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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Monday 20 January 2020

2.30 pm

Prayers—read by the Lord Bishop of Birmingham.

Oaths and Affirmations

2.34 pm

Several noble Lords took the oath or made the solemn affirmation, and signed an undertaking to abide by the Code of Conduct.

Death of a Member: Lord Maclennan of Rogart

Announcement

2.37 pm

The Lord Speaker (Lord Fowler): My Lords, I regret to inform the House of the death of the noble Lord, Lord Maclennan of Rogart, on 17 January. On behalf of the House, I extend our condolences to the noble Lord's family and friends.

Kashmir

Question

2.37 pm

Asked by ***Lord Hussain***

To ask Her Majesty's Government what assessment they have made of the human rights situation in Indian-administered Kashmir following the abrogation of Articles 370 and 35(A) of the Indian constitution.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, we recognise that there are human rights concerns in Indian-administered Kashmir. We encourage all states to ensure that domestic laws are in line with international standards. Any allegation of human rights violations or abuse is deeply concerning and must be investigated thoroughly, promptly and transparently. The continued use of detentions and restrictions in Indian-administered Kashmir is worrying. We are clear on the importance of rights being fully respected, and we raise our concerns directly with the Indian Government.

Lord Hussain (LD): I thank the Minister for that Answer. On 5 August 2019, the Indian Government revoked Articles 370 and 35A of the Indian constitution, which gave Jammu and Kashmir a special status in the Union of India, removed the state Government and arrested and detained thousands of Kashmiris, including three former Chief Ministers. According to Human Rights Watch:

"Prior to its actions in Jammu and Kashmir, the government deployed additional troops to the province, shut down the internet and phones, and arbitrarily detained thousands of Kashmiris, including political leaders, activists, journalists, lawyers, and potential protesters, including children. Hundreds remain in detention without charge or under house arrest to prevent protests."

On 17 September, Amnesty International said:

"The continued use of draconian laws against political dissidents, despite promises of change, signals the dishonest intent of the Indian government. Thousands of political leaders, activists and journalists continue to be silenced through … detention laws."

In the light of this information, does the Minister not agree with me that India is violating the principles and values of the Commonwealth? What representation have the British Government made to the Indian Government in this respect?

Lord Ahmad of Wimbledon: My Lords, there was a lot in that question, but on a serious issue. As the noble Lord has heard, I have already made our position very clear. Indeed, as Minister for South Asia, I have been dealing directly with this issue, but not just me: my right honourable friends the Prime Minister and the Foreign Secretary have also raised the very concern the noble Lord raises.

As far as India's membership of the Commonwealth is concerned, India is the largest democracy. It is an important and valued member of the Commonwealth and will continue to be so. As the largest democracy, India knows—we have these exchanges with India—that the importance of respecting human rights is one of the fundamental tenets of the charter, and we encourage all member states, India included, to uphold those shared commitments.

Baroness Verma (Con): My Lords, surely a constitutional matter that is internal to a country is the issue of that country. As close friends of India, we must respect that India has a right to amend its constitution when it chooses to do so. Does my noble friend agree that this change gives equal rights to women, the LGBT community, those in minority communities and the disadvantaged?

Lord Ahmad of Wimbledon: My Lords, my noble friend refers to Article 370. In the UK, we have consistently retained our position across successive Governments, and it is important to re-emphasise that. As for the situation in Kashmir, or indeed any issue between India and Pakistan, we retain and will continue to retain the view that it needs to be resolved bilaterally by both countries, while respecting the views of those in Kashmir.

Lord Singh of Wimbledon (CB): My Lords, the Minister referred just now to India as a democracy. Does he agree that the Indian action in Kashmir questions its right to be called a secular democracy? As we have heard, hundreds of Muslims are routinely rounded up, and many disappear. According to the medical journal the *Lancet*, hospital staff are being told to understate the number of fatalities occurring to minimise scrutiny. It is a state which even MPs cannot visit, as internet and phone connections have been cut off. This is all happening in a state that, in more peaceful conditions, could live on tourism alone.

