK personnel in target selection. A former CIA official has underlined how effective UK forces have been:

"The British have been in Gulf states for decades. They have a reservoir of knowledge, contacts, and expertise that is very important … If you look at what capabilities each side has, that starts to tell you something about precisely where the actionable intelligence is coming from."

I think my noble friend could usefully comment on the accuracy of that statement when she winds up.

Before I conclude, I will say a word about the wider implications of the increased use of drones and drone technology. From the safety of this House, it is easy to assume that drone warfare affects only the combatants—sadly not. Civilians are nearly always on the front line. One of our excellent researchers at the APPG recently spent time in Yemen. She explained that although drones fly at around 10,000 feet, they can be heard on the ground. Imagine the psychological strain of hearing a drone, from which death and destruction can be rained down at any moment, loitering above your town or village maybe for days at a time; the drones can fly for 17 or 18 hours at a time. How do you go about your daily life? For example, do you allow your children to play outside? Drones' use may appear to be risk-free to us, but it is far from risk-free to those on the ground.

1.34 pm

Lord Janvrin (CB): My Lords, I thank the noble Lord, Lord Hodgson, for introducing this timely short debate. I will speak briefly about the importance of Parliament being able to scrutinise government decisions on the use of drones. I do so as a member of the Intelligence and Security Committee in the last Parliament, and its predecessor, which issued the 2016 report entitled *UK Lethal Drone Strikes in Syria*.

The international political ramifications of the United States' decision to kill Qasem Soleimani will continue to be debated for months, if not years. But, as the noble Lord, Lord Hodgson, made quite clear, his Question is about issues of legality and policy raised by the assassination. The 2016 ISC report into the targeted killing of Reyaad Khan, a British member of ISIL in Syria, is instructive in examining some of these issues.

That report drew attention to the Government's position that, when it comes to international law, the policy on the use of remotely piloted aircraft is the same as that for manned aircraft; namely, that pilots operate under the same legal constraints and rules of engagement. In accordance with Article 51 of the UN charter, a Government have the right to use force in self-defence where an armed attack is under way or judged to be imminent and where the response is both necessary and proportionate.

Thus far we are on familiar ground, but with the recent use of drones we soon get into more challenging territory. I pay tribute to the work of the APPG on Drones in looking at some of these more difficult issues—around the interpretation of the right to self-defence, what constitutes an imminent attack, and the strain imposed on these legal concepts by technological change relating to the use of robotics, data analytics and information technology.

My point is altogether simpler; it concerns the importance of being able to assess the intelligence. The 2016 ISC report made it clear that, in order to examine the legality of a lethal drone attack, it is obviously necessary to assess the secret intelligence underlying the judgments on the severity of the threat, imminence, necessity and proportionality. In the case of the UK's decision to kill Reyaad Khan in August 2015, the ISC was able to take evidence in secret and to publish an important, if limited, report commenting on the intelligence supporting the decision to go for a lethal drone attack.

The significant point here is that Parliament had the ability to scrutinise the legality of a lethal drone attack because the parliamentary Intelligence and Security Committee, under the Justice and Security Act 2013, can examine the secret intelligence. For me, this is a very significant implication of the US drone attack. It is a reminder to Parliament of the importance of the Intelligence and Security Committee in providing that scrutiny and oversight of the UK's intelligence agencies.

[Lord Janvrin]
This scrutiny is part of the licence given to the agencies to go about their secret business in an open and democratic society. It is about ensuring public trust—so vital to the effectiveness of these services, which make such a key contribution to our security and well-being.

The Intelligence and Security Committee is not a conventional parliamentary Select Committee. Under the 2013 Act, members are nominated by the Prime Minister in consultation with the leader of the Opposition, then Parliament makes the appointments, with each House voting on the nominations of its own Members. After the 2017 election there was an unfortunate delay of some five months before the new committee was appointed. I realise that there are many competing priorities after the recent election, but it is surely in the interests of the public, Parliament and the intelligence community to have the new committee up and running sooner rather than later. There are a number of ISC reports waiting to be published, and major issues—such as Huawei and the 5G network—on which the ISC will have a unique oversight responsibility.

Does the Minister have any information on the nomination process for this committee in this new Parliament? I realise that this may be outside her direct ministerial responsibilities, but I hope that she will at least be able to pass on that there is parliamentary interest in the appointment of a new committee without undue delay.

1.41 pm

Lord Judd (Lab): My Lords, my interests and experience relevant to my position on this are on the record.

We all owe a great debt to the noble Lord, Lord Hodgson, for introducing this debate on a crucial issue. I underline the word "crucial", with all its significance. The work that he consistently does on drones is to be congratulated.

Agnès Callamard, the UN special rapporteur on extrajudicial killings, said that the test for so-called anticipatory self-defence is very narrow. It must be a necessity that is instant, overwhelming and leaving no choice of means and no moment of deliberation. Frankly, those requirements are unlikely to be met in the circumstances of the US-targeted drone attack on the Iranian general Qasem Soleimani.

Targeted assassinations, using drones or otherwise, are likely to be highly counterproductive, especially in the longer term, because the law protects everyone, including the people of the US. Other countries are likely to follow the practice and example set by the States, ourselves or anybody else.

Finally, and perhaps most directly relevant to this debate, the growing trend of armed UAV proliferation among state and non-state actors, and its increased use, as illustrated by this instance, gives rise to the need for a clearer legal framework, whether by strengthening or more fully implementing other control regimes, or by formulating distinct measures, to help eliminate any confusion about different applicable standards and rules and to protect the rule of law and international stability, which should incorporate appropriate levels of accountability, transparency and oversight.

Do the Government accept and put on record that they are legally responsible for what happens at the bases on our territory, for our partners' use of intelligence and assets, and for the UK personnel embedded with partner forces, no matter which state commands? Will they clarify what safeguards and oversight mechanisms currently exist beyond assurances from partners? Is there an oversight mechanism? What is the line of oversight? Are they prepared to give an undertaking to establish and implement a mechanism to ensure that US operations involving UK intelligence and support are lawful, and develop policy safeguards to address areas of risk? These should surely include a robust assessment of the facts, taking into account information provided by the partner and the UK's own intelligence and civil society sources of information, establishing a mechanism to ensure adherence to international human rights law when strikes are taken outside armed conflict, and establishing a framework to instate conditions on a partnership in the face of concerns, exiting the partnership if no improvement is made.

Currently, and disturbingly, the only options available are to assist or not to assist. Will the Government ask the US Government what is happening at the bases on UK territory? Specifically, is any element of the US drone programme, including but not limited to intelligence gathering, analysis and target development, facilitated through UK bases such as RAF Menwith Hill? In line with Section 17 of the Chilcot report, will the Government carry out standard continuous assessment of civilian casualties and harm resulting from UN drone strikes in places such as Yemen, where UK assistance is pivotal to the outcome of conflict? Will they inform Parliament, or a specific body in Parliament, of any assistance arrangements so that the requisite information is available for informed decision-making?

We are drifting into a new age of great challenge. Technological warfare, particularly when so few current politicians have experience of warfare, can too easily become just another management option, pressing buttons for things to happen remotely. War is a horrible business. Civilians get maimed, hurt and bereaved in warfare. We need to take what is happening extremely seriously. I again thank the noble Lord, Lord Hodgson, for having brought this issue to our attention.

1.48 pm

Baroness Stern (CB): My Lords, I thank the noble Lord, Lord Hodgson, for arranging this timely debate. He has done the House a great service with his balanced and probing contribution.

Your Lordships' House has shown an interest in the development of drone warfare since 2012, when the All-Party Group on Drones was established. I declare an interest, having been a member of that group since it was set up. When it was established, its central concern was to ensure that as drones became an intrinsic part of conflict operations everywhere, they were operated by the United Kingdom at all times within a framework of humanitarian and international human rights law, overseen by and accountable to Parliament.

As the noble Lord, Lord Judd, has pointed out, a weapon that can inflict damage from thousands of miles away, and target more precisely than any other

weapons system so far in use, requires new thinking. This was a new element in warfare that was developing fast, and a framework was needed to ensure that the use of this new weaponry would follow the obligation to protect civilians in conflict and operate under international law.

During the previous Parliament, the all-party group carried out an extensive inquiry entitled *The UK's Use of Armed Drones: Working with Partners*. The inquiry had the involvement of distinguished experts. It was chaired by Professor Michael Clarke, former director-general of the Royal United Services Institute, and advised by Professor Dapo Akande, co-director of the Oxford University Institute for Ethics, Law and Armed Conflict. Evidence for the inquiry was taken from senior military figures, among others.

The inquiry report stated:

"In general, the United Kingdom has had a good story to tell on the deployment of drones for a range of military purposes. Over the last two decades, the UK's use of military drones has been highly constrained and was widely regarded by other countries, and by the United Nations, as a model of responsible and ethical use. It was also regarded as different in some significant respects to the way lethal drones were used by the United States."

However, it also concluded that

"without clear policy and sound legal basis, UK armed drones are flying into political and operational danger, risking both harm to innocent civilians and opening up personnel to criminal prosecution. The UK's use of lethal force by drone without parliamentary approval, and its assistance to partners' lethal use of drones risks violating national and international law."

The report made a number of recommendations, and at the time of a new Government it seems appropriate to bring some of these to the attention of the Minister, in the hope that the Government will be prepared to consider them afresh. Some of the recommendations address the role the UK plays in drone strikes when it is working with other state partners and suggest ways to ensure that humanitarian and international laws are respected. For example, the Government should publish their policy on targeted killings: they should at least explain the legal basis; the criteria used and the precautions applied in the selection of targeted individuals; the decision-making process; and, in particular, the process of making sure that every alternative method of neutralising the threat posed by the targeted person has been exhausted.

Transparency is another important area, including the involvement of and accountability to Parliament. The provision of information by the Government is inadequate, and I am grateful to the noble Lord, Lord Janvrin, for his detailed contribution on this. The Defence Committee, the Intelligence and Security Committee, and the Joint Committee on Human Rights can look at certain aspects of drone use that fall within their mandates, but no parliamentary committee has the mandate to conduct comprehensive investigations into a drone strike. The report by our all-party group concluded that parliamentarians should demand greater transparency in the way the UK operates drones. A number of suggestions were proposed for consideration —for example, that the Government should create the post of an independent reviewer of drone operations, in the manner of the successful Independent Reviewer of Terrorism Legislation.

In closing, perhaps I may ask the Minister three questions. First, can she tell the House whether the Government have any plans, or any work in progress, that would put more information on UK drone warfare into the public domain? Secondly, is there any plan to strengthen the accountability to Parliament in respect of drone warfare? Thirdly, if the answer to both these questions is negative—and it would be reasonable for the Minister to say that it is a bit soon in the life of this Parliament to ask such questions—is she prepared to meet some Members of your Lordships' House, to hear their concerns and take this matter further?

1.55 pm

Baroness Smith of Newnham (LD): My Lords, like other Members in the Chamber, I thank the noble Lord, Lord Hodgson, for bringing forward this timely debate today. It is flagged on the annunciator as "Drones: International Law" but the Order Paper and the original documents suggest a slightly different title.

I would like to raise two key themes with the Minister: international law and the UK's use of drones, and how our relationship with the United States fits into questions associated with the impact of the strike on 3 January; and further questions about the nature of our alliance with the United States and how far Her Majesty's Government are able to rest on the assurances of the United States Government.

The APPG on Drones, of which I am not a member but whose meetings I occasionally attend, provided a useful briefing. It pointed out that a German court has said that the German airbase of Ramstein cannot be used for drones precisely because there is a concern about the Americans acting illegally in some of their attacks on Yemen—a concern that the collateral damage and some of the deaths there have gone beyond what is acceptable under international law.

In a letter to my noble friend Lady Northover regarding the drone strike on 3 January, the noble Lord, Lord Ahmad, said:

"It is well established that states have the right to use force in self-defence. The United States have said that Soleimani was plotting imminent attacks on American diplomats and military personnel. I do not doubt what they have said."

I am not here to question whether what the United States said about that attack was correct or to query the integrity of the noble Lord, Lord Ahmad, in accepting those assurances, but how far are Her Majesty's Government able to interrogate United States actions ahead of time? How far are Her Majesty's Government able to accept the assurances of the United States Government? How far are we able to be reassured? How far can the Minister reassure your Lordships' House that when we work with the United States through our existing legal arrangements on its drone programmes, on any activity that involves UK drones, UK intelligence and our bases in Cyprus and elsewhere, as the noble Lord said, any activity undertaken by the United States is within the framework of international law?

There are clear challenges in international law. Your Lordships' International Relations and Defence Committee, on which I serve, in a report last year raised concerns that the international law-based order is already under threat. We are used to it being challenged

[Baroness Smith of Newnham]
by countries we see as, perhaps, our opponents in the international order; it is more of a problem when those threats come from our closest ally, the United States.

In our report we said that there were some challenges from the United States with Donald Trump as President, and that some of those challenges were likely to be much exacerbated in the event that a Trump Administration lasts not four years but eight years. So, as we look to the next American elections, are Her Majesty's Government assured that the United States, as our closest ally, is acting within the framework of international law? Can we be assured that Ministers are acting, at least in private, to ensure that the United States is aware that we will not be complicit in illegal activities? Obviously I do not expect the Minister to suggest today anything that has been said. I assume that any conversations are in private, but I would like to be reassured that such conversations are happening.

The drone strike on 3 January raised a set of precedents that we need to be reassured are not likely to recur. The attack was on a state individual, not a non-state actor. It was undertaken without the permission of the host state—Iraq—and the President of the United States seemed to suggest that perhaps part of the motivation could be retaliation. Can the Minister assure us that the United Kingdom does not accept that we should in any case act without the permission of the host state, that we should not act outside a mandate from the United Nations and that we would not attack state individuals?

Can the Minister also give us a little more clarity on the UK's understanding of "self-defence"? Clearly it is a concept understood in international law, yet in the US's attempt to say that the attack on 3 January was in self-defence and in the light of an imminent threat, that word can sometimes seem in danger of mission creep, as the noble Lord, Lord Hodgson, said. Is the Minister reassured that the threat was imminent? Can she tell us how the United Kingdom Government define "imminent"? Perhaps it is not quite as finite a concept as it might appear.

There is clearly a danger of escalation, and escalation affects not just the United States and Iran but UK troops in Iraq. The attack on 3 January raised threats to international law and to the United Kingdom. What are the UK Government doing to ensure that our links with our allies will improve our security, not undermine it?

2.02 pm

Lord Tunnicliffe (Lab): My Lords, I thank the noble Lord, Lord Hodgson, for securing today's important debate. I have been watching developments between the US and Iran with great concern, as we all have. First, I stress the need for de-escalation, the restoration of relations between countries and for international institutions to be the primary mechanism for defusing the situation. Diplomacy not drones must be the priority when it comes to the Middle East, but the US strike assassinating Qasem Soleimani marks a new chapter. Despite the use of drones increasing, this was the first time the US had used the technology to kill another country's senior military commander on foreign soil.

I fear that we are moving toward a dangerous world where drones are believed to be a quick and easy solution to complex problems—but, as the assassination demonstrates, any use of military force has serious knock-on consequences. These have ranged from retaliatory strikes on two Iraqi bases housing US troops to at least 400 UK troops in Iraq being placed in immediate danger and a commercial plane being shot down by Iran, killing 176 people. While shooting down a passenger jet is a despicable act, the incident illustrates the impact that escalating tensions can have on totally innocent civilians. I will take this opportunity to express my condolences to the families and friends affected.

The use of drones outside armed conflict often rests on the legal argument for self-defence under international law. Indeed, the US initially stated that the drone strike was justified as a self-defence measure. However, this shifted in the days after the strike, with Secretary of State Mike Pompeo pointing to previous actions of Soleimani as justification. Since the UN's special rapporteur on extrajudicial killings said that the attack "most likely" violated international law, can the Minister confirm whether the Government consider that the use of drones must be in accordance with international law? The Joint Human Rights Committee has called for the UK to take the lead in building a consensus on how legal frameworks are applied, and I reiterate this today.

Despite legal questions, drones and other autonomous weapons will continue to reshape warfare. Jane's Information Group estimates that more than 80,000 surveillance drones and almost 2,000 attack drones will be purchased around the world in the next 10 years. The country that invests the earliest and most aggressively may end up in a position of military supremacy. People have argued that we should welcome such weapons systems because of their increased accuracy and the removal of harm for not only military personnel but civilians. While this can be the case, civilian casualties can never be ruled out, and autonomous weapons will continue to raise numerous concerns around oversight, accountability and human rights. In the short term, a definition of autonomous weapons would help lead to the creation of norms, even in the absence of the clear application of legal frameworks. Can the Minister explain why the UK Government are yet to adopt any internationally recognised definition of autonomous weapons? We should also use parliamentary committees to increase scrutiny of the MoD's use of drones and emerging technology.

The long-term question is whether humans will be removed from the loop, allowing AI-powered drones to select and kill targets with no human oversight. While the UN Secretary-General has described such machines as "morally repugnant", the UK spoke forcefully against regulation on lethal autonomous weapons at UN talks last year. Can the Minister explain why the Government are so against regulation? The UK should be taking a lead on this issue internationally and considering how arms treaties can be upgraded to stop the development of fully autonomous weapons.

Drones, machine learning and AI have already started an arms race between nations that will reshape geopolitics in the years to come. While I welcome the Prime Minister

calling on parties to "dial this thing down" to de-escalate tensions in the Middle East, the oversight and accountability of drones must be dialled up.