Lord Ahmad of Wimbledon: My Lords, on the noble Lord's final point, as anyone who has visited Kashmir will know, it is a beautiful part of the world. On his

[Lord Ahmad of Wimbledon]
wider point on human rights in Kashmir and detentions after India revoked Article 370, as I said in my original Answer we have raised these issues; I have consistently raised the specific issue of the detention of various representatives. The noble Lord also talked about internet access. The contractual-based internet has been reintroduced across all of Kashmir and Ladakh. Currently, there is no open mobile service, but we continue to raise these issues with the Indian Government directly. It is important that the UK lend its voice to the incredible confidence-building initiatives between India and Pakistan. In that respect, I pay tribute to both countries on the recent opening of the Kartarpur corridor, which allows Sikh pilgrims to travel without visas across to Pakistan to pay respects at a very sacred temple.

Baroness Kennedy of The Shaws (Lab): My Lords, I want to ask the Minister about the important lead this Government are taking on media freedom. It is important to note that India leads the world in the maximum number of internet shutdowns conducted, particularly in Jammu and Kashmir, which have had indefinite communication blackouts. The media is one of the ways people know about their freedoms and what is happening to members of their community. We have had disappearances and the alleged use of torture. The human rights abuses have been considerable, including the shooting of people with metal pellets, which have blinded 1,500 people. Given the importance of media freedom to this Government, what are we saying to India about these media shutdowns?

Lord Ahmad of Wimbledon: My Lords, I pay tribute to the noble Baroness's work. We will continue to work together on the important issue of the media freedom campaign. I assure noble Lords that that remains a key priority for Her Majesty's Government. We will continue to call out media suppression around the world. On India specifically, the noble Baroness raised the internet shutdown. There are areas, such as Jammu, where the internet has been restored, but concerns remain within the Kashmir valley which we consistently raise. On our exchanges with India, the Indian Foreign Minister, Mr Jaishankar, actually attended the media freedom conference. We continue to raise these issues. India is a democracy, media freedom is a fundamental tenet of democracy, and there are many in India who support that very value.

China: Uighurs

Question

2.45 pm

Asked by ***Baroness Warsi***

To ask Her Majesty's Government what is their latest assessment of the treatment of Uighurs in China; and what representations they have made to the Government of China regarding such treatment.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, we have deep and serious concerns about the human rights situation in Xinjiang, including the extrajudicial detention of more than 1 million Uighur Muslims and other minorities in what are called political re-education camps, systematic restrictions on Uighur culture and the practice of Islam, and extensive surveillance. We regularly raise these concerns with the Chinese authorities and at the United Nations. Most recently, the UK ambassador to China raised Xinjiang directly with the Vice Foreign Minister on 24 December 2019.

Baroness Warsi (Con): My Lords, I thank my noble friend for his Answer. The Uighurs are being subjected to the largest surveillance and internment of any ethnic minority since the Holocaust. They are subjected to torture in the name of re-education and retraining. The families of British Uighurs are currently detained in camps. Does my noble friend feel that enough is being done to raise this issue with China? Bearing in mind that we will mark Holocaust Memorial Day a week today, do he and the Government recognise the hollowness of pledging to never forget when we allow the horrors of the past to be repeated in full view and with our full knowledge?

Lord Ahmad of Wimbledon: My Lords, on my noble friend's final point, it is a very poignant moment as we reflect on the anniversary of the liberation of Auschwitz-Birkenau next week. My noble friend Lord Pickles and I have just returned from Brussels after attending a meeting this morning focused on anti-Semitism, which remains a scourge in the modern world. My noble friend is quite right on Xinjiang and I agree with her. I assure her that we have raised the issue of Xinjiang, and the suppression of the Uighurs and other minorities, bilaterally with the Chinese Government. As Human Rights Minister, I made it a specific point to raise this issue at the Human Rights Council directly and in partnership and collaboration with other like-minded partners. It remains a key priority that we continue to raise in bilateral and multilateral fora across the globe.

Lord Collins of Highbury (Lab): My Lords, is it not time, though, for some more action? Words do not seem to be having any effect. We could be working with our allies to ensure that we have targeted sanctions. I think in particular of the companies making money out of the sorts of things being done in the province. Should we not be working with our European allies to ensure that those companies are subject to sanctions? We need to ensure that China listens and acts.

Lord Ahmad of Wimbledon: My Lords, I believe that China is listening. I have sat in international meetings with the Chinese authorities, raising our concern. As to whether the United Kingdom and other countries will raise Xinjiang and, in particular, the situation of the Uighurs, we have consistently done so. Most recently, we have also called for access to Xinjiang for Michelle Bachelet, the UN High Commissioner for Human Rights. These systematic and focused parts of our strategy continue. The noble Lord raised the important issue of the use of sanctions. As he well knows, the Government are currently contemplating this. We would be looking to introduce Magnitsky-style sanctions, which are geared at ensuring that those who commit human rights abuses are not allowed to enter countries.

Restrictions would be placed on them. I am sure that the Magnitsky sanctions regime will play an important part in the overall mix as we consider our human rights policy globally.

Lord Dholakia (LD): My Lords, the Minister rightly points out that over 1 million Uighurs have gone through the indoctrination process to be converted into obedient Chinese communist workers. Is he aware that this is brainwashing on an industrial scale? Is it not time that he contacted the United Nations to see whether a high-level delegation can visit this province of China to see what precisely is happening in some of these camps? The latest satellite evidence demonstrates very clearly the destruction and razing of the graves of the Uighur community. Can the Foreign Office address with the Chinese Government the nature of their actions on some of the Uighur community's secular burial sites?

Lord Ahmad of Wimbledon: The noble Lord raises an important point. I assure him that we are doing exactly as he suggests. Most recently, we called on the Chinese authorities to allow meaningful and unrestricted access to Xinjiang for all UN observers, including Michelle Bachelet, the United Nations High Commissioner for Human Rights, as I said in response to an earlier question. We have also repeatedly called for this action to be taken forward, in the UN Third Committee statement in October and through our national statements at the Human Rights Council. China is an important strategic partner for the United Kingdom, and our relationship allows us to raise these issues bilaterally. I assure the noble Lord that we will continue to do so through international fora such as the UN.

Lord Alton of Liverpool (CB): My Lords, has the Minister, in those bilateral talks, challenged the Chinese Government's campaign against what they call extremism? In Xinjiang, extremism is measured by the length of a beard or the desire to pray in a mosque not controlled by the Communist Party. As we have heard, it leads to incarceration, torture and re-education, and to what a United Nations committee on the elimination of racial discrimination recently described Xinjiang as: a "no-right zone." As the noble Lord, Lord Collins, said, should we not be desisting from business as usual with companies such as Huawei, Dahua and Hikvision; that is, funnelling British money into companies which are arms of a communist state responsible for egregious human rights violation, which I wrote to the Minister about on 11 December 2019?

Lord Ahmad of Wimbledon: My Lords, on the point about extremism, that has been a narrative which the Chinese have put forward. We all have challenges of extremism; there are ways and means of dealing with them. While I do not have a beard, I fear I would fall short on the second of those signs of extremism: praying in a non-communist-led mosque. That said, the noble Lord raises important issues. As I said to the noble Lord, Lord Collins, we are looking at introducing a sanctions regime. Our relationship with China is an important one, the strength of which allows us to raise serious human rights concerns, as I said earlier.

Office for Environmental Protection

Question

2.52 pm

Asked by ***Lord Teverson***

To ask Her Majesty's Government when the Office for Environmental Protection will become (1) operational, and (2) take on its full statutory powers and responsibilities.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, we plan for the OEP to be operational from 1 January 2021, at which point it will begin to perform its full statutory powers and responsibilities. It will therefore be operational from the day that the UK leaves the oversight of the EU institutions, at the end of the implementation period. The OEP will be ready to receive complaints from day one.

Lord Teverson (LD): My Lords, I thank the Minister, and welcome that announcement and that reassurance. The Minister will also be aware that Defra, where this body probably will lie, keeps very close to its executive agencies and its non-departmental public bodies. In fact, it calls them "the Defra family." How will he ensure that, if it is part of that family, the office will remain entirely independent and fearless in carrying out its statutory duties?

Lord Gardiner of Kimble: The noble Lord is right: independence is key. The environment Bill will state that the OEP will be operational independent of Defra. Ministers will not be able to set its programme of activity or influence its decision-making. It will be accountable to Parliament through a sponsoring Minister. We intend the chair to be subject to a pre-appointment scrutiny hearing. Ministerial appointments will be regulated by the Commissioner for Public Appointments. It is important that the OEP is independent. It will be.