2.07 pm

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, I congratulate my noble friend Lord Hodgson on securing this debate. I thank other noble Lords for their contributions. I pay tribute to my noble friend and the noble Baroness, Lady Stern, for their excellent work on the APPG on drones.

Following the killing of General Qasem Soleimani by a US drone strike, I know that some concerns have been raised in this place and elsewhere. In particular, my noble friend questions what implications such actions may have for the future use of unmanned aerial systems and their proliferation more generally. So I welcome the opportunity afforded by this debate to clarify Her Majesty's Government's position.

Let me start by reiterating a point about the strike on Qasem Soleimani. It is important to be clear that the choice of air platform selected to deliver the strike has no bearing in determining whether the strike was lawful. Article 51 of the UN charter recognises that all states have an inherent right of self-defence, and it is for the United States to say how the criteria for self-defence are met. The UK will always defend the right of countries to defend themselves.

The US case was set out in a letter to the UN Security Council on 8 January. The noble Baroness, Lady Smith, raised the issue of the UK's relationship with the United States. The United States is a valued ally but, as has been observed in the past, that does not mean that we have to agree on everything. Good friends can reserve the right to disagree on certain things. We are united in our fight against terrorism but, in respect of individual acts, it is for the United States to be responsible for its own actions.

The United States asserted that Soleimani organised the strikes by militia group Kata'ib Hezbollah on 27 December 2019 that targeted a US military base in Kirkuk in Iraq and killed a US civilian contractor. The US is confident that Soleimani came to Baghdad to co-ordinate imminent attacks on American diplomats and military personnel. As one of the commanders of the Quds force of Iran's Islamic Revolutionary Guard Corps, General Qasem Soleimani certainly had blood on his hands and was behind the murder of numerous United States and British troops.

Before I turn to the use of UAVs and UK practice, I shall deal briefly with the somewhat overlooked but important matter of terminology. The acronym "UAV", not to mention the popular contraction to "drone", can lead to an unhelpful and disturbing confusion that struck me when I was preparing for this debate. It is important that we make a distinction. The term "unmanned aerial vehicle" denotes a piece of equipment that, for aeronautical purposes, is flown remotely and with varying degrees of automation and simple functions. However, within the UK Armed Forces, where such a system is armed—as, for example, with the Reaper—the strike function will always be under remote human control and subject to strict operational rules and protocols. It is very important to separate that reality from what is becoming the current fictional lexicon of the video-game mentality. That distinction matters.

Regarding the use of armed unmanned aerial systems and UK practice, respect for international law that governs the use of force is of paramount importance. My noble friend Lord Hodgson referred to mission creep and the noble Lord, Lord Judd, also expressed concerns. I make it clear that our Armed Forces have always known that they are answerable for their conduct on the battlefield. That accountability is not least to Parliament—a matter that the noble Lord, Lord Janvrin, very properly raised. Our Armed Forces have always known that they must conform to the highest standards of personal behaviour and conduct. They have also known that they are bound by the criminal law of England and Wales, and they will always operate in accordance with the laws of war.

The noble Baroness, Lady Stern, raised the issue of accountability. My department is currently in the process of updating the UK *Manual of the Law of Armed Conflict* —a programme that will consult widely to ensure that our manual remains one of the most authoritative and continues to influence our international partners. At the same time, updating the manual reinforces Her Majesty's Government's commitment to the rules-based international system and international humanitarian law.

I will turn briefly to these vital rules under international humanitarian law. I am proud to say that the UK is a leader in that field and continues to uphold the rules-based international system. The Geneva conventions are a cornerstone of international humanitarian law and remain relevant to this day. I know that the noble Baroness, Lady Smith, was particularly concerned about this. I make it clear that the UK encourages all states to apply them in conflict. However, it is not just about ensuring responsibility in the conduct of warfare; there is also a need to ensure that weapons systems such as UAS do not proliferate into the hands of those who would use them unlawfully. That is why the UK applies strict criteria before issuing a licence to export arms, and works with partners, striving to ensure that the rules and regulations remain fit for purpose.

A number of specific points were raised and I will try to deal with them if I can. My noble friend Lord Hodgson and the noble Lord, Lord Judd, raised the issue of embedded personnel. This long-standing practice gives UK personnel valuable experience by operating alongside our allies. However, I reassure your Lordships that our personnel remain subject to UK law and to any policy restrictions placed on them by the MoD. If they are asked to take part in any unagreed operation, they must revert to the MoD for permission.

The noble Lord, Lord Janvrin, raised the important issue of the new scrutiny committee in this new Parliament. I am not being evasive, but that is outside my ministerial responsibilities, and indeed it is outwith the remit of the MoD. However, I will ensure that the sentiments that the noble Lord expressed are indeed passed on.

The noble Lords, Lord Janvrin and Lord Judd, raised the matter of imminence. The legal test of an actual or imminent armed attack must be satisfied, and any action

[Baroness Goldie]
must be necessary and proportionate. The Attorney-General explained the Government's understanding of the meaning of "imminent" in a speech on 11 January 2017. Consideration will be given to the immediacy of the threat, its seriousness and the likelihood of an attack taking place, among other things.

The noble Lord, Lord Janvrin, and the noble Baronesses, Lady Stern and Lady Smith, also raised the issue of targeting and red cards. A robust system to authorise air strikes is in place and is well proven and tested. This process enables all relevant legal and policy requirements, including international humanitarian law, to be considered and applied. Expert legal advice is integral to decision-making, and all military targeting is governed by strict laws of engagement that are in accordance with UK law and international law, as well as any policy restrictions that the Defence Secretary might specify.

Lord Hodgson of Astley Abbotts: I know that my noble friend is doing a valiant job, but one of the problems that we have is: yes, we are getting assurances, but is the red card ever used? Has it ever been used? I am not asking where it has been used or in what circumstances, but whether it has been used.

Baroness Goldie: I was just about to observe that the process applies to both UK strikes and those conducted by another nation. However, I am not sure whether it has been used. I shall have to take that back and write to my noble friend.

The noble Baroness, Lady Smith, also raised the issue of target selection. Decisions on, and the necessity of proportionality in, the use of force are complex and highly sensitive. They require policy and national security input, including military, intelligence and legal, but the decision-making process enables all aspects to be considered and ensures that they will.

The noble Baroness, Lady Stern, raised a number of issues from her report. I was able to look at it before coming into the debate, particularly the sections on transparency and accountability. These are important issues and the Government would never seek to evade or dodge them, but she will understand that there are mechanisms to ensure accountability, not least the role of Parliament, the role of committees within Parliament, and the right of parliamentarians to ask questions, hold debates and require Statements from Ministers. However, everything that we do has to be under the umbrella of acting in the best interests of the security of the United Kingdom, our citizens and our personnel if they are engaged in service in different parts of the globe. The MoD has a record of respecting parliamentary accountability and, subject to security constraints, of doing its best to co-operate in that regard.

The noble Baroness also raised the issue of an independent reviewer. With the other processes and mechanisms in place, that might be premature, but, as with everything, the MoD will keep an open mind because, as one contributor observed, the whole process is evolving. As with others, we will certainly always assess what is happening and what we think might be necessary or might improve the situation.

The noble Lord, Lord Janvrin, and the noble Baroness, Lady Smith, also raised important issues relating to the operational use of UAS. One question concerned the use of force outside an armed conflict. As the Government have stated previously, there is no policy on the use of force outside an armed conflict: rather, they have a policy to defend the UK and its citizens against both armed attacks and imminent threats of armed attack.

The noble Lord, Lord Tunnicliffe, raised a number of important points. On the matter of a definition of "autonomous weapons", there is an ongoing international discussion and the technology is developing fast. The debate is insufficiently mature to conclude a definition. We therefore rely on the clear parameters of international humanitarian law to ensure legality, whatever weapon or weapons system is used.

I have run out of time. The noble Lord, Lord Tunnicliffe, raised a number of other points and I undertake to respond to him in writing. I thank your Lordships for what I consider to have been a very important and useful debate. The UK will continue to support a nation's right to self-defence and we will continue to uphold international law.

European Union (Withdrawal Agreement) Bill

Committee (3rd Day) (Continued)

2.20 pm

Amendment 38

Moved by ***Lord Storey***

38: After Clause 37, insert the following new Clause—

"Implementation period negotiating objectives: Erasmus+

(1) It is an objective of Her Majesty's Government to secure an agreement within the framework of the future relationship of the United Kingdom and the EU before the end of the implementation period that enables the United Kingdom to participate in all elements of the Erasmus+ programme on existing terms after the implementation period ends.

(2) A Minister must lay before each House of Parliament a progress report on the objective in subsection (1) within six months of this Act being passed."

Member's explanatory statement

This new Clause would require the Government to seek to negotiate continuing full membership of the EU's Erasmus+ education and youth programmes.

Lord Storey (LD): My Lords, the referendum on Brexit shows that young people in particular want to remain in Europe. Now that we are leaving, it is important that young people's opportunities to learn, study and exchange in Europe are an opportunity to bring young people back together again. Nobody can doubt the value and importance of Erasmus+. Every year, through the Erasmus programme, 17,000 UK university students, plus hundreds more college students and apprentices, study or work abroad. The opportunities that Erasmus offers to UK students, particularly young people, to study, work, volunteer, teach and train abroad are irreplaceable.

For school pupils, the scheme offers the youth exchange programme and volunteering opportunities, and volunteering is something that the Government have always been very keen on. Erasmus+ has paid out tens of millions of pounds in grants to UK schools for exchanges, collaborative programmes and professional development. If we want to be an outward-looking country that realises the importance of friendship, sharing ideas, culture, language, education and opportunities, and brings people together, this is not a programme that you would consider watering down or dispensing with.

As my colleague Layla Moran has said about her amendment,

"what people remember most about studying abroad normally isn't that they increased their employment prospects"—

which of course they do—

"They recall learning a new language, falling in love with the culture and building new friendships."

I am somewhat confused about the Government's stance or policy on Erasmus+. Is it that of the Secretary of State for Education, Gavin Williamson, who said:

"We do truly understand the value that such exchange programmes bring all students right across the United Kingdom, but to ensure that we are able to continue to offer that we will also develop our own alternative arrangements should they be needed"?—[*Official Report*, Commons, 14/1/20; col. 912.]

Or is it that of our Prime Minister, who said:

"There is no threat to the Erasmus scheme, and we will continue to participate in it. UK students will continue to be able to enjoy the benefits of exchanges with our European friends and partners, just as they will be able to continue to come to this country"?—[*Official Report*, Commons, 15/1/20; col. 1021.]

Perhaps the Minister would be good enough to tell me which version it is. The amendment that we are moving certainly supports the Prime Minister's view that the Erasmus scheme is under no threat.

Currently the in-phrase in government is "levelling up". We want to ensure with this amendment that there is no levelling down for students and young people across the UK, whether they be from the south or the north. By staying in the Erasmus+ scheme, we can keep that level playing field. UK universities are clear that Erasmus is not broken and so does not need fixing, and they warn that a UK replacement would find it impossible to match the reputation, brand awareness and sheer scale of Erasmus+. I beg to move.

The Earl of Clancarty (CB): My Lords, I have added my name to this important amendment. I will be brief.

The Government should have a fairly good idea by now of the views of academics, universities and other institutions. Hopefully, they will have taken note of the strong views of students and former participants in the Erasmus programme that have been expressed in the press and on social media in the last week or so, and their huge concern about the potential loss of this programme.

In terms of projects, Erasmus is now about more than learning and higher education. As the noble Lord, Lord Storey, has pointed out, there are schemes for apprentices, adult learners, schools, youth programmes and entrepreneurs. On that point, what is less heard and discussed is the implications of Erasmus for business. The Russell group has spoken of the considerable opportunities in industry that Erasmus opens up for students on their return to the UK. If we are also to maintain our business links with Europe, it will become more important, not less, that young people learn and use languages such as French and German, an issue that the noble Baroness, Lady Coussins, will no doubt expand on.

I hope the Government will look at this objectively and understand that the loss of Erasmus would represent a significant overall loss in terms of the choices that students will have to study abroad. In those circumstances, where the choice remains it will be at a considerably greater cost, to the extent that for students from poorer backgrounds, that choice would disappear. That is an important point. Erasmus favours those from less privileged backgrounds, a point that has been well made by former participants.

One of the arguments that is put is that we can replace Erasmus with a global arrangement. We have such arrangements already, which Erasmus does not preclude. The loss of Erasmus would be a net loss for students, and a reduction of opportunities to study abroad and to broaden horizons. I agree with the noble Lord, Lord Storey, that the loss of Erasmus would, in the Government's own terminology, be a levelling down, not a levelling up. I earnestly hope that the Government will do everything to maintain our meaningful membership—that is, programme membership—of Erasmus. Surely this being an intention endorsed by Parliament will only strengthen our hand in negotiations with the EU. I fully support the amendment.

Baroness Coussins (CB): My Lords, I too have added my name to Amendment 38. Last week, after the vote in the House of Commons to reject a similar amendment, I was semi-encouraged by the statement issued by the Department for Education:

"The Government is committed to continuing the academic relationship between the UK and the EU, including through the next Erasmus+ programme if it is in our interests to do so."

I hope I can offer some information and arguments today that will convince the Minister to go back and persuade the Government that it is indeed very much in our interests, and that they should think again and put their commitment to Erasmus+ in the Bill. As we have heard, the Prime Minister said only yesterday that there was no threat to Erasmus. If that is a genuine commitment, fantastic—there can be no reason why that cannot be irrefutably placed in the Bill. Otherwise, all that we actually know we can be sure of is that Erasmus is secure only until the end of 2020.

I have spoken several times before in your Lordships' House on the importance of Erasmus in the context of the teaching and learning of modern foreign languages, but that is neither the whole picture nor the whole reason for needing to stick with the programme. It is also in the far broader interests of the UK, its economic resilience, its competitiveness and the employability of young people—and I do not just mean relatively privileged students. I understand from a press report in last Saturday's *Times* that one of the Government's reservations is that Erasmus is viewed as mainly benefiting middle-class students and that the money might be much better directed towards the schools budget. If accurate, this view shows a misunderstanding of the breadth,

[Baroness Coussins]
purpose and benefits of the Erasmus programme. I hope I can now shed some light on this, to assist the Government in looking again and changing their mind out of sheer self-interest.

2.30 pm

Let me recap very quickly on the value of Erasmus as far as language skills are concerned, then put that into a broader context. Despite some recent improvement in GCSE take-up, the UK currently faces a serious crisis of lack of language skills, which costs our economy an estimated 3.5% of GDP every year. Employers are not happy with the foreign language skills of school leavers and graduates and have been relying increasingly on overseas recruitment to meet their needs. Yet 100,000 fewer GCSE language exams were taken in 2015 compared to a decade earlier and, since 2000, more than 50 of our universities have scrapped some or all of their modern language degree courses. Erasmus+ plays a crucial role in the supply chain of MFL teachers in our schools, where we are already looking at a critical shortage unless levels of recruitment from the EU can be sustained after we leave.

All this is happening against a background in which the UK will be seeking to redefine its place in the world, establish leadership in international relations, security and soft power, and negotiate many new free trade agreements. It is a world, contrary to the popular but completely mistaken myth, in which 75% of the global population does not speak English, and young people need languages more than ever to compete in a culturally agile, mobile and interconnected jobs market. The Government are rightly committed to retaining a close relationship on all fronts with our European neighbours after we leave the EU, and so should be aware that English will almost certainly have a declining influence as an EU language, as native English speakers shrink from 13% of member state population to a mere 1%.

Another very telling statistic is that young people who have spent a year abroad with the Erasmus programme are 23% less likely to be unemployed than those who have not. This goes for students of all disciplines, not just linguists. Employers have repeatedly said how much they value candidates who have taken a year abroad to not just acquire language skills but develop an international and cross-cultural mindset. One study reported that employers rated these skills even more highly than expertise in STEM subjects.

It is also important to correct the misunderstanding that the scope of Erasmus+ is restricted to university students: as the noble Lord, Lord Storey, mentioned, it also covers schools, including primary schools, adult education, the youth sector and vocational training for apprentices and associated staff. Since 2014, the vocational provision has funded around 24,000 UK apprentices, other young learners and staff to participate in accredited mobility placements.

Erasmus+ gives opportunities to young people to work together and make a difference on issues that matter in their daily lives. Activities include running a project in their own community, meetings with decision-makers and volunteering abroad. Benefits include improved access to employment, as well as new experience and skills as active citizens. Youth workers benefit from job attachments, training and other professional development. Erasmus+ has an important role in supporting diversity and inclusion and is especially relevant to the most disadvantaged and vulnerable young people, including those in care, those with disabilities, refugees and migrants.

I respectfully ask Her Majesty's Government to consider very carefully the timing of decisions on Erasmus+. To come out of the programme now, or even just cast doubt over our future participation by default, would be unnecessarily damaging to our national interests, for two key reasons: first, because the current uncertainty is one of the reasons given for the further drop we have seen in the past year of applications to study languages at university. The year abroad, supported by Erasmus, is the jewel in the crown of an MFL degree, and without it more universities will be under pressure to cut courses, which will further threaten the supply chain of language teachers. If we do not guarantee our full commitment to Erasmus now, this uncertainty will be compounded and very hard to turn around and recover from.