Baroness McIntosh of Pickering (Con): My Lords, will the situation be one of legal limbo until 31 December this year? Currently, the European Court of Justice has the right to take legal action against any company that infringes environmental law. What will the legal position be until 1 January 2021?

Lord Gardiner of Kimble: My Lords, until the end of the implementation period, we will clearly be subject to the oversight of the EU institutions. The point is that there will be no governance gap and the OEP will be ready to act from 1 January 2021.

Baroness Whitaker (Lab): My Lords, what powers will the new organisation have to combat climate change where feasible and to improve adaptation where it can? How many staff will it have to do that?

Lord Gardiner of Kimble: My Lords, at this stage we think that between 60 and 120 people will run the OEP. What the noble Baroness says is important. Clearly, we have the Committee on Climate Change.

[Lord Gardiner of Kimble]
We expect the OEP and the CCC to build on statutory requirements to develop a strong working relationship, which will be formalised through a memorandum of understanding once the OEP is operational. We expect the majority of legislation concerning climate change mitigation to fall within the OEP's remit.

Lord Randall of Uxbridge (Con): My Lords, can my noble friend the Minister confirm that decisions made by the Office for Environmental Protection will capture all public bodies?

Lord Gardiner of Kimble: Yes. The intention is very much for this to go beyond what we had with the EU's oversight. This will be with our domestic legal arrangements. This will concern public authorities, be they arm's-length bodies or local authorities. The important point about our domestic system is that we will be able to locate and rectify and that, through its enforcement options, it will be able to rectify what needs to be rectified.

Baroness Jones of Whitchurch (Lab): My Lords, on that issue, does the Minister agree with the Natural Capital Committee's recent report, which went one step further? It recommended that Office for Environmental Protection's remit should also cover the private sector and private landowners. Does the Minister have any views on that?

Lord Gardiner of Kimble: My Lords, I must say that the OEP is predicated on the responsibility of public authorities. Clearly, if, for instance, a water company or a private individual contravened a law, it would be for one of those public bodies to take action, be it the Environment Agency or whatever. The key point about this legislation is that it concerns the oversight of the Environment Agency or government or a local authority. There are already mechanisms in law where someone transgressing environmental law can be taken to task; this is about enshrining that local authorities can also be.

Baroness Jones of Moulsecoomb (GP): My Lords, it is good if the OEP is independent—that is a crucial factor—but what about it having teeth? Will it have real strength when it decides against a public body?

Lord Gardiner of Kimble: The intention of the enforcement options is clear: to get the transgression rectified. The OEP will have the ability to issue an information notice; if that is not resolved, it can issue a decision notice. If failure is still unresolved, the OEP may seek a legal challenge through an environmental review in the Upper Tribunal. There are all sorts of mechanisms by which the OEP's intention and remit is to rectify whatever is contrary to environmental law.

Baroness McIntosh of Hudnall (Lab): My Lords, in an earlier answer, the Minister said—if I heard him right—that the OEP staff would be somewhere between 60 and 120 people. That is a very large margin. Since capacity will be critical to the OEP's ability to fulfil its duties—indeed, to it having the teeth referred to by the noble Baroness, Lady Jones of Moulsecoomb—can he say how the numbers are to be determined and why that margin is quite so wide?

Lord Gardiner of Kimble: Yes, I asked rather the same question of officials, if I may say so. The OEP must lay its annual statement of accounts before Parliament, including an assessment of whether it has been provided with sufficient funds to carry out its functions. Clearly, we want to get the OEP set up and we need to establish a board and a chair before it becomes operational. We will have to see. As I say, I used the figure of 60 to 120 people. It may be 100. We are not setting a distinct figure. What we want is for the job to be done properly.

Lord Teverson: My Lords, it is well known to the Minister that perhaps one of the greatest reasons for the Government taking notice of the Commission and its powers and beyond is that the Commission is able to fine Governments who do not comply as an ultimate sanction. Will the OEP have that power over the United Kingdom Government?

Lord Gardiner of Kimble: My Lords, the distinction is that under the EU arrangements the Commission may bring legal proceedings against a member state Government only. Under our domestic legal arrangements, we believe that fines would simply move money around the domestic public finance system. Indeed, fines may also shift resources away from their intended use in implementing measures to protect the environment. The key point is that if a public authority failed to comply with a court order, the OEP would be able to bring contempt of court proceedings, which could lead in turn to fines being imposed.