Secondly, the European Commission is about to double the budget for Erasmus+ to €30 billion for the next funding period from 2021-27, with €25.9 billion for education and training, €3.1 billion for youth provision and €550 million for sport. This will support three times as many people as the current budget. Why would we want to turn our back on our share of all that? What bad timing indeed if we were to cease being full, continuous members of the programme right now, just as we could have access to this expansion, which could help Her Majesty's Government fulfil some of their core objectives on social mobility, social justice, regional inequalities and global competitiveness.

Therefore, I implore the Minister and through him the Government to please think again about cutting our ties with Erasmus+, especially right now when so much else is still up for negotiation over the next year. Let us at least hold on to what we know we already have access to, which provides excellent value for money and sends an important message to our young people that we have their future opportunities front of mind. Other non-EU countries which subscribe as full participants in Erasmus+ are Iceland, Liechtenstein, North Macedonia, Norway, Serbia and Turkey. I hope the UK will also be one of these after the end of 2020. I honestly believe that this would be the most straightforward, non-controversial, popular tweak to this Bill that the Government could adopt, whether in its current wording or perhaps in the Government's own name on Report. As long as such an amendment provided for a solid commitment to continued membership of Erasmus+ and eliminated uncertainty, with absolute clarity on the future, I am sure it would be welcomed and appreciated across all sections of society.

Lord Wigley (PC): My Lords, I apologise to the noble Lord, Lord Storey, for missing the first half minute of his speech in rushing into the Chamber for this debate. I am delighted to support the amendment, which is one of the most important that we have before us. I welcome the speech of the noble Baroness, which brought in the whole dimension of multilingualism and our responsibilities towards the wider world, to show that our minds are open in that way.

A good friend of many of ours in Brussels, Hywel Ceri Jones, was one of the instigators of the original Erasmus programme, which, as has been mentioned, has been developed so that it now reaches and is relevant to far more people. It can therefore exert its influence in a much more beneficial way.

Over the period since the referendum, the Government have stressed that we are—sadly—leaving the European Union but not Europe. Having the Erasmus+ programme available sends a signal that we still want our young people to engage with Europe. That is a two-way process: equally, we want to see the Erasmus+ programme enabling young people from European countries to come to the countries of the United Kingdom. This is a very modest amendment, but it sends a very strong signal and I urge the Government to accept it or at least to come back with some statement or amendment of their own that shows that Erasmus+ will certainly be part of our future.

Baroness Blower (Lab): My Lords, I was going to make exactly the same point as the noble Lord, Lord Wigley: we are indeed leaving the EU—much to my regret—but not leaving Europe. As a former teacher of modern foreign languages, I am very well aware of the great benefit that students derive from speaking the target language in situ in the country, rather than in the classroom or—heaven forfend—a language laboratory. Speaking a language in the country where it is spoken necessarily involves all those aspects of culture that are so much more difficult to bring into the classroom, where they will sometimes appear slightly artificial. Even though all the points have already been made eloquently by the noble Baroness, Lady Coussins, I wish to associate myself, as a former teacher, with all those remarks.

As I said in my maiden speech, I work extensively with teacher organisations across Europe, not in just the 27 countries that will remain in the EU but also in the other countries mentioned that subscribe to Erasmus+. My colleagues across Europe wonder what is going on in Britain and why we are leaving, but they are also at great pains to say that they are very keen to continue to work with British teachers, and to ensure, in so far as they can—although it is not in their purview—that we remain closely engaged with the Erasmus+ programme.

The budget is, as the noble Baroness, Lady Coussins, said, an enormous amount of money and a huge increase. It would simply be folly for the Government not to remain in this programme to access all those opportunities—at school level, at university level, with apprentices and, indeed, to assist the recruitment of teachers of modern foreign languages, as the noble Baroness said. I know more teachers of modern foreign languages who are no longer in the classroom than I do who are actually teaching. It is a very big problem and I hope the Government will listen to all the wonderful speeches that have been made today, make the very slight amendment to the Bill and determine that we will remain full participants in the Erasmus+ programme.

The Duke of Somerset (CB): My Lords, I too would like to support this amendment. Erasmus has been a most successful EU scheme and benefited 800,000 people in 2017, which seems to be the last year for which statistics are available. It has existed for three decades, benefiting 9 million people in that time. In 2015, the UK received funds of €113 million to implement the scheme.

As we know, it funds students and staff on vocational courses, voluntary work and sports programmes throughout the 28 EU countries. I should declare an interest: one of my daughters attended the University of Naples for a year on the scheme and she has gone on to live and work there. In general, the scheme is hugely influential in broadening the education and cultural values of our young, including introducing them to foreign languages, which is not a natural skill for us Britons, as we have heard. When they return home, this knowledge helps them obtain more challenging jobs that benefit our own UK economy. Vice versa, EU students who study here learn to appreciate the British way of life and its values, which they spread back home in a positive manner.

It is hard to overestimate the often life-changing benefits Erasmus has bestowed on those who have participated—from all walks of life, as we have heard. We all gain from this programme and to refuse to commit to trying to continue our participation after the IP seems unworthy of this Government and a kick in the teeth for so many aspiring young people.

Baroness Kingsmill (Lab): My Lords, I started my career living in France in my early 20s, and for the last 10 years I have earned my living in Europe in several different countries. Living and working in Europe has been a very educative experience.

The Erasmus programme is amazing. I have met several young people who have had the opportunity to learn about other countries, and to spread their knowledge of English while acquiring other languages. At a time when we are, through this unfortunate Bill, restricting the abilities of young people to experience living and working abroad, blocking this amendment would be very petty on the part of the Government. They have such a large majority and can do whatever they like, but to penalise young people in this way and to restrict their ability to experience Europe in all its glory is a great pity.

2.45 pm

Lord McNicol of West Kilbride (Lab): My Lords, I am grateful to the noble Lord, Lord Storey, for tabling Amendment 38 and affording me the opportunity to probe the Government's intentions with regard to excellent Erasmus+ scheme.

As we have heard, the current Erasmus+ scheme has benefited thousands of our young people and given tens of thousands of EU young people the opportunity to spend time in the United Kingdom. Despite previous statements that the UK will consider options for continued participation, the Government may be tempted to make a clean break. That would be a mistake. If we were to leave Erasmus+, current participants would be able to wind up their placements but other young people would be denied the opportunity to study, to work and to volunteer, which has become so commonplace. We on these Benches very much hope that this will not be the case. It would be a huge

[Lord McNicol of West Kilbride]
mistake to walk away from a scheme that has led not just to better employment outcomes but to an increase in the participants' confidence, independent thinking and cultural awareness.

The Prime Minister has indicated that the UK will seek to continue participating in Erasmus+. As the noble Lord, Lord Storey, and others who have participated in this debate have said, we support the Prime Minister in that position. I hope the Minister can confirm that this is definitely the Government's intention, as well as outlining what discussions—if any—have already taken place with the EU 27.

If I may abuse my position for just a second, could the Minister also confirm whether any progress has been made on our continued participation in the Horizon research programme, which is similar in many respects?

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, I am pleased to respond to this amendment moved by the noble Lord, Lord Storey, and I will try to respond to the comments made by the noble Earl, Lord Clancarty, the noble Lords, Lord Wigley and Lord McNicol, the noble Duke, the Duke of Somerset, and the noble Baronesses, Lady Coussins and Lady Blower.

I appreciate that in recent days there has been a great deal of interest in, and confusion about, the UK's participation in the next Erasmus+ programme. International exchanges are strongly valued by students and staff across the education sector. That is why we published our international education strategy in March 2019, setting out our ambition to increase the value of education exports to £35 billion a year, and to increase the total number of international students hosted by UK universities to 600,000 by 2030. The numbers of international students and EU applications are at record levels. The total number of international students, EU and non-EU combined, studying in the UK increased from 442,000 in 2016-17 to 458,000, and the most recent figure is 486,000 for 2018-19.

The most recent mobility analysis shows that Erasmus accounted for less than half of all mobility activities. I agree with the noble Baroness, Lady Coussins, and the noble Lord, Lord McNicol: there is evidence that students who have spent time abroad as part of their degree are more likely to achieve better degree outcomes, improved employment prospects, enhanced language skills and improvements in their confidence and well-being. I must gently point out to the noble Baroness, Lady Blower, however, that it was a Labour Government who removed the requirement that modern foreign languages be a compulsory subject. As soon as that happened, participation collapsed and we have fought hard over the last nine years to increase it.

I would like to clarify the Government's position and explain why the proposed new clause is unnecessary. As several noble Lords have said, the Prime Minister made it clear at Prime Minister's Questions yesterday that we will continue to participate in the existing programme. Our future participation will be subject to our negotiations on the future UK-EU relationship, but we have in our elected Prime Minister, almost uniquely, a person steeped in European culture. He was educated in Brussels for part of his childhood, at the European School, and is bilingual in French. This is not a person who is going to turn his back on European education and its institutions.

We believe that the UK and European countries should continue to give young people and students opportunities to benefit from each other's best universities. Our exit from the EU does not change this. As several noble Lords have said, we are not leaving Europe. The withdrawal agreement ensures that UK organisations, students, young people and learners will be able to continue to participate fully in the remainder of the current programme.

On the question of future participation in the next Erasmus programme, which runs from 2021 to 2027, we have been clear that we are open to continued co-operation on education and training with the European Union. We remain open to participation in the programme, but the amendment is not necessary. The next generation of EU programmes, including the proposed regulation for Erasmus 2021-2027, is still being discussed in the EU and has yet to be finalised. How can we comment on something that does not yet exist? The existing scheme is nearly seven years old and as the noble Baronesses, Lady Blower and Lady Coussins, said, the new programme will be different. It will be bigger and, until we see the substance of those proposals, we simply cannot be sure what the next stage of the Erasmus programme will look like. On this basis, it is not realistic for the Government to commit ahead to participation in a programme yet to be defined.

As set out in the political declaration, we have said that if it is in the UK's interests we will seek to participate in some specific EU programmes as a third country. This includes Erasmus+ but this will of course be a matter for upcoming negotiations arising from our future relationship with the EU. We are considering a range of options with regard to the future of international exchange and collaboration on education training, including potential domestic alternatives. This is a significant moment in our history. In two weeks' time, we will begin to pivot to become a more outward-facing country. We do not need just an EU university scheme but a much wider one.

I hope that we will have a global programme, encompassing all continents. We have many small schemes. Time is too short here to list them all but I will ask officials to attach an addendum to *Hansard*. I shall mention one: the Chevening scholarships scheme, which offers some 1,600 postgraduate scholarships and fellowships for potential future leaders. Last year, we doubled the number of scholars coming from Argentina. To celebrate this, I held a dinner for them in Lancaster House and was joined by the Argentinian ambassador—and before noble Lords worry about a taxpayer-funded junket, I can reassure them that I paid for this myself. I did this because I want Britain to have a wider window on the world.

This Government will look carefully at all available opportunities to fund international co-operation on education matters, including with the EU. I hope this explanation demonstrates why the proposed amendment is not necessary and I ask that the noble Lord, Lord Storey, withdraws it.

Baroness Coussins: The Minister put a lot of emphasis on the Government's wish to see the offer to students be much broader than just European and to encourage students to go worldwide as well. Does he not acknowledge that the whole point of Erasmus+, as opposed to the original form of Erasmus—without the plus—now means that the programme includes the opportunity for UK students to take up their placements in their year off in countries that are outside the EU, as well as inside it? This is precisely because it is acknowledged that some students may well benefit from a placement in China, Brazil, Turkey or wherever. That is exactly what has been happening with Erasmus+.

Lord Agnew of Oulton: I entirely accept what the noble Baroness says but the key principle here is that we cannot offer a blank cheque in the withdrawal Bill to say that we will automatically join a new programme where the details have still not been agreed. However, none of the mood music coming out, including what the Prime Minister said only 24 hours ago, suggests that we are going to turn our backs on the educational institutions of Europe. We want to be part of it. We are in a rapidly globalising world but the point that I want to make to everyone is that we cannot continue to slavishly focus on the EU. This is why we had the referendum and why, at the 2017 election, the manifestos of 85% of MPs supported leaving. We then had three years of chaos in Parliament and now we finally have a decent mandate to do it. That does not mean that we flounce out of Europe, or that we leave the culture and institutions of Europe. I am sure that we will work proactively to maintain close links.

Baroness Blackstone (Ind Lab): Does the Minister accept that the Chevening scholarship scheme has absolutely nothing to do with Erasmus? As a former Minister responsible for all post-school education, I am familiar with these schemes. The Chevening scheme is for master's degree-level programmes and for students coming to the UK; it is not for British students going out to other countries, whether in Europe or elsewhere. Why the Minister's officials have put this in his speech, and why he does not realise that it has absolutely nothing to do with Erasmus, I simply cannot imagine.

Lord Agnew of Oulton: I can answer that. The point is that nearly every Peer who joined the debate on this amendment was mourning the leaving of Europe. Many of them just said, "We are very sad to be leaving the EU", but we have got to get beyond that. In two weeks' time, we are going to be an outward-facing country looking to the rest of the world. The reason that I mentioned Chevening—I put it into the speech, not officials—is because I had direct experience of it recently. I was sent to the OECD conference on education in Argentina about 18 months' ago. I met the Education Minister, and it is those sorts of contacts which will help the future of this country. I accept that Chevening is a master's degree programme and that it is for high-potential future leaders, but it is about the connection between institutions in our country and other countries.

The Earl of Clancarty: The point I made in my speech was that Erasmus does not preclude these arrangements. My nephew was at Swansea University, which had an exchange with Arizona that had nothing to do with Erasmus. Losing Erasmus means that students would lose choices overall; that is the point.

Lord Agnew of Oulton: The reassurance that I can give the noble Earl is that we support the value of Erasmus. We are not signalling that we are going to come out of the next version of it, but we cannot offer a blank cheque on a scheme that has yet to be agreed. It will be part of the far wider withdrawal agreements that we foster with the EU over the next 12 months.

Lord Storey: I am grateful for the Minister's comments. I am sure that he will want to reflect on the comments made by Members in this debate, particularly on the importance of Erasmus to languages and inclusion. I am pleased that he has told us that we are committed to staying in the current Erasmus scheme, as that is important. I would also point out that regarding our ability to engage with—in the phrase the Minister uses—the wider world, these things are not mutually exclusive. There is already a whole host of schemes where young people can go to non-European countries to study; those exist currently. I hope that we can build on those as a nation over future years as well.

The key issue is that while, to some extent, the Minister is right that we do not yet quite know what the new Erasmus programme will look like, if we can give a commitment to be part of it we can be part of forming that new programme, which will, I hope, do some of the things that he has been espousing. I will reflect on what he said and I hope that he will consider what Members have said. For the moment, I beg leave to withdraw the amendment.

Amendment 38 withdrawn.

3 pm

Amendment 39

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

39: After Clause 37, insert the following new Clause—

"Future relationship: EEA alignment

It shall be an objective of the Government to secure an agreement with the EU that aligns as closely as possible with EEA member status, having regard to Article 184 of the withdrawal agreement (concerning ongoing commitment to the political declaration)."

Lord Lea of Crondall (Non-Afl): My Lords, the President of the European Commission indicated last week that there was no way that the Government's open-ended agenda—I stand to be corrected about the detail of the shopping list for the rest of this year—could be dealt with by the end of this year. Indeed, it is seen in Brussels as simple wishful thinking; Boris Johnson will think of another wheeze in time to keep the show on the road.

Instead of "Get Brexit done", the real issue is "Let's get Brexit real". At the moment, we assume that the starting point was something like the withdrawal agreement and political declaration of October 2019, but we would like to see a credible programme of what the Government will try to negotiate by the summer or autumn in order to meet the commitment made by the

[Lord Lea of Crondall]
Prime Minister. It is in that connection that we could have something like EEA/EFTA as a point of reference—a tick-box, if you like—for many of the questions that will arise. We have just heard an interesting debate about Erasmus, but there are 20 or 30 such subjects, all of which will need decisions, including in many cases on their compatibility with free trade for the rest of the world—all that work has been done over many years since the Stockholm Convention of the late 1950s and Britain's participation in EFTA and, eventually, the EEC in 1973-74. We have now therefore to set out where we want to be on the whole range of things where we have alignment at the moment.

The Government often say "We have alignment at the moment", so why not say the next thing? If we are taking some comfort in the fact that we have alignment at the moment, is not the question surely why we want to move away from it? Do Her Majesty's Government have some ideological reason for moving away from alignment? At the end of January, we will be putting out the flags to say Brexit is all done—it has hardly started, as we know.

The EFTA and EEA agreements have other consequences as well. I am not suggesting that we would enter into them, given the short title of this Bill, but they include the very important questions of jurisdiction of settlements of disputes, the arbitration panel and so on, all of which are important if we want to continue to attract foreign direct investment into Britain. As the *Financial Times* charts, this is going down very rapidly, partly because these rather straightforward decisions have yet to be made. If they are not made very soon, there will be an assumption that the Government have not thought through how these Brexit-related issues will be resolved.

To remind ourselves, the EEA agreement provides for a free trade area covering all the EEA states. It does not extend the customs union to the EEA/EFTA states. The free trade area also abolishes tariffs on trade between the parties, but there are still border procedures. This is a model that I hope the Government will not run away from simply because it was not their idea in the first place. To get Brexit real, these become very serious options for consideration, and I hope that the Minister will agree that we should look at all these questions on their merits and at having a framework for the compatibility of them all. Looking at each question one by one is not necessarily the most helpful way to see how a framework can be agreed. Surely, by the end of this year, the notion is not just that we will have a number of separate agreements on everything under the sun but that we will have some sort of framework, because there are consequences between the different silos in any framework. I hope the Minister appreciates that—I say it in a constructive spirit—because it is, unfortunately, against the background that we will have left the European Union, possibly to rejoin the EEA at a later point. That is another question, but it is not something that the Minister should balk at simply because it sounds like a stalking horse for rejoining the EU. It is a perfectly good shopping list for the Government. When will the Government's framework concept for the negotiations in the next few months be published, or will the Government just keep all their cards up their sleeve and not publish such a thing?

Take the question of jurisdiction: it is very odd indeed that we should now want to attach more importance to jurisdictions where we have no judge, as we do in the European Court of Justice at present. During the transition and under the future envisaged in the political declaration, does the Minister agree that we will have to accept that it will be for the ECJ, without a UK judge, to present the authoritative view in any imaginable case between the EU and the UK before the new arbitral tribunal?

We know that there are issues that do not necessarily fit within the framework that I have just described, such as the free movement of persons and mutual recognition of diplomacies. There are limits to how far one wants to go in putting everything in what we might call a framework agreement but, again, a lot of work was done in the EEA negotiations. If we are going to shadow anything to see what works and what does not, that would be an excellent place to start. It would be far more effective than a one-off set of negotiations on a whole range of things one at a time. I hope that, in that spirit, the Minister will agree that there could be value to the Government in looking at such a framework.

Baroness Quin (Lab): My Lords, I have not spoken on this Bill so far, because I was not able to attend the closing speeches at Second Reading, though I have followed most of the Bill proceedings. I added my name to the amendment moved by my noble friend Lord Lea because I felt that it was a way of raising the issue of how close we manage to stay to the European market after Brexit. The amendment of course raises the importance of alignment. We have already heard several times from Ministers today that we are not leaving Europe even though we are leaving the EU, yet in so many ways we are putting obstacles in the way of our ongoing relationship with Europe. In terms of alignment, there is much emphasis on having freedom to make our own standards, but this seems quite an illusory freedom in many ways, which is probably not in our interests. Obviously, there may be some rules within the EU that we do not particularly like, but most of the rules we have agreed over the years are as part of the single market, which the United Kingdom very much pushed for in its early stages. Most of those standards and rules concern such things as consumer safety, environmental standards and sensible trading arrangements: we must not forget that as we move forward. In many ways, we actually made those rules: we were the prime mover in making those rules in the European market.

One of the arguments against being too close to EFTA was that that would make us rule-takers rather than rule-makers. Of course, that argument already concedes the fact that we have been rule-makers in the past. Within the EFTA arrangements, there are certainly ways in which we can influence the rules, which will not be the case if we do not follow any kind of close alignment after Brexit.

I have been struck in the course of our debates by how the issues I have been raising have been translated into vivid examples in different parts of the UK. I was

very struck by the remarkable debate that took place quite late on Monday night about Northern Ireland, about the importance of the single market to Northern Ireland's relationship with the Republic and how vital unfettered access to the UK market is to Northern Ireland. In particular, my noble friend Lord Hain made that point very powerfully, and there does not seem to be any easy answer. I cannot understand, and nobody has been able to explain it to me so far, why the arrangement consists of trying to assess whether goods that go into Northern Ireland from the UK may, or may be likely to, end up in the Republic of Ireland. I have no idea how that system of assessment is going to work. It seems unworkable and the debate in your Lordships' House on Monday night underlined that point very strongly.

We also know that Scotland is very keen to keep as close to the European market as possible and is concerned about the Government's trading stance. In my own part of the country, the north-east of England—the Minister will not be surprised that I mention it, because I always do—a higher proportion of our trade goes to the European market than any other region of the UK. When the Prime Minister visited the north-east recently, before election day, I was very much hoping that someone would ask him whether he accepts the figures of his own Government that the north-east is going to lose out in so many specific ways. He was never asked that but I would have liked to ask him whether he accepted those figures or, if he did not, what his own figures were. Perhaps the Minister will give us some clarification of that now. Certainly, our future trade arrangements will be vital to the future of the north-east's economy.

There is a political point that needs to be made. We know that the referendum result in 2016 was narrow and that, despite the Government's handsome majority of seats in the House of Commons now, none the less those people who voted for parties who either wanted a second vote or were in favour of remain comprised 53% as opposed to 47%. That is a contrary picture to that in 2016 and for that reason, while the Government have a mandate in terms of seats to go ahead with Brexit, they also have a responsibility to work towards a solution that will at least not seem totally antagonistic to what the other part of our population actually thinks. For that reason, a compromise would be to stay as close to the European market in as many constructive ways as we can.

We have just had a fascinating debate about Erasmus: that is a very good example of the kind of thing I am talking about. I urge the Government to look at this whole issue of alignment and staying close to the European market in a much more positive and constructive way than they have up to now.

3.15 pm

Baroness Hayter of Kentish Town (Lab): My Lords, the EEA relationship has been, and, indeed still is, one that suits its member states exceedingly well. It enables certain non-EU member states to take full advantage of their geographical proximity and their historical trading and cultural relations with the EU to the benefits of both sides of the various borders. It is a model, as we have heard, that our negotiators would do well to follow, not necessarily on the exact detail, which is, after all, tailor-made for the various parties, but in its aim: to retain the alignments that foster trade, and to build on our different natural resources, strengths, patterns of exchange, labour needs, service expertise and investment potential. The negotiations should build on those strengths, just as the EEA has managed to achieve. That, we think, would be to the benefit of the EU as well as ourselves.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, I thank all noble Lords who took part in the debate, but we have been very clear in the political declaration, and indeed in our election manifesto, on our vision for the UK's future relationship with the EU, which is based on an ambitious free trade agreement.

As I always do, I enjoyed the contribution of the noble Baroness, Lady Quin. We share an interest in the north-east of England. She is an experienced former Minister, doing some aspects of the job that I do now, and I always listen very carefully to what she has to say because she speaks a great deal of sense. She asked about the impact on the north-east of England, something I am of course very interested in. The answer will depend on the future trading arrangements that we negotiate, so I say: come back and ask me again at the end of this year. We have been very clear that we want an ambitious free trade agreement. We want trade to be as free as possible and we will be negotiating hard to bring that happy state of affairs about.

The election has clearly shown, in my view, that the public support the vision that we put forward. It was extensively debated in the election campaign and we won our majority on that basis. To answer the question of the noble Lord, Lord Lea, directly, I say that it is only by leaving the single market that the UK will be able to obtain an ambitious free trade agreement and to strike new trade deals with new and existing global partners. Attempts to remain in the EEA agreement beyond exit is by no means as simple as many noble Lords would have us believe. The EEA is an arrangement that exists at the moment between the EU and a number of EFTA countries—

Lord Lea of Crondall: I emphasise for the third time that this amendment is not about rejoining or staying in: it is, as my noble friend Lady Quin said, about alignment. Indeed, it is, if I may use the phrase, shadowing some of the rules that we have at the moment. Will the Minister comment on the fact that he has said many times that we are beginning from alignment? Why leave alignment, as a theological requirement?

Lord Callanan: I do not think that I said that. However, the noble Lord is right—although I did not say it on this occasion—that of course we are starting from a position of alignment. I do not have his amendment in front of me, but I think it refers to the EEA: it is the purpose of the amendment he has tabled, which is why I was exploring the issue.

The point I was going to go on to make is that the EEA is an agreement between the European Union member states and a number of EFTA states, and it is

[Lord Callanan]
not open to the UK just to be able to join that agreement. We will leave it when we leave the EU part of that agreement, but the EU would almost certainly want to renegotiate it, because it was never designed for a country the size of the UK. That is if we did want to join it, but as I will shortly set out, I do not think it is desirable that we should. It is not a simple case, even if we wanted to, of happily trotting off and joining the EEA agreement: there are a number of other countries which are in at the moment that would no doubt have some observations on that.

My point is that attempts to remain in the EEA agreement beyond exit would not deliver control of our borders or our laws—two of the main three pillars of our argument for why we need to leave the EU. On borders, it would mean having to continue to accept all four freedoms of the single market—I take the point made by the noble Lord, Lord Lea, that we could perhaps pick and choose which ones we wanted to abide by or align with, but I suspect that the EU might have something to say about that. However, we would of course have to accept free movement of people. On laws, it would mean that we would have to implement all new EU legislation—as the noble Baroness, Lady Quin, said, we would be rule-takers. The noble Baroness was not in her place last night, but I quoted Mark Carney, the Governor of the Bank of England, who said how dangerous it would be, as we seek to manage one of the largest and most complex financial markets in the world, to turn ourselves into rule-takers, whereby the rules were set by another jurisdiction. Despite Mark Carney's views on EU exit, which are well known, he made it clear that he thinks that it would be an unacceptable state of affairs for us to proceed with. It would mean that the UK would have to implement all new EU legislation for the whole of the economy, including services, digital and financial services.

We do not believe that that would deliver on the British people's desire as expressed in the referendum to have more direct control over decisions that affect their daily lives. Rules would be set in the EU that we would then have to abide by. The public want the Government to get on with negotiating this future relationship, which was set out in the political declaration, without any further unnecessary hurdles, and that is what the Government will do.

Baroness Quin: I am listening carefully to what the Minister says, but he is responding to something that the amendment does not say. It does not say "rejoin" or "join" EFTA or the EEA but simply that we should have a look at what is happening in that process and look at areas where we would want to align with it.

Lord Callanan: The amendment refers to the EEA, and the noble Lord, Lord Lea, indicated earlier that he would be in favour of joining it, so I was making the arguments against that. However, we have also explored the arguments on alignment at different times in the past, and it may well be as a result of the negotiations that there are some areas of EU legislation that we may wish to align with or put in place an equivalence procedure. That is all for the future negotiations.

As we have said on many other amendments, we do not believe that it is a sensible tactic to set out our negotiating objectives in statute, or that setting a negotiating objective along the lines of that advocated in the amendment would be what the public voted for in the general election or in the original EU referendum. Our manifesto at the election was explicit about the Government's intention and determination to keep the UK out of the single market. On that basis, although I suspect that I have probably not satisfied the noble Lord, I hope that he will feel able to withdraw his amendment.

Lord Lea of Crondall: I thank the Minister for that reply, although I think that whoever wrote his speech had not read the terms of the amendment. Over the course of the next four years, even if the Government do not want to set out a blueprint—

Lord Callanan: I have a copy of the amendment and it says:

"aligns as closely as possible with EEA member status".

Lord Lea of Crondall: To align is something that we can do unilaterally or with agreement, but the amendment does not say "join". I am sorry—I am not trying to be pedantic; we both know where we are, but that is what the amendment says.

To conclude, I hope that the Minister and the Government will generally reflect on the fact that, if they want to get Brexit real rather than just saying "Get Brexit done" as a slogan, they will have to see how a framework can be approached which will have certain common principles that will then be understood by the President of the European Commission. At the moment, she is baffled about whether the Government know what they are doing when they say that we can get all these things done one by one—scores of them all done and dusted by the end of this year. I beg leave to withdraw the amendment.

Amendment 39 withdrawn.

Amendment 40 not moved.

Amendment 41

Moved by ***Lord Wigley***

41: After Clause 37, insert the following new Clause—

"Economic impact assessment

(1) A Minister of the Crown must—

(a) lay before each House of Parliament, and

(b) submit to the Presiding Officer of each devolved legislature,

a comprehensive economic impact assessment of potential outcomes arising from the conclusion of negotiations on the future relationship with the EU.

(2) An assessment under subsection (1) must include—

(a) an analysis by NUTS1 and NUTS2 regions of the United Kingdom including (but not limited to)—

(i) impact on employment as both an actual figure and a percentage, and

(ii) impact on Gross Value Added;

(b) a sectoral analysis including but not limited to agriculture, health and social care, manufacturing, the aerospace industry and financial services."

Member's explanatory statement

This new Clause would require the Government to produce an economic impact assessment on the future relationship with the European Union.

Lord Wigley: My Lords, the objective of Amendment 41 is to require the Minister to present, both to Parliament and to the devolved legislatures, an economic impact assessment of the potential outcomes of negotiations so that we may know where we are heading.

First, over the past three years, numerous prophecies have been made as to the economic implications of Brexit, most of which were based on guess-work at the time as to what would be the outcome. All those guesstimates are now largely irrelevant. We now know three basic dimensions of our way forward. We know that we shall be leaving at the end of this month and that the implementation period will last until next December.

Secondly, the Government, presumably, know exactly what they want in any agreement reached with the European Union. They therefore will have made their own assessment of the economic impact if they get their way. The House and the devolved Governments have a right to know the detail of any such assessment, as well as a right to know the implications for each of our four nations and for the standard regions—in the amendment this is covered by virtue of a reference to the NUTS areas.

Thirdly, the Government have made it clear that, if they fail to reach and to achieve their negotiating objectives, they will choose to leave without a deal. Again, they have presumably estimated the effect of any such course of action. The implication could be disastrous for manufacturing, exporters, hill farmers and many others. However, surely the Government have, at the very least, a duty to make known the detail of any such estimates. Anyone in the world of trade, agriculture, manufacturing, industry or finance will clearly want to know, at the earliest time possible, what are the official forecasts for these implications, for the basic reason that they are quite fundamental to making any future investment decisions.

If the Government have their own estimates, they are surely duty-bound to share them, and if they do not, they should step back from negotiating a trade deal until they have the basic tools needed to make such a major and far-reaching decision, and to have those tools and the information on a logical and quantified basis. I beg to move.

Baroness Hayter of Kentish Town: My Lords, perhaps it is a symptom of the way that Brexit has been handled that the noble Lord, Lord Wigley, even needs to table this amendment; we would have hoped that all this work had been done, published and debated well before any decisions were made. Indeed, I think reference was made yesterday to the Room 101 experience we had when we were called to be shown in secret the so-called sector-by-sector analyses of the impact of the withdrawal. They were of course no such thing—they were A-level descriptions which could have been got from published documents. Now we find that the Government want to head into negotiations on the future of the UK and its constituent parts with no prior appraisal of the impact of a range of outcomes, either on sectors or on geographical areas, and importantly, with no debate with either the industries concerned or with elected representatives of the geographical areas. Yet as we heard in the debate yesterday, important trade-offs and difficult judgments are going to have to be made as we struggle to find a workable trade relationship with the EU.

This should not be done in the dark. We should have full knowledge of the likely impact of each possible approach. The Government should have done this work, but I have little confidence that they have, which is why the amendment tabled by the noble Lord, Lord Wigley, is so relevant.

3.30 pm

Earl Howe (Con): My Lords, I am grateful to the noble Lord, Lord Wigley, for introducing his amendment which, as he made clear, relates to the future economic relationship between the UK and the EU. Our agreement with the EU in the political declaration was expressed in the following words:

"to develop an ambitious, wide-ranging and balanced economic partnership. This partnership will be comprehensive, encompassing a Free Trade Agreement, as well as wider sectoral cooperation where it is in the mutual interest of both Parties."

We look forward to working with our partners in the EU to negotiate this free trade agreement in the year to come. But on that, there is a basic point to be made. It would be neither possible nor appropriate to publish a detailed analysis of the specifics of an agreement that is yet to be negotiated. Indeed, publishing such a detailed report, as the noble Lord's amendment would require, would completely undermine the UK's negotiating position heading into the next stage.

There is a way to address the noble Lord's concern that does not land us in that kind of trap. In November 2018, the Government published a detailed analysis that covered a broad range of possible EU exit scenarios. This report ran to over 80 pages and was designed to provide an understanding of how changes to our relationship with the EU might affect the United Kingdom's economy in the long run. This is available for all to see.

In exactly the same vein, let me reassure the noble Lord that the Government remain committed to informing Parliament with the best analysis to support parliamentary scrutiny. We will do so at an appropriate time that does not impede our ability to strike the best deal for the UK. As I emphasised in our debates yesterday, we have also been clear that we will engage with the devolved Administrations and draw on their knowledge and expertise to secure an agreement that works for the whole of the UK.

I hope therefore that the noble Lord, Lord Wigley, will feel able to withdraw his amendment. I can assure him that the Government will continue to update the House with analysis at appropriate points.

Lord Wigley: Could the noble Earl clarify why, if it was possible to publish in 2018 the figures to which he has referred, it is not possible to do so now?

Earl Howe: My Lords, the intention behind those scenarios was to cover a broad spectrum of circumstances which we could find ourselves in. They were not designed to posit our desired end-point; they were designed as a guide to the citizen to illustrate what could happen, given certain variables. I do not think that it is possible or advisable for us to go beyond that at this stage.

Lord Wigley: I am sorry to labour the point, but could he therefore say whether the figures of 2018 are still valid?

Earl Howe: They are still valid as hypothetical figures and as illustrative of certain scenarios if certain arrangements were agreed. I think that Ministers would stand by the figures in so far as they are designed to illustrate those scenarios.

Lord Wigley: My Lords, I do not think I will succeed in taking this matter very much further this afternoon, but the House will have seen the position that we are in: some figures were available in 2018 that may or may not be relevant now, and we do not know the direction we are going in to know whether they are relevant. It seems a very strange way of entering negotiations—I only hope that the outcome will be better than the prophecy on that basis. I beg leave to withdraw the amendment.

Amendment 41 withdrawn.

Amendment 42

Moved by ***Lord Whitty***

42: After Clause 37, insert the following new Clause—

"Transport between the United Kingdom and the EU

(1) During the implementation period a Minister of the Crown must as necessary make regulations and seek agreements with the EU or with an individual member State of the EU to ensure that transport of freight and of passengers by road, rail, air and sea continues to operate smoothly between the United Kingdom and member States of the EU during the implementation period.

(2) No later than 31 July 2020 a Minister of the Crown must set out in a report to both Houses of Parliament the basis for movement of freight and of passengers by road, rail, air and sea between the United Kingdom and member States of the EU after the implementation period.

(3) A Minister of the Crown must, within the period of 14 sitting days beginning with the day on which the report is published, make arrangements for an amendable motion on the report to be debated and voted on in each House of Parliament."

Member's explanatory statement

This amendment is to alleviate concerns that permits will become less available and more complicated for lorries and drivers on cross-Channel journeys by ensuring that contingency arrangements can be made during the implementation period.

Lord Whitty (Lab): My Lords, I said earlier this afternoon that my amendments were somewhat technocratic today, but this one actually, in a sense, deals with the most fundamental issue of all. As we split from the European Union, what actually happens when we move from one economic and political entity to another and how does it differ from the free movement we have had over the past few years? In other words, what will be different for the citizen or the trader once Brexit is "done"? Of course, as we said earlier, it is being done in stages: some things will happen from 1 February, some presumably from 1 January, and there might well be further stages in any ultimate agreement.

What matters to citizens and business is: if you drive your lorry off the ferry at Ostend, what has changed? If you land at Schiphol Airport, now in a different economic area, as a British citizen, what has changed? Despite the fact that we have had major debates on Northern Ireland, it is not at all clear what will happen in relation to Northern Ireland, even internally within the United Kingdom. What actually happens if you are a trader moving produce from Stranraer to Larne or vice versa? I am not clear and nor are many businesses in Northern Ireland. Indeed, what changes if you just drive produce down the road from Strabane to Letterkenny? We need to know that; businesses, citizens and communities need to make arrangements that anticipate the new relationship with our European colleagues.

In May last year, the sub-committee of the EU Select Committee that I then chaired produced a major report on transport. That report is yet to be debated in the House. I was told that we would be debating it next week, in which case I probably would not have moved this amendment, but that seems to have disappeared, in which case we are not likely to debate transport in any other context before Brexit on 31 January.

We are told that things will not change during the implementation period, but some things will change. We will no longer be party to any decisions on transport or any other area during that period. I have therefore tabled an amendment that tries to deal with these stage changes to enable Ministers to make regulations to deal with those changes even during the implementation/transition period, because some will be needed. More importantly, after the end of that period, we will have a whole new relationship for every mode of transport—air, sea, road and rail. The implications will be different for passengers and for freight.

Take the road haulage industry: we have already had two different attempts to get it to prepare by developing its certificates and its ability to trade post Brexit, originally in preparation for 29 March. Those arrangements have, of course, now fallen. Even now, the road haulage industry is not yet clear whether we will be dealing with ECMT permits, which are limited in number, whether the whole range of road haulage will be required to have a new certification process, or whether drivers' qualifications will remain recognised by the European Union, and therefore whether we can continue to trade in anything like the way we currently do without going through a whole new process.

When 29 March was in prospect, the European Union unilaterally, but subject obviously to reciprocal action, proposed that there would be a period of between nine and 12 months when the current arrangements for aviation and road transport would remain, so there was to be a buffer contingency provision. Those have sort of been rolled forward, but it is still not yet clear how long they will last and whether they will actually maintain continuity, or whether they will require new bureaucratic limitations on the ability to maintain the

current level of aviation service, the current number of slots available to British-based companies, or, in the road haulage industry, the current level of permits.

The EU Select Committee has reviewed the withdrawal treaty and the political declaration. There are, of course, very high-level commitments in the political declaration to try to maintain some degree of movement. The committee concludes—as, more or less, does my committee—that it is not yet clear, and is unlikely to be clear until we get a free trade agreement of some sort, what the arrangements will be post December this year. The committee concludes that we need much firmer commitments from the Government on their objectives in these areas, and much clearer commitment from the EU during the coming months.

The second part of my amendment therefore requires that, half way through the year—by the end of July; let us give them a few months to get it sorted—the Government offer some clarity to industry and citizens. This involves us even as individual motorists. Will we need an international driving certificate by the end of this year to get off the ferry at Calais or Boulogne? It matters that we know the Government's intention in these areas. As yet, we do not know the intention or—if it is to maintain free movement of goods and passengers on the present basis as far as possible—the credibility of that intention.

Of course, we then run up against a basic objection: free movement is dependent on alignment and common regulations, or what one of Mrs May's propositions referred to as a common rule book. Without that, even if we have no tariffs, there are administrative problems, including costs and potential delays. That could snarl up Dover and make traffic at Holyhead almost impossible to check. It could mean snarling up trade with Ireland, as well as our relationship with the Irish Republic, which uses the UK as a transit area to get into the rest of the EU.

If the Government genuinely want what the Prime Minister on occasion says they want—the maximum freedom to diverge from European Union regulations—and they apply this to transport, the system will snarl up. There will not be frictionless trade, which has been said by successive Prime Ministers to be the objective. Frictionless trade does not exist without pretty close alignment of regulations, which the European Union has. As my noble friend Lord Lea said earlier, even between the EU and EEA/EFTA countries, there are some administrative problems at the borders, despite the agreement between the EU and those countries.

In every transport sector, whether you are a big road haulage company, a major world airline, a small trader with a van or an individual motorist, you do not yet know how the world is going to change and we have had no real indication from the Government of how they will deal with this. Can they give us some indication? As I have said, I would have preferred a report on transport in a different context—and I hope we will still have that even if it has to be after Brexit day—but this is a major subject which affects almost every sector of our country. I will come on to another amendment that deals with the agencies. The European agencies are very important to effective transport safety, be it road haulage, the railways or, more importantly, aviation and maritime activities.

I hope that we can get a coherent response—a report—from the Government on this issue. I have given them time before we exit. Between now and July, they should tell us where they are going and how we are to travel and trade beyond next year. I beg to move.

3.45 pm

Baroness Randerson (LD): My Lords, I was a member of the committee to which the noble Lord, Lord Whitty, referred when he mentioned the evidence on this issue. Week after week we heard witnesses from the transport industries giving evidence, and they presented a pretty united picture. Not one of them bounced in and said, "No, it's all right, we'll cope; we aren't worried." They were all worried and they were all frustrated. Of course, they will do their best to cope, but many of them genuinely fear that their businesses will go to the wall in the process.

Transport of one sort or another has been the subject of a lot of discussion and controversy throughout the Brexit debate. This is a comprehensive amendment which includes references to passengers, freight, roads, rail, air and sea. All of these are currently governed by a mass of different rules and agreements. Some of the agreements are with the EU and some are international treaties, but we are a member of those treaties solely as a member of the EU. Therefore, our position has to be renegotiated as we leave. All of this has to be unravelled and reconstructed if our transport system is to flow smoothly. It will never flow as easily after we leave the EU, because the Government have set their face against the close trading relationship needed for it to do so. However, they can still do things to paper over the cracks.

It is important to recognise the size of the problem. The prosperity of our economy rests on the shoulders of our transport system. Much of that involves foreign trade and the movement of people between countries, but even parts of the economy that are purely internal are to a varying extent affected by problems in the international movement of goods and people. To give one example, any delay to the ports in Kent has a huge knock-on effect not just on the motorways but on the towns and villages of Kent as a whole, and has an impact directly on its internal economy.

Now we have the added factor of the border down the Irish Sea. I have spoken repeatedly in this Chamber about the impact that this would have on Wales—for example on the port of Holyhead, which is badly unprepared to deal with long queues of traffic simply because of where it is situated—and on the farming industry in Wales as a whole. Transport-related problems are not confined to the impact of increased bureaucracy, to which the noble Lord, Lord Whitty, referred, nor to more complex border arrangements and the delays they might produce. They are also caused by the steady departure of EU nationals. This industry has a very high percentage of such employees, and their departure will also cause recruitment issues.

I draw the attention of the Minister to the fact that many of the early arrangements we made as a country with the EU in preparation for this are now badly out

[Baroness Randerson]
of date. Indeed, I remember sitting opposite the noble Baroness, Lady Sugg, when she was the Minister, discussing whether the dates matched for the interim arrangements that had been reached. So all these now need to be updated. They took us a long time in the first place—many hours of work went into them—but they must be looked at again, and it would be very useful for this House to know how well the Government are getting on with that.

The Government have been relatively keen to maintain our membership of aviation-related treaties but have been much more limited in how they have approached, for instance, links with our current EU partners on the railways. They have wanted agreement only with our immediate neighbours. Is that still their position?

The Government have gradually woken up to the general issues and concerns, especially in relation to freight and ports. A great deal of money has been spent on an emergency infrastructure in Kent. Of course, a lot of that money was wasted because it led to previous dates for departure from the EU that did not come to anything. Then there is of course the famous ferry company with no ferries.

I see that the Government are now trying to reclaim some of the £10 million that they gave to this industry and others to prepare for a no-deal Brexit. That displays the Government's confusion on all this, because the Prime Minister continues to threaten that if there is no trade deal this year there will still be a no-deal Brexit. Everyone I talk to or listen to who has any knowledge of the complexity of a trade deal says of course that it is a highly likely event, because it is virtually impossible to get an agreement by the end of the year.

The transport industry remains seriously concerned. It grapples with uncertainty and complexity. I argue that this issue is so fundamental that it deserves the spotlight and the report that the amendment suggests. It is about a great deal more than whether we will all need two different sorts of international driving permit. It is that kind of thing that will have a huge impact on the general public, but it is the complexity of all the other issues that will have a major impact on how our goods are carried to and fro, and with what efficiency.

The amendment is designed to impose on the Government an obligation to work for the smoothest possible trade arrangements going forward. I hope that the Government have no problem in accepting that principle; but I also hope that they accept that Parliament should have the opportunity to assess progress. I believe, and I have always believed, that it is not until we get the impact on our transport arrangements across the board that people in Britain will realise the size of the change coming to us.

I hope that the Government can accept the amendment. If they cannot, I hope that they will work toward agreeing something along similar lines that will impose similar obligations on them to give updates on progress as they move forward with agreements on transport.

Baroness Noakes (Con): My Lords, like the noble Baroness, Lady Randerson, I served on the EU sub-committee, led very ably by the noble Lord, Lord Whitty, and took part in the preparation of the report to which the noble Lord referred.

It was very clear from the evidence we received in that committee that some serious issues remain to be resolved. In particular, I single out road haulage, with the issue of permitting. Not all the other sectors present the same degree of difficulty. However, in that committee we took evidence from the Minister in the Department for Transport. While there were no definitive answers, because at that time last year there was a range of possible Brexit outcomes, it is fair to say that the Minister demonstrated a full grasp of the issues involved. I have confidence that the Government are aware of the issues and know what needs to be addressed in order for there to be a successful outcome for all aspects of transport post Brexit: that is, post the implementation period, in effect, so this is not a burning-platform issue.

I cannot support the amendment in the name of the noble Lord, Lord Whitty, because I do not think that reports to Parliament are a particularly useful mechanism, especially in the context of what I believe was relatively clear evidence at the time that the Government were aware of the issues and determined to address them. I look forward to hearing my noble friend the Minister's response and hope that she will be able to demonstrate to the House that the Government are indeed aware of the issues and committed to finding practical solutions to them.

Lord Tunnicliffe (Lab): I do not normally have sympathy for the Government Front Bench, but I, like the noble Baroness, Lady Sugg, took part in many hours of, broadly speaking, good-natured debates preparing for a no-deal exit. That very action revealed to us the sheer complexity required to make international transport systems work effectively. We were dependent on what we could do for ourselves, because we were in no way able to demand reciprocal action from the EU. Indeed, the EU saw the sheer risks of a no-deal exit and in fact came some way towards providing interim arrangements. Those interim arrangements do not now exist. It is possible that they will emerge between now and the end of December, but given the sheer effort required to do these complex deals, where somehow it is subtly acceptable with our European friends but is not actually like Europe—roughly speaking, that is what the Government are saying—I fear it is impossible.

I do not want to leave the European Union. Most of the House before the election did not want to leave the European Union and probably does not now, but with the odd exception there is virtually acceptance in this House that we have to get Brexit done. We may not like it, but we accept it. However, the sheer practical difficulties the Government face are terrifying.

It also happens that they have picked the worst date of the year. I had a crisis when a permit to operate ran out on 31 December; the alternative was to stop London on 1 January. It was pretty terrifying, because Christmas happens all over the place. Frankly, the end of December is the 22nd if you are lucky. The problem is that everybody else thinks the end of December is the 31st. It turns out that it is not. People are not there—senior people to make decisions and last-minute scrambles, which are what deadlines produce. It becomes utterly chaotic. Anyway, we survived and London did not stop, but it got incredibly close.

During consideration of the Haulage Permits and Trailer Registration Act, we debated the concerns of the freight industry at length. That industry is key to our trading with the EU 27, with millions of road goods vehicles travelling from Britain to the European mainland each year.

Since the passage of the Act, as part of its preparations for a no-deal exit, the Department for Transport began allocating permits via a lottery system, a system that was to be a fallback. Inevitably, because it is so overwhelmed, that became the main allocator. Figures show that less than 1,000 of more than 11,000 HGV operators' applications for annual permits were successful. With a deal now in place and a time-limited transition period running to the end of December, hauliers, drivers and users of other transport modes will be able to continue largely as normal.

However, as with other topics debated in recent days, there is no certainty about the post-December 2020 picture. Indeed, with the Government imposing hard deadlines for a new trade deal, transport operators face a renewed threat of suboptimal contingency measures. I lived in the transport industry. The lead time simply to have the right people in the right places to load the trains, drive the trains, fly the aeroplanes takes weeks and months. If you do not know what you are going to do in an industry that is so integrated, chaos reigns.

I welcome my noble friend Lord Whitty's amendment and look forward to the Minister providing more up-to-date information. We have had precious little detail from the Government on their plans for future UK-EU transport arrangements, and while we accept that this will be subject to negotiation, I hope the Minister can indicate the type of arrangements that we will be seeking, and that the Government are successful.

4 pm

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, I thank the noble Lord, Lord Whitty, and members of his committee, including the noble Baronesses, Lady Randerson and Lady Noakes, for their very thorough report in May 2019, *Brexit: Road, Rail and Maritime Transport*. I also thank the noble Lord, Lord Tunnicliffe, for his contribution today. While I appreciate the intended effect of the amendment proposed by the noble Lord, Lord Whitty, it is at best unnecessary and at worst unwise, as I hope to explain.

The first part of the noble Lord's amendment relates to transport during the implementation period. It is worth reiterating that, once the withdrawal agreement is ratified by the EU and the United Kingdom, EU law will continue to apply in the UK during the implementation period, and the Government will make regulations as appropriate. This will guarantee that the transport of freight and passengers will continue to operate smoothly, just as it does now. So in the implantation period, nothing changes. I hope this reassures the noble Lord that this part of the amendment is therefore unnecessary.

Regarding arrangements for the moving of freight and passengers by road, rail, air and sea between the UK and the EU after 2020, these considerations will form a very important part of the negotiations with the EU and should be allowed to proceed without undue impediment. While it is beyond the scope of today's debate to go into great detail, I will take this opportunity to reassure noble Lords that the Government are fully prepared across all four modes: roads, aviation, rail and maritime. The landscape is complex, but the challenges are not insurmountable, and the work done in your Lordships' House and beyond has been critical in crystallising our understanding.

On roads and road haulage, while international haulage accounts for only a small proportion of haulage activity in the UK, it is essential for our imports and exports. The political declaration therefore identifies road transport as an area for negotiation. We hope to agree arrangements that will allow the haulage industry to continue to act as the vital enabler of wider economic activity, while respecting our right to decide for ourselves how we regulate this sector in the future. We are developing a programme of discussions with the haulage sector on the future relationship, and this will include regular industry round-table meetings.

The noble Lord, Lord Tunnicliffe, mentioned permits and the time taken already by your Lordships' House on a permitting system. This has helped our understanding of the challenges that the haulage industry will face. The Government are aware that the ECMT permitting system can be limited, and therefore if we do not have an agreement, we will look at bilateral arrangements with individual countries. Many of those historic bilateral road agreements can be restarted, and we have them with all EU member states, excluding Malta for reasons of geography. These would be the foundation for maintaining connectivity. However, our immediate focus is on getting an arrangement, particularly for road haulage. There is huge interest on both sides to make sure the arrangements work and that we are able to serve the supply chains across all nations.

Private motorists are also mentioned in the political declaration. Noble Lords will recall that by ratifying the 1968 Vienna Convention on Road Traffic we have already ensured that UK driving licences should be recognised in EU member states which also ratified the convention. Ireland, Spain, Cyprus and Malta have not ratified this convention, but we have ensured that UK driving licences should be recognised in those countries through their ratification of the 1949 convention. We are prepared to consider complementary arrangements where those would make sense.

Another example is on type approval for vehicles. The Government are working on implementing a UK type approval system to regulate which vehicles may be sold on the UK market, so that we remain confident that vehicles registered in the UK are safe, secure and clean. The UK is a respected member of the UNECE World Forum for Harmonization of Vehicle Regulations. We expect to maintain our high level of influence over the development of international vehicle technical standards.

On aviation, the political declaration foresees a comprehensive air transport agreement that will provide market access for UK and EU airlines, and provisions to facilitate co-operation on aviation safety and security, and air traffic management. The UK has long-standing expertise in negotiating aviation agreements and is fully prepared to reach a beneficial deal.

[Baroness Vere of Norbiton]

The noble Baroness, Lady Randerson, mentioned the safety agencies. Within the field of aviation that is the EASA, a significant player with whom the UK works closely. It is paramount that the safety and security of all passengers travelling in the UK and EU is not compromised under any circumstances. We want our consumers and EU consumers to continue to experience the best safety practices, when flying both to and from the UK. The Government understand the industry position on the UK's continued participation in EASA and we will continue to work closely with industry throughout the negotiations.

On rail, arrangements are already in place for services through the Channel Tunnel and on the island of Ireland to ensure that these cross-border services continue in all circumstances. These arrangements will be supplemented by bilateral arrangements with France to support the continuation of these mutually beneficial services over the longer term, and we will continue to support the Northern Ireland Civil Service in future discussions with Ireland. The Government want to secure a close relationship with the EU transport safety agencies, including those for rail, as part of our future relationship.

Finally, maritime is a global sector and largely liberalised in practice. The UK's departure from the EU will not create obstacles for UK ships in accessing EU ports. However, free trade arrangements can provide the legal certainty to underpin the market access that exists in practice.

The amendment of the noble Lord, Lord Whitty, also proposes a reporting requirement, a debate in both Houses and a vote thereon. On reporting, there is no need to set out—indeed, there may be a significant detriment in setting out—bespoke statutory reporting requirements on a specified date. I hope noble Lords agree that imposing a statutory duty on a Minister to provide public commentary at a fixed point in time on the likely outcome of confidential negotiations risks seriously disadvantaging negotiators acting for the UK. However, I highlight the comments on scrutiny made by my noble friend Lord Callanan in your Lordships' House yesterday. It will remain the case that both Houses will have all the usual and long-standing arrangements for scrutinising the actions of the Government.

Let me summarise the Government's response to the two key elements of this amendment. First, the smooth running of transport during the implementation period is already guaranteed. Secondly, the proposed report being published during the course of the negotiations is unlikely to be helpful and may significantly undermine the UK's negotiating position. Given these considerations, I hope that the noble Lord, Lord Whitty, will feel able to withdraw his amendment.

Lord Whitty: I thank the Minister for that very full reply, and I thank colleagues, particularly committee members, who contributed to this debate. I accept some of what the Minister said, in the sense that, theoretically, during the implementation period nothing is supposed to change—but some of the mechanisms for ensuring that things do not change have disappeared. That is probably an issue for my next amendment because, if we are not involved in discussions in the various agencies and issues arise, there will be a problem in the implementation period.

I agree that the real problem is from the new date of 31 December—or, in deference to my noble friend on the Front Bench, 22 December or thereabouts. The whole point of me asking for a report in July is to ensure that, in good time for the December date, all the various sectors, plus individual motorists, brokers and insurance companies and so forth, understand the position. It may be over-glossing it to require a vote of both Houses, but I think the industry and the nation require a comprehensive report, in some form, to the House and the country, to explain what will happen in all these modes of transport beyond December.

I will not press this amendment or the July date. This was always a probing amendment, and I have got a number of commitments from the Government, for which I am grateful. I am sure the Government are well aware of all these issues. I am not sure I entirely agree with my former colleague on the committee, the noble Baroness, Lady Noakes, about the degree of preparedness of Ministers before us; that was probably true of the last Minister we saw, but it may not have been true of earlier Ministers. I shall draw a curtain over that.

I accept the Government's good intention in this respect, but, in the coming months, they will be under pressure from these various sectors to have greater clarification. It would be quite a good idea if we debated that again in the House, in whatever form the Government think is appropriate. Otherwise, we could still be in a situation where there is chaos in at least one of these sectors on 1 January next year. I beg leave to withdraw the amendment.

Amendment 42 withdrawn.

Amendment 43

Moved by ***Lord Whitty***

43: After Clause 37, insert the following new Clause—

"Agencies of the EU and Euratom

(1) During the implementation period, the Secretary of State must continue to cooperate with the agencies listed in Schedule (Agencies of the EU and Euratom) and, if the Secretary of State considers it necessary, make regulations to enable cooperation.

(2) Subsection (3) applies whether or not during the implementation period the United Kingdom is a member, associate member or observer at an agency, or has no formal association with it.

(3) No later than a month before the end of the implementation period, the Secretary of State must lay a report before both Houses of Parliament setting out the United Kingdom's intended future relationship with each agency listed in Schedule (Agencies of the EU and Euratom) after the implementation period."

Member's explanatory statement

The EU executive agencies have impacts on different sectors of UK business and society. This amendment would compel the Government to set out how they intend to fulfill their obligations in respect of the agencies during the implementation period, and how they intend future relations with those agencies will be conducted afterwards.

Lord Whitty: My Lords, I shall speak also to Amendment 62. Veterans of these withdrawal Bill debates—I cannot remember how many we have had now—will know that I have become somewhat obsessive about the agencies. The original EU withdrawal Bill transposed into UK law in a very sensible way—albeit a complicated way, and one that has taken a lot of work by our sub-committees to put into effect—most directives and regulations from the EU. In addition to those directives, however, day to day, it is often the agencies of the EU that are actually smoothing the way so that we have a co-ordinated market in the areas that they cover. Other areas—for example, security; I heard the noble Lord, Lord Paddick, talking about police co-operation the other day—are facilitated via these agencies in interpretation, enforcement, gathering information and monitoring the activities that they oversee.

4.15 pm

At 4.15 pm on a Thursday, I shall not go through each of these 40-odd agencies and explain their importance or why we need greater clarity, but one problem of our imminently being in the implementation and transition period is that, while all the rules remain the same, we are no longer at the table. Whether they cover transport, as we have debated, or sectors such as chemicals or medicines—we used to have the European Medicines Agency here in London but it has more or less gone already—or any other area of activity, we do not know yet what long-term arrangements we will make with these agencies. Some have countries not within the EU at present as observers or associate members, but there has been no clarification from the Government of how this will work.

Let us take one industry that I spoke about in the House during the passage of one of the previous Bills: the chemicals industry and the REACH provisions. The Government have made it clear that we have transposed all the rules. They have designated the Health and Safety Executive as the body that will take over from the European body and establish a duplicate system for, effectively, registering and testing new chemicals. That is quite an expensive process, and it has proved quite a difficult legal one in terms of UK companies and traders having access to the legal rights that arose from the patenting and testing procedures under the European Chemicals Agency. A number of noble Lords may well have received approaches from the Royal Society of Chemistry, explaining why it is necessary for us to participate in the European agency rather than try to duplicate it totally through the Health and Safety Executive.

That is just one, rather major, industry that will face difficulties unless we continue to have a positive, engaged arrangement with the European agency. Even in that field, there are parallel situations for chemicals such as pesticides, cosmetics and, as I have mentioned, the whole area of pharmaceuticals and medicines. We need continued absolute co-operation for those areas to work, otherwise there will be serious safety, environmental and medical consequences.

I appreciate that some of this will have to be legislated for by the Brexit-related Bills that we are promised. I understand that a new version of the agriculture Bill has been printed in the Commons today, and the environment Bill will deal with some of these issues. However, my general point is that, unless we take seriously the role that these agencies have hitherto played and either have a replacement based in the UK that does the same job and/or continue some sort of positive relationship with these agencies, many activities in the economic area and in the areas of law enforcement, science and technology, data-sharing and all the others covered by the agencies listed in Amendment 62 will become more complicated for individuals and companies attempting to meet all the requirements and regulations, particularly smaller companies. If they have to do that twice—if they import from or export to the EU—there will be an additional cost and potential delay in using the latest technology, the latest information or the latest criminal information.

My amendment might not be exactly the best way of achieving what I am seeking, but I would like an indication from the Government that they are working on this and are positively considering whether we should seek associate membership of each of these agencies or an equivalent arrangement post 31 December. I hope that the Minister can at least give me some clarity and reassurance on these issues. I beg to move.

Baroness Miller of Chilthorne Domer (LD): My Lords, I thank the noble Lord, Lord Whitty, for his dogged persistence in pursuing this matter. There is no doubt that, as we move beyond the end of this year, we will start to lose out on all the joint research on the issues around novel foods, scientific research into diseases and threats, pollution, climate change and so on—all the things that scientists are working on—unless we move ahead in the way that the noble Lord has described. It would be criminal if at a time when we are all facing so many common threats, particularly from climate change, we started reinventing the wheel. We do not have the scientific capacity to reproduce the sort of work that goes on at the Joint Research Centre in Ispra in Italy, for example, which is the combined research of the cutting-edge scientists of so many countries.

I doubt that it will be in the lifetime of this Government that we will be able to measure their failure to do the sort of work that the noble Lord is suggesting but, unless a solution is reached along the lines that his amendment suggests, we will certainly suffer in five, seven or 10 years' time.

Lord Tunnicliffe (Lab): My Lords, this is not the first time we have debated the options for future UK participation in EU agencies and I doubt it will be the last. However, it remains a vital issue, and one where the Government and the Opposition remain at odds.

We have always been clear that, while it would require ongoing payments to the EU, it is in the national interest for the UK to continue working within or alongside EU agencies. These are the bodies that were established with the UK's blessing, and indeed often at its insistence, to share best practice and promote efficiency by avoiding unnecessary duplication. Participation often comes with access to shared databases or alert systems. These are particularly important for food safety, product recalls and so on.

[Lord Tunnicliffe]

Under Mrs May, the Government shifted from point-blank refusal to even debate the issue to half-hearted commitments to exploring their options. Later they edged towards continued participation in some agencies if the price and terms were right. All the while we edge towards our exit without any kind of clarity. Your Lordships' House and its committees have previously explored the options and precedents at some length. I hope the Government will have undertaken their own assessments. The Minister will know that it is not only possible for the UK to continue as part of many agencies but that that would be actively welcomed by our friends and colleagues across the EU 27.

As with the last group of amendments, I know the Minister will fall back on the fact that these are matters for the next phase of the negotiations. I also know that the Government will resist this amendment, as they have done with every other amendment that we have debated in recent days. I strongly disagree with that approach but it is the Minister's prerogative. However, the suggestion from my noble friend Lord Whitty is a sensible one. All he seeks is an assurance that Parliament will be provided with information on the Government's plans for future participation in each EU agency and will have the chance to debate those decisions. I have no doubt that your Lordships' House's committees will continue to carry out inquiries in these specific subject areas, and those reports will continue to be useful and give us the chance to talk about specifics, but I would like a commitment from the Government that they will be proactive in their approach, providing a speedy response and ensuring that sufficient time is allocated for discussion.

In my career I have been a much-regulated person, and the value of effective regulation when it comes to safety, trading, smoothness and so on is overwhelming. Every now and then we get a sad reminder of that when it breaks down, and unfortunately we have had this recently in the aviation industry. To take on the sheer complexity of certificating aeroplanes, for instance—in this case the Boeing 737 Max—you need an enormous level of competence and real political clout. The FAA failed to supervise Boeing successfully despite being a body in a big country which had all the resources to do it. The European aviation safety organisation did have that size. We have to recognise that to discharge these responsibilities without being part of a larger agency will be an enormous challenge, requiring enormous resources.

I really hope that the Government will take the general thrust of my noble friend Lord Whitty's amendment and recognise just how valuable it is to retain membership of the European agencies in one form or another. The chances of generating our own capability to have the same impact on safety in particular, but also reliability, co-operation and so on, are, in my view, close to negligible.

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 a short but worthwhile debate. I thank the noble Lord, Lord Whitty, for tabling amendments which have allowed us to discuss the matter. Amendment 62 lists the large number of agencies of which we are full members; I will not read them out either, but I recognise their value and worth over the years.

It is important to stress certain points at the outset. Of course, during the implementation period, we will remain full members of and have full participation in these bodies. We have also made declarations about which bodies we have a particular ambition to remain active in after that implementation period, covering things such as aviation safety, the chemicals agency and the medicines agency. We can all see the value in those. However, I must stress again that these elements will be subject to an ongoing negotiation. They cannot be secured by unilateral demand. There will be a discussion to take that matter forward.

It is important to stress that in each of these areas and with each of these agencies, it is not the Government's intent to make any of the adjustments in secret. It will be necessary for all those regulated or affected by those agencies to understand how the Government-EU negotiations will impact the industries, sectors and the individuals themselves. The obligation to provide a report is all but superseded by the Government's necessary commitment to do this, to ensure the safe continuation of each of the elements for which those agencies are responsible.

The Prime Minister himself has said that he will keep Parliament fully abreast of these developments, and rightly so. Even more importantly, the committees of this House and the other place will be in full scrutinising mode to ensure that the way these evolutions unfold is fit for purpose, works for those affected and ultimately delivers against the Government's objectives of allowing growth in these areas. A number of noble Lords have hinted that some of these areas are more challenging to deal with and that is why we need to find ways of working through, to make sure that we are not dimming our ambitions or collaborations in any way. I hope that through those negotiations we will be able to move these matters forward in constructive ways.

The noble Baroness, Lady Miller, asked about the research challenges. I accept that the Joint Research Centre and some of the institutions to which we belong will need to be considered in a new light. I also recognise that we are a participant not just because of our membership but because of respect for the science for which we are responsible and the work we are able to bring. That is a testament to our universities and our wider academic sectors. We should not lose sight of the fact that we are not just active but valued participants in a number of these areas. That relationship must continue because, in many respects, the research that is being considered is more important than the politics which underpins some of today's debate.

I cannot accept the amendment, but I accept why the noble Lord, Lord Whitty, tabled it. I accept that he has done so to try to secure from the Government an understanding and an appreciation of how we will go forward. The important thing is that we will be transparent. The negotiations will consider our relationship with each of these agencies and, as that consideration evolves, we shall ensure that both Houses of Parliament are fully abreast of what this will mean. We will do so

in a manner that allows the necessary scrutiny that noble Lords would expect from the committees we have here today. The settled will of developing these ideas will be done in collaboration with the EU. Those negotiations are important but, on a number of issues, I am afraid we cannot give the commitments that even I would like to give just now because they rely upon that negotiated approach. On that basis, I ask the noble Lord, Lord Whitty, to withdraw his amendment, in the knowledge that his ambition is, I believe, also shared by the Government.

4.30 pm

Lord Whitty: My Lords, I am very grateful for that full reply from the Minister on the intent of Government in these areas. I would, however, ask him to comment on one or possibly two areas.

First, the three agencies that he picked out were the ones that the previous Prime Minister picked out, in one of her major speeches in this saga, as being particularly important for continuing participation. Perhaps I should solidly approve the consistency of policy within the Government over the change in regime, but if that is still the priority, it is a rather limited number of these agencies.

Secondly, the noble Lord said that things will continue as normal during the implementation transition period. My understanding—as of a few months ago, anyway—was that, while the rules would remain the same, our participation in any of the executive bodies of these agencies has been denied by the European Union. If there is a change in that situation, I would strongly support it, but my understanding is that only a few weeks ago the EU's view was that we would no longer participate, even though we were bound by the rules. Could the Minister comment on that?

Lord Duncan of Springbank: Yes, of course. The noble Lord is correct. I did not mean to imply that there is no change whatever. I meant that what those agencies do, and our commitment to those agencies, continues unchanged during the implementation period, until such time as the negotiations reveal the structure or the future arrangement. I picked out the three particular agencies because there has been continuity on those between the two Administrations post the election or post change of regime, and those are clearly ones in which we would wish to see an active participation. We would prioritise these in developing a relationship with the EU, but not exclusively so—I would not wish it to be thought that, of the agencies that have been listed, only those three are for active consideration. Those are ones that, in light of our conversations and debates so far, probably stand at the top of the list. For each of the others, an accommodation and a relationship will be required. What it will be and how it will be determined will ultimately evolve through those negotiations. I hope this House and the other place will be kept fully informed of those.

Lord Whitty: My Lords, I thank the Minister very much for that clarification, and I beg leave to withdraw the Amendment.

Amendment 43 withdrawn.

Amendment 44 not moved.

Clause 38: Parliamentary sovereignty

Amendment 45 not moved.

Debate on whether Clause 38 should stand part of the Bill.

Lord Wallace of Saltaire (LD): My Lords, Clause 38 is purely declaratory: it has no effect whatsoever, except to appease the appetite of the hard ideologues on the Conservative right. The Select Committee on the Constitution notes explicitly that

"this Clause has no legal effect".

Its opening phrase,

"It is recognised that the Parliament of the United Kingdom is sovereign",

is poorly drafted. It does not say who recognises it, or what effect that might conceivably have. It ought, at least, be an active declaration of the principle of parliamentary sovereignty.

The model for such a declaration was, of course, the ultimate Henry VIII clause in the Statute in Restraint of Appeals 1532, which asserts that,

"this realm of England is an empire".

It did not surprise me when I checked the date of that statute on Wikipedia to find an accompanying side reference to Sir John Redwood calling for the full restoration of our imperial sovereignty by excluding any appeals to any continental court. This clause is about the myths of English identity and history far more than about current practice.

The foreign appeals which the 1532 Act were restraining were to the Pope in Rome, rather than to any political institution. It has often struck me as odd and eccentric that several of the most ardent English nationalists and Brexiteers are right-wing Catholics, some of them converts, who regard the current Pope critically as tending towards a dangerous liberalism rather than the dogmatic orthodoxy that they prefer. They have nevertheless embraced an English doctrine which is rooted in our Protestant Reformation and its rejection of the universalism of the Catholic Church.

Since the 16th century, the doctrine of sovereignty has evolved a great deal and been the subject of a great deal of scholarship, some of which I had to teach when a university teacher. As Dutch, Danish, English and other lawyers have argued, national sovereignty is embedded in a framework of international law, which is necessary to enable trade and peaceful interchange among nation states. Under our system of parliamentary sovereignty, trade agreements and treaties have to be transposed into domestic law, but Parliament accepts that it cannot renegotiate what the Government have agreed and that international treaties therefore limit absolute parliamentary sovereignty. That is why it is inconsistent with any coherent doctrine of parliamentary sovereignty for a Government to neglect to carry Parliament with them as they negotiate major treaties which have significant implications for domestic law and domestic economic life.

International law and domestic law—as the Minister who is to answer knows extremely well—are closely intertwined. This Conservative Government, like their

[Lord Wallace of Saltaire]
predecessors, stress the depth of their commitment to the legal, institutionalised international order. As the ideologues on the Conservative Benches rejected the constraints of European Union law, they will still be hemmed in by wider international commitments on human rights, standards, aviation safety, environmental law, shipping, data exchange and a great deal more.

Purists within the United States have gone further than English nationalists and argued that the perfection of the American constitution and the democracy it encapsulates must override the constraints of international law and treaties. Justice Antonin Scalia, appointed by President Reagan to the US Supreme Court, explicitly argued this exceptionalist view that international law could in no way override American law but, so far as I know, no right-wing English lawyer has gone quite so far yet.

The cry of the Vote Leave campaign was to re-establish parliamentary sovereignty by leaving the EU. Now that we are leaving, we hear a different tune, calling on Parliament to accept that it should not examine the process of government too closely. I listened this morning to the noble Lord, Lord Bethell, no doubt reading from his brief when he said that it is vital that we restore the traditional relationship between government and Parliament. I understand that to mean: that Parliament should accept that majority government has now returned; that it should accept what the Government propose without significant amendment, particularly in the second Chamber; and that the key principle of Britain's unwritten constitution is that the Queen's government must be carried on without let or hindrance. That is not easily compatible with parliamentary sovereignty.

This clause therefore declares a half-truth. The relationship between Parliament and government in reality remains contested. The noble and learned Lord, Lord Woolf, spoke yesterday of the importance of maintaining the separation of powers between Executive, Parliament and judiciary, but there is nothing here to suggest that the judiciary can in any way be a counterbalance to government. If I correctly understood what the Prime Minister implied in Prime Minister's Questions yesterday, he thinks it improper for judges to play such a role.

Twice in the last week, we have probed the promise in the Government's manifesto and the Queen's Speech to establish within the next 12 months, as the manifesto said, a commission on the constitution, justice and democracy. We have gathered the impression from the incoherence of ministerial answers that the Government are unsure how far they wish to open up such underlying questions of our constitutional and democratic order. It may even be that some within the Government now regret that the commitment has been made, but the commitment to a constitutional commission has been made and these questions will have to be addressed.

This clause, however, with its very poor drafting and its failure to refer in any way to the unavoidable influence of European law on the UK as we negotiate a close future relationship, as the political declaration makes clear, does not offer any useful contribution to that task or to providing clarity for our political, legal and constitutional debate.

Baroness Hayter of Kentish Town: My Lords, as we have been told, Clause 38 is essentially meaningless. It is declaratory, I think it was said; a sop to the ERG. Indeed, the Explanatory Memorandum makes clear that the clause makes no material difference to the scope of Parliament's powers.

However, it is not just neutral. The problem, as we discussed on Tuesday, is that, by having this clause but failing to refer alongside it to the Sewel convention that the UK Parliament will not normally use its powers to legislate in devolved matters without the agreement of the National Assembly—or indeed the Scottish Parliament—it appears to our colleagues there to undermine the devolution settlements.

It is for that reason, as we discussed in relation to Amendment 45 on Tuesday that the Welsh Government wish the Sewel convention to be restated alongside what is in this clause, if it really must remain in the Bill, although it is in fact otiose and it would probably be best for it to go altogether. I see the Chief Whip in his place; he always likes to know what we will return to. That is one point to which we shall return next week.

For the Opposition, however, there is a different problem with the clause, which is that the rest of the Bill does the exact opposite to what it says in it. Virtually all the rest of the Bill dilutes parliamentary sovereignty vis-à-vis the Executive: it takes powers from us, not to give them to Wales or Scotland but to give them to the Government.

Future historians will puzzle over why this clause is here. We are particularly grateful to the noble Lords for giving notice of their intention to oppose that Clause 38 stand part, because it gives us the opportunity to write that into *Hansard*, so that when future historians—I am a historian—look at why on earth this clause was there, they can say it was there to keep the ERG of the Tory party happy. That does not seem to us to be a very good reason to have it, but if it really must remain, without the reference to the devolution settlements it is in fact unhelpful, rather than neutral.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I am obliged to noble Lords for their contributions to this part of the debate. I express some concern that the noble Lord, Lord Wallace, wishes to concertina hard ideologues of the right, English nationalists and Brexiteers into one uniform group. That is regrettable shorthand and, indeed, the very fact that his party has adopted that sort of attitude towards the issue of our leaving the European Union might go some way to explaining why it returned after the general election with a total of 11 Members in the House of Commons. There are many, many people in the United Kingdom who are not English nationalists but voted to leave the European Union. There are many people in the United Kingdom who are not hard ideologues of the right who voted to leave the European Union.

Lord Wallace of Saltaire: My Lords, I entirely accept that. I am merely talking about those who have written about this. I am talking, as my noble colleague on the Labour Front Bench suggested, about those who have been agitating for clauses such as this, who have been

expounding—the Martin Howes of this world—and not, of course, the average voter, who has much a simpler collection of views on all this. We know that the vote came for many reasons, but for those who have written and spoken about the justification and the necessity for this, in overlapping groups, I think that the terms I used were justified. We are talking about a view of English exceptionalism, which perhaps even some Scots share—a view of English identity and our difference from the continent, which I do not share but which I was taught at university. I have learned a great deal about it and I dispute it.

4.45 pm

Lord Keen of Elie: My Lords, even though the noble Lord may seek to narrow down the characterisation he advanced in his opening, I still do not accept it. It appears to me to go far too far in its assertion of who might be concerned to restate and recognise the sovereignty of our Parliament, and why. I will make two comments on his observations. He did not mention the duality principle, but he ought to bear it in mind because, of course, while the Executive may enter into obligations at the level of international law, they have no impact on domestic law unless and until they are brought into domestic law by this Parliament. So there is no question of parliamentary sovereignty being undermined in any sense by the ability of the Executive to enter into treaties, and to have and enjoy that treaty-making power. That is simply not correct.

On the noble Lord's observations about the separation of powers and the position of the judiciary, I invite him to revisit, as am sure he has often done before, the work of Dicey on the constitution—I think the 1887 edition was the last one that Dicey himself edited—in which he makes very clear the position of the judiciary vis-à-vis the sovereignty of Parliament.

Lord Wallace of Saltaire: I have indeed read Dicey and I am conscious that his views on a number of issues were influenced by his growing opposition to home rule.

Lord Keen of Elie: It is well known that, latterly, Dicey developed views on home rule for Ireland that differed from what might be regarded as the mainstream at the time. Be that as it may, his works on the principles of the constitution stand the test of time and are worthy of being revisited by the noble Lord.

I shall deal shortly with the point advanced by the noble Baroness, Lady Hayter, about the scope of the present clause. The Sewel convention is not itself a matter of constitutional law; it is a political convention, as the Supreme Court made clear in the first Miller case. It is a political convention into which the courts would not intrude. Be that as it may, it has of course been restated in statutory form and therefore does not require repetition. Section 2 of the Scotland Act 2016 and Section 2 of the Wales Act 2017 restated it expressly in statutory form. So it is there on the statute book and does not invite repetition. What is not contained in any of the devolved legislation, for obvious reasons, is a restatement and recognition of the fundamental principle of our constitutional arrangement, namely that Parliament is sovereign, and there is therefore a desire to see that made clear.

The noble Lord, Lord Wallace, suggested that there was some deficiency in the drafting of the clause, but I resist that suggestion. It says, in terms, that the principle of our constitutional arrangement—namely, parliamentary sovereignty—is recognised. It is universally recognised, and that is an appropriate way to express the position of our constitution. In other words, nothing in the Bill derogates from the sovereignty of Parliament, and this clause makes that clear.

Baroness Hayter of Kentish Town: Does the noble and learned Lord therefore accept that if there was an addition to restate the convention, that would not detract in any way from what is in the clauses at the moment?

Lord Keen of Elie: It would not detract from the clause but it would be an unnecessary repetition. We do not normally put precisely the same provision into statutes two or three years apart. Here we have the provision with regard to the Sewel convention in Section 2 of the Scotland Act 2016, and again in Section 2 of the Wales Act 2017. It is there. It is on the statute book; it exists. That is why there is no need for repetition.

As I say, leaving the European Union is a matter of some significance in the context of our constitutional arrangements, in particular, the repeal of the ECA. It is therefore appropriate in this context that there is an explicit recognition of the principle of parliamentary sovereignty. Therefore, as the Bill implements the withdrawal agreement so that we can leave the legal order that is the European Union, it is appropriate, when disentangling ourselves from those international obligations, that we ensure that there is no concern about the principle of parliamentary sovereignty. It is for Parliament, acting in its sovereign capacity, to give effect to the agreement in domestic law—that is the duality principle, and nothing in the Bill derogates from that principle as recognised by this clause. In these circumstances, I submit that it is entirely appropriate that this clause should stand part of the Bill, and I invite the noble Lord not to oppose it doing so.

Lord Wallace of Saltaire: My Lords, in that case, I find the phrase "unnecessary repetition" entirely appropriate to this clause as a description of what it is for. I referred to the duality principle; I remind the noble and learned Lord that the United States also has that principle, and that the view of the exceptional position of the American constitution and its relationship with international law means that, on occasion, the Senate turns down treaties that the United States has negotiated, sometimes to the extreme discomfort of the international legal order.

Lord Keen of Elie: I think we are aware that it did not join the League of Nations.

Lord Wallace of Saltaire: Not just the League of Nations—there was also withdrawal from the joint agreement with Iran, although that was an executive act.

I was saying that our Parliament, which is sovereign, is constrained by acceptance of the legal order. On the delicate relationship between Parliament and government

[Lord Wallace of Saltaire]
over the negotiation of treaties, particularly trade treaties, we need to bear that in mind, because, as a Parliament, we have never rejected a treaty that a Government have negotiated. That is one reason why many of us are still pressing for that. I wish merely to mark that these issues need to be examined in more detail, that the Government have committed themselves to some sort of commission on the constitution, the judiciary and democracy, and that as we leave the European Union, it is entirely appropriate—indeed, necessary—that we re-examine some of these questions about which, as the noble and learned Lord and I have shown in our discussions, there is some contestation.

Clause 38 agreed.

Clauses 39 and 40 agreed.

Amendment 46

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

46: After Clause 40, insert the following new Clause—

"Regulations: extension of EUWA 2018 sifting provisions

(1) Schedule 7 to the European Union (Withdrawal) Act 2018 is amended as follows.

(2) In paragraph 1(3), after "8(1)" insert ", 8A(1), 8B(1) or 8C(1)"."

Member's explanatory statement

This amendment ensures the sifting provisions in the European Union (Withdrawal) Act 2018 apply to regulations made under inserted sections 8A to 8C.

Baroness Hayter of Kentish Town: In moving Amendment 46 I will speak to the other amendments in the group, which essentially have the same effect. Under the Bill there will be no extra sifting procedure of the sort that we established in the 2018 Act, which was able to act as a further check on the Brexit statutory instruments that were laid using the negative procedure. Quite a large number of instruments were recommended for upgrade to the affirmative procedure, and the process helped to identify a variety of drafting errors that could otherwise have left the statute book inoperable in the event of a no-deal Brexit.

Our thoughtful and highly experienced Delegated Powers and Regulatory Reform Committee has recommended a sifting mechanism for this Bill along the lines of the 2018 Act. It would be able to recommend an upgrade from the negative to the affirmative procedure where the regulations were seen to be significant. That recommendation has been endorsed by our Constitution Committee, given the importance and potential breadth of powers in the Bill. It has also recommended that the sifting mechanism should be added as part of parliamentary scrutiny. In particular, the committee concurs with the recommendation of the DPRRC that the powers in Part 1, which are not accompanied by a sunset provision and are thus particularly important, should be subject to a sifting mechanism, as well as those in Part 3 and for the Clause 18 powers.

Rather than duplicate unnecessarily the provisions laid out in the 2018 Act, the amendments tabled in my name seek to make clear that the relevant delegated powers would be subject to these provisions. Given that we are in Committee, I hope that the Minister will understand that any issues in the drafting are the result of not having gone through all detail before, and that he will focus instead on the principle that the wide-ranging powers allowed for under the current Bill should be subject to a greater level of scrutiny. That, as I say, is not only for the sake of Parliament but to protect the Government from any errors.

I know that there may be some noble Lords who will probably disagree, having spent many a long afternoon in the Moses Room, but actually the sifting mechanism in the 2018 Act did work really well, and I think that that was the view of Ministers as well as those doing the scrutiny. Given that, it is slightly hard to see why the Government have not thought to repeat that process in this Bill, particularly given that it has been recommended by the DPRRC and the Constitution Committee. I beg to move.

Lord Tyler (LD): My Lords, my name is attached to the amendments in the name of the noble Baroness, and in addition to those I will speak to Amendment 66A, which is on a more specific question. I endorse entirely what the noble Baroness said. I find it extremely difficult to understand what change of circumstance has made it necessary to depart from the very effective system that we produced in 2018 for sifting. At that stage I was a member of the Delegated Powers and Regulatory Reform Committee and we were strongly in favour of the process because it did a good job.

I noticed just now that the noble Lord, Lord Duncan, who sadly is not in his place, when responding I think to the noble Lord, Lord Whitty, referred to "a change of regime" between the Administration of Mrs May and Mr Johnson. Regime change has a certain curious association in our minds, but if that is the real reason why there has been a change between 2018 and 2019 in the treatment of these matters, then of course that has wider significance because it is well known that the new Government take what I should perhaps call a more cavalier attitude to the role of Parliament, not least because they have a large majority in the other place.

I was contemplating just now the final part of Clause 38, with which my noble friend Lord Wallace was dealing. I did not intervene in the debate because it was so erudite that it went way above my head, but I thought that the final sentence—

"nothing in this Act derogates from the sovereignty of the Parliament of the United Kingdom"—

was a bit optimistic. Frankly, there are all sorts of relatively small items that refer to the role of Parliament, which is why the sifting issue comes in. It is rather like arriving at the pearly gates and thinking that it would somehow ease one's passage to say to St Peter, "Look, I know I've committed all sorts of sins, but they're all relatively minor, and in any case I went on record just before I arrived here and swore that I was actually very much against sin." I notice we have two representatives of my church here so I hope that they will endorse that. It is really what this clause is saying: "Take no notice of the fact that throughout the Bill there are all sorts of examples where the Government are not really giving Parliament its proper role. Do not worry about it because we say that we are against that." I find that not very consoling. The sifting mechanism is well tried. It has worked and we find it very difficult to understand why it has been ruled out in these circumstances.

5 pm

I turn specifically to Amendment 66A in my name. It might seem a comparatively minor change, but it is indicative of the Government's whole attitude to Parliament in the Bill, hence the significance of what I have just been saying. The proposal at page 68, line 9, is really quite extraordinary:

"A statutory instrument containing regulations under section 41(1) is subject to annulment in pursuance of a resolution of either House of Parliament."

That sounds innocuous, but it actually means that the Government think that this is so unimportant that it can be pushed through at top speed. It is, if you like, the shortcut of all shortcuts.

That is why it has been picked out by the Delegated Powers Committee as a classic example of a Henry VIII power. I remind your Lordships that that committee is not in any sense a party committee; it is a cross-party committee led by a very distinguished former Conservative Minister. It speaks to us all about our role in this House. The committee says that

"clause 41 (consequential and transitional provision etc.) contains a Henry VIII power for a Minister of the Crown by regulations to repeal or amend any Act of Parliament passed from time immemorial until the end of the transitional period (the end of 2020) as part of such provision as the Minister considers appropriate in consequence of the Act. Such regulations are made pursuant to the negative procedure.

In seeking to justify this departure from the norm, the Government mention that primary legislation passed or made after December 2020 is not amendable under this provision. This offers limited comfort, given that every Act of Parliament passed before the end of December 2020 is amendable by Ministerial regulations made under the negative procedure. The Government also seek to justify the negative procedure on the ground that consequential powers are construed strictly by the courts. This is not relevant to the question whether Parliament should be able to scrutinize the legislation under the affirmative procedure.

Where regulations under clause 41(1) modify primary legislation or retained direct principal EU legislation, the affirmative procedure should apply in accordance with established practice and be consistent with the general approach in the Bill."

That is why this relates back to our previous debate. Incidentally, the Constitution Committee made a very strong recommendation to agree with that recommendation.

It is quite possible that the Bill will be amended by this House next week. I know not on what issue, but it is quite likely that it will go back to the other place for Members of Parliament to look at again. I wonder whether the proposal tucked away at page 68 is actually a simple mistake, because it is so silly. What is the point of doing it? All it does is undermine the proper way the Bill should be considered and the proper way your Lordships' House should take on its responsibilities in scrutinising the Government's proposals. If it is a simple mistake, let the Minister simply say to us, "Look, come on. Let's get this right." Let us, for once, make some reasonably sensible change to the Bill. If it goes back to the other place, we will simply make sure that this matter is very firmly taken under the affirmative procedure, so that Members in both Houses can look at the issue in precisely the terms that they are advised to do by our delegated powers and constitution committees.

I hope the Minister will say, "Actually, we could look at this again." We have not heard that phrase often in the last few days, but I plead with the Government. This is such a silly thing to do and flies in the face of all protestations of the importance of the role of Parliament in this regard.

Lord Callanan: I thank the noble Baroness, Lady Hayter, and the noble Lord, Lord Tyler, for their opening statements on the amendments in this group. Of course, I well remember the many debates that we had during the passage of the 2018 Act on the extremely important subject of delegated powers. It is of great interest to us. I do not think the other place took as much interest in it, but it is nevertheless an important subject and I am grateful to both the noble Baroness and the noble Lord for raising it.

I will say at the start that the Government have read with care the reports of the Delegated Powers and Regulatory Reform Committee and, of course, the Constitution Committee, which were referred to. I am also grateful, as I said in my opening at Second Reading, for their contribution to the exit process to date.

I will speak first to the amendments of the noble Baroness, Lady Hayter. I note that they are co-signed by the noble Lord, Lord Blencathra, who is not in his place. He is a signatory to these amendments and an extremely distinguished chair of the committee. A number of Members here are, of course, veterans of the debate that we had during the passage of the EU withdrawal Act about the introduction of a sifting mechanism into the Act. I agree that the sifting mechanism introduced then was a contribution to the unique set of circumstances in which we found ourselves as a consequence of that Act. I will argue today that the circumstances in which we find ourselves now are very different from those of the 2018 Act.

The first point, of course, is that the volume of statutory instruments that we will make under this Bill will be significantly less than those made under the 2018 Act. I suspect that this comes as a significant relief to many noble Lords. Secondly, the powers themselves are much narrower and more specific in nature. The DPRRC report itself acknowledged that:

"The scope of each power is … naturally constrained by the scope of the … matter contained in the Agreements that it is intended to address."

Even more importantly, we have set out the procedure to be used when exercising the powers in this Bill. Ministers do not have the discretion that was afforded to them in the 2018 Act regarding the procedure attached to the use of the powers in this Bill. The argument then was that we needed a sifting mechanism because of the wide discretion given to Ministers to select the appropriate procedure. We do not have that procedure in the way this is drafted. As Members have observed, the general approach that we have taken is that the affirmative procedure will apply when the powers in the Bill are exercised so as to modify primary legislation—the so-called Henry VIII power—or retained direct principal EU legislation; the affirmative procedure will always apply in those circumstances.

Where the negative procedure applies, Members of the House may scrutinise the regulations and may, of course, pray against them should they wish to do so, as

[Lord Callanan]
is usual for regulations of this kind. The sifting mechanism that was inserted in the 2018 Act worked very well. It was a unique response to a unique Bill. There were always going to be a huge amount of SIs introduced. There was much less certainty at the time about how they would be used, and a considerable amount of ministerial discretion on the procedure to be used. I submit to the House that none of those conditions applies to this withdrawal agreement Bill. I hope I have explained why the procedures for the powers in this Bill are of a different nature to those in the withdrawal Act and why the Government therefore cannot accept these amendments.

I turn to Amendment 66A, tabled in the name of the noble Lord, Lord Tope. As noble Lords are aware, consequential powers are standard provisions in legislation—even legislation of great constitutional importance, such as the Constitutional Reform Act or the devolution statutes. The Bill already includes many consequential amendments at Schedule 5, but we also need to take a power to make further consequential provisions to the statute book. Again, this power is limited to making amendments consequential to the contents of the Act itself and, like consequential powers in other primary legislation, this power will be construed strictly by the courts. It is in everyone's interest that the statute book functions effectively.

Lord Tyler: Is the Minister really saying that Clause 41(1) is so limited in that way? Perhaps I may read it to him again:

"A Minister of the Crown may by regulations make such provision as the Minister considers appropriate in consequence of this Act."

That is very widely drawn. If, as he said just now, there are fewer orders in prospect, that makes it all the more important that, with something as important as this, the recommendations of the Delegated Powers and Regulatory Reform Committee and the Constitution Committee be taken into account. I cannot see that his argument stands up.

Lord Callanan: The clause that the noble Lord quoted comes under the consequential provisions. As I just said, the consequential power is construed strictly by the courts. I am advised by departmental lawyers that there is an extremely narrow focus; they are amendments that can be made only as a direct consequence of the Bill when it is enacted. I do not think that it in any way provides leeway for a Minister to make things up on the spur of the moment and amend primary legislation. The powers are very strictly constrained to consequential amendments, and this is not an unusual provision. It exists in many other Acts, including those I quoted earlier. We believe that moving the consequential provision to the affirmative procedure would frustrate the ability of departments to make consequential changes before exit day.

As I said also on the other amendments, I am sure that the noble Lord will agree that the use of the negative procedure does not prevent parliamentary scrutiny taking place. Members will still have the opportunity to pray against regulations should they consider it appropriate—and, as I said, there are the restrictions on the use of that power that I mentioned earlier.

I hope that, with the reassurances I have given noble Lords and a fuller explanation of the powers we propose to take, the noble Baroness will feel able to withdraw her amendment.

Baroness Hayter of Kentish Town: Let it never be said that we think the Minister would make up something on the spur of the moment.

I have only two things to say. First, I am sure that both our Delegated Powers and Regulatory Reform Committee and our Constitution Committee considered the points that the Minister has just made and nevertheless recommended a sifting procedure, but be that as it may. Secondly—this does not actually affect these particular amendments, because we are talking about the negative procedure here—the Minister said that there would be fewer SIs under this Bill. He also said that it has "narrower powers." I do not think our noble and learned Members who spoke the other day would see the power it gave, albeit of the affirmative, to Ministers to alter the way ECJ rulings are heard as a "narrow power." But that, as I say, is not covered by this, although some of the powers in the Bill are rather large.

However, the point the Minister makes about the ability to pray against negative draft orders is significant. I beg leave to withdraw the amendment.

Amendment 46 withdrawn.

Clauses 41 and 42 agreed.

Schedule 1 agreed.

Schedule 2: Independent Monitoring Authority for the Citizens' Rights Agreements

Amendment 47 not moved.

5.15 pm

Amendment 48

Moved by ***Lord Greaves***

48: Schedule 2, page 47, line 12, at end insert—

"(d) a member who knows about conditions in England relating to the relevant matters."

Member's explanatory statement

This amendment adds England alongside the other constituent parts of the United Kingdom.

Lord Greaves (LD): My Lords, I find myself having to move the last amendment slightly by accident. I will also speak to the other three amendments in the group. I apologise to the Committee: I had intended to group them with a much earlier group that was debated yesterday morning. Unfortunately, the way in which the Bill has been concertinaed caught me napping and I have ended up having to do this at the last gasp.

Since it is the last gasp, I want to say one thing. I am a little concerned. I have listened to a lot of the debate both in the Chamber and outside it, and I am reading the rest of it. I feel that this has not been a normal Committee in the House of Lords. That is not just because it has been concertinaed into three days; we understand why that is so. It is the first time, I think,

that I have not heard or read debate on a single amendment when the Government Front Bench have said, "Yes, there are interesting points to consider here. We'll take them away and consider them and perhaps have some meetings outside the Chamber before Report." Again, the concertinaed timetable makes that difficult but that is the way the House of Lords normally works. This is a special and unusual Bill and we are in unusual times, but it is an indication of the way Brexit has divided not only the country—almost down the middle—but this House and every institution in the country. I believe that there is a fundamental lack of trust here.

Perhaps I am being presumptuous, but I will have been here for 20 years come May, so I have a right to be slightly so. I say this to the Government Front Bench: at times, I have seen the House of Lords descend into a certain amount of chaos, but most of the time it does a very good job of scrutinising and revising Bills. We now have a majority Government in the Commons. I have been here when there have been big majority Governments. There have been periods of Labour government during which we in the Liberal Democrats worked closely with the Conservatives, as the two opposition parties, and sent things back to the Commons time and again.

We have also negotiated with the Government; indeed, there were Lords Ministers in a majority Government during the 2000s who took it upon themselves to go back to the Commons and the Government to try to get a deal. The noble Lord, Lord Whitty, who was here earlier, was excellent at that. On a number of occasions, he got deals on agriculture Bills and then came back here and satisfied—or at least half-satisfied—the Liberal and Conservative groups. I hope we will move back to that sort of thing once we get over the traumas of Brexit.

I sense a feeling on the Government's side that everybody who is against Brexit—who voted to remain and tried to stop Brexit—is trying to stop the exit day on 31 January and to put off the final reckoning at the end of the year until some time in the far future. I can speak only for myself—I cannot speak for my group, and my Chief Whip is here so I had better be careful what I say—but I believe that there certainly is consensus in our group. We accept that the UK will leave the EU on 31 January. That decision has been made. That is why we are more than happy to co-operate in getting this Bill through in time.

I believe that, now the decision has been made, to quote whoever it was:

> "If it were done when 'tis done, then 'twere well
> It were done quickly".

The quicker it can now happen—and everything can be sorted out in the meantime—the better. Then there is certainty and we can all move forward into the future. If some of us want to start long-term campaigns to go back in, we can do that; but let us have the certainty of the end of this year, if at all possible. Many of us are very doubtful that the Government can do all the necessary negotiating by this summer but, if they can, good luck. They will need the help and assistance of opposition parties in Parliament—including in the Commons, where there is a huge majority—to achieve that. I believe that is what should happen. I do not know if that is the view of my group generally, but it is what I believe.

I have four little amendments, on which I will try to be quick because everybody who is still here wants to go for the trains. Amendment 48 comes back to the relationship with the devolved authorities and other "relevant" authorities, as it says here. We are back to the composition of the independent monitoring authority. Three of the members—or perhaps four, if Gibraltar is included—will have to know about "conditions" in Scotland, Wales, Northern Ireland and perhaps Gibraltar. It is a strange phrase, "knows about conditions in". That leaves the rest of the UK appointees, who are supposed to know about conditions everywhere.

The appointments of the specific people who will, in a sense, have a duty to represent what is going on in Scotland, Wales and Northern Ireland—and perhaps Gibraltar—are subject to consultation with the relevant authorities in those areas. But if the authorities say they do not like the person put forward, the Government can go ahead anyway and appoint the person; all they have to do is write a few words as to why they have done it. That is a tiny thing, in a sense, but it seems to strike at the heart of the relationship between Whitehall and Westminster and the devolved authorities. I think it is wrong, and this amendment and another say that they have to come to agreement, in effect. It is not difficult to negotiate and come to an agreement in those circumstances.

The other amendments, which are slightly wild, add England to this. The present devolutionary settlement in this country—I am talking particularly about England and Scotland here—is not stable and, I believe, not sustainable for the future. This is just one little example of that. People will be there as UK persons but also representing England. It is not clear whether the people with special knowledge of Scotland and so on will have anything to do with England, but it is an asymmetrical relationship and is falling apart in all sorts of ways. Every time there is a little example of something falling apart, it just stokes up the pressure for Scottish independence.

In my view, Scottish independence as such, just brought about by a referendum, would be pretty disastrous for this island. We must sort out the relationship between Scotland and England. I say "we", because at the moment it is assumed that the future of Scotland is all to do with people in Scotland. I do not think it is; it is to do with people in Scotland and England, because it is a question of the relationship between us.

Finally, if Scotland and Wales have representatives or people who know about the conditions there, why does not the north of England? These issues of devolution within England are going to come to the fore. I know this is far and away beyond the purview of this Bill and these amendments, but such issues will underline a huge amount that happens in this Parliament and a huge amount of the politics out there during this Parliament. If this constitutional convention can start to get to grips with those things—starting from scratch; not from "Will Scotland be independent or not?" but from "What relationship do we really want in future between Scotland and England?"—then Wales and

[Lord Greaves]
Northern Ireland can follow along. Having said that—I am totally out of order talking about this under this group of amendments—I beg to move Amendment 48.

Lord McNicol of West Kilbride: My Lords, I responded to an amendment in the name of the noble Lord, Lord Greaves, on day 1 of Committee, so it seems we have come full circle. I offer a brief response to these further amendments regarding the independent monitoring authority. I understand that these are probing amendments, and I am keen to hear the Minister's response, so I will not detain the Committee after three consecutive days of debate on this Bill, which I hope will not be a trend in future when debating Bills off the back of Brexit.

I am particularly interested in Amendments 49 and 50, which would prevent the Secretary of State from appointing a person to the IMA against the wishes of the relevant body. This suggestion strikes me as entirely sensible. Given previous ministerial assurances on the issues of devolution, I would be very interested to hear from the Minister in what circumstances the Government would seek to force through an appointment that had been opposed by a devolved Minister. If that were to happen, the current sub-paragraph (7) requires the Secretary of State to make a statement outlining the reasons for proceeding with that appointment. Can the Minister confirm what form this statement would take, and what opportunities, if any, the relevant devolved legislatures would have to hold the Secretary of State to account?

Lord Keen of Elie: I am obliged to the noble Lords, Lord Greaves and Lord McNicol of West Kilbride, for their contributions.

As was the case during Tuesday's debate on Clause 15, we have noticed the importance of the IMA's role and functions interacting properly with the devolved settlements. I seek to reassure the noble Lord, Lord Greaves, and the Committee, that the IMA has been designed in a way that takes into account the individual interests and circumstances of Scotland, Wales, Northern Ireland, England and indeed Gibraltar.

In addressing the amendments, I begin by showing the Committee that the Government's approach to establishing the IMA, as set out in Clause 15 and Schedule 2, was reached following detailed and extensive engagement with the devolved Administrations. As a result of this consultation, we have ensured on the face of the Bill that the IMA's board will contain members with knowledge of relevant matters in relation to citizens right across the United Kingdom. Those relevant matters include not only matters reserved for the United Kingdom Government, but also matters that are devolved to the Scottish, Welsh and Northern Irish Administrations. Therefore, we have provided a full and robust role for Ministers of the devolved Administrations in the appointment of candidates to board positions. Of course, parts of the citizens' rights agreements that the IMA will monitor, such as provisions covering healthcare, welfare and education, are already devolved to Scotland, Wales and Northern Ireland, which has been taken into account. That is why there is a requirement for expertise in these areas.

However, I reassure the noble Lord, Lord Greaves, that the IMA will also possess the same expertise specifically in relation to England. He refers to Amendment 48 as seeking to achieve expertise in that area, but I draw his attention to paragraph 4(1) of Schedule 2, which states that

"the Secretary of State and the non-executive members must have regard to the desirability of the IMA's"

board possessing relevant expertise in relation to citizens' rights across the United Kingdom. It should embrace both reserved areas which are pan-UK and those devolved areas specific to the particular devolved Administrations. We can ensure by default that regard is had to the desirability of the IMA possessing expertise in relation to England. It is for that reason that Amendments 48 and 51 are unnecessary and I shall in due course invite the noble Lord not to press them.

5.30 pm

I turn now to the role that we have provided for Ministers of the devolved Administrations, a point raised by the noble Lord, Lord McNicol, in appointing these members following consultation. As I say, there will be a full and robust role for the devolved Administrations. They will be consulted on the skills and expertise required of candidates and the names of shortlisted candidates will be shared with them for comment. In the Bill we have also required the Government to seek the agreement of the devolved Administration before appointing these candidates'. The IMA must contain the correct expertise.

We have included the contingency, which ensures that we can make crucial IMA board positions if and when there is ever a situation in which no agreement is forthcoming from the devolved Administration. If we were not able to do that—it is a matter of constitutional propriety—we would potentially be placing the UK Government in breach of their international law obligations under the withdrawal agreement, in terms of which a suitable IMA must be in place to safeguard the rights and interests of the relevant citizens covered by it. It is not only appropriate but necessary that we have such a default mechanism. However, it is not anticipated that we will ever be required to do that but the Bill provides that in such an eventuality the Secretary of State will have to make a published statement in the public domain so that people may comment on it. The Minister may be held to account for the terms of that statement if required.

We are confident that the appointments model will work for the devolved Administrations and that a collaborative approach will result in our being able to maintain a suitably qualified body to discharge the obligations that we are undertaking under the withdrawal agreement. It is for that reason that I invite the noble Lord not to move his Amendments 49 and 50, recognising, as he himself candidly observed, that they are essentially probing amendments.

That is the position that we find ourselves in. I hope noble Lords are reassured that these provisions in the clause are required so that we can have a properly constituted IMA that covers the entirety of the United Kingdom and Gibraltar and that we can, in extremis, ensure that we meet our obligations under international law. I invite the noble Lord to withdraw the amendment.

Lord Greaves: I am grateful. I thank the Minister for his reply and his usual diligence. My mischievous gene says that I should now call a Division but I do not think that would make me popular with anyone and it is not necessary. I beg leave to withdraw Amendment 48 and, in so doing, wish everyone a relaxing weekend before we start again on Monday.

Amendment 48 withdrawn.

Amendments 49 to 57 not moved.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): If Amendment 58 is agreed, I cannot call Amendments 59 and 60 by reason of pre-emption.

Amendment 58 to 61 not moved.

Schedule 2 agreed.

Schedule 3 agreed.

Amendment 62 not moved.

Schedule 4: Regulations under this Act

Amendments 63 to 68 not moved.

Schedule 4 agreed.

Schedule 5 agreed.

House resumed.

Bill reported without amendment.

House adjourned at 5.35 pm.

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