UK Holocaust Memorial

Question

3 pm

Asked by ***Lord Hylton***

To ask Her Majesty's Government what plans they have, if any, to substitute the proposed UK Holocaust Memorial with a national memorial commemorating all victims of extermination or genocide.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government (Viscount Younger of Leckie) (Con): My Lords, the Government are firmly committed to establishing a new national Holocaust memorial. The memorial will be dedicated to the 6 million Jewish men, women and children and all victims of Nazi persecution, including Roma, gay and disabled people murdered in the Holocaust. This memorial, at the heart of our democratic institutions, will provide a striking reminder to Parliament and to the whole nation of the need to tackle persecution in all its forms.

Lord Hylton (CB): I thank the noble Viscount for his reply. I wonder whether we could all agree that all attempts to kill a whole group, whether ethnic, religious, national or other, are equally odious and ought to be prevented. Is it not therefore important that any British memorial to victims of genocide or extermination,

certainly if it is to be sited next to Parliament, should commemorate all victims rather than one particular group?

Viscount Younger of Leckie: I take note of what the noble Lord says, but there can be no more powerful symbol of our commitment to remembering the Holocaust than placing a memorial in Victoria Tower Gardens. As I said earlier, the Holocaust is one of the darkest chapters in human history, which saw the systematic state-sponsored killing of human beings. To pick up on what the noble Lord said, there will be a focus in the memorial centre on the Jewish population, obviously, but particularly on other atrocities, including in Cambodia, Rwanda and Bosnia.

Baroness Deech (CB): My Lords, does the Minister agree that the Question fails to recognise the intrinsic difference of the Jewish genocide in its length and comprehensive nature and the fact that anti-Semitism is still going on today not so far from here? It also reveals that we do not really know what is to be achieved by a Holocaust memorial. There are hundreds of them, but they have not proved effective in stopping anti-Semitism and we do not really know what this one will achieve.

Viscount Younger of Leckie: I take issue with the noble Baroness—a lot of work has gone into this centre so far. The Holocaust memorial will stand as a reminder that the central role of democracy is to encourage tolerance of ethnic, religious and racial differences and to foster religious freedom, individual rights and civil responsibility. The learning centre is a stark reminder, next to Parliament, of the work that needs to be done to be sure that these dreadful atrocities do not happen again.

Lord Pickles (Con): My Lords, on the uniqueness of the Holocaust, does my noble friend share the assessment of the late Professor David Cesarani, who said that the Holocaust was unprecedented because never before in history had a leader decided that within a conceivable timeframe an ethnic religious group could be physically destroyed and that equipment would be devised and created to achieve that? Is my noble friend pleased that a commitment to build the Holocaust memorial and learning centre specifically in Victoria Tower Gardens was included in the Conservative Party's election manifesto at the general election last month?

Viscount Younger of Leckie: On my noble friend's second point, yes, we are pleased—and it is a commitment from this Government—to go ahead and build this Holocaust memorial. Of course, he is right, and I am sure the whole House will agree that the number of people involved—6 million Jewish men, women and children, and millions of others—is almost incomprehensible and absolutely horrendous. That is why the Holocaust has to stand out on its own. However, as I mentioned earlier, we must never forget other atrocities.

Lord Palmer of Childs Hill (LD): My Lords, all genocide is horrific but, on the anniversary of the liberation of Auschwitz, surely we should recognise how the sheer industrialisation of the Holocaust differs from other genocides, appalling though they all are. There are still Holocaust deniers. Civilisation is only skin deep, and we need continual reminding of man's inhumanity to man. Does the Minister agree that the UK needs to preserve the memories of survivors and educate future generations?

Viscount Younger of Leckie: The noble Lord is absolutely right. That is why the memorial exhibition and learning centre will explore the role of Britain's Parliament and democratic institutions in the Holocaust—what we did and what more we could have done to tackle the persecution of the Jewish people and other groups.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I endorse the comments of the noble Viscount in answering this Question. I am delighted that my noble friend Lady Smith of Basildon, along with the noble Lord, Lord Pickles, and others, is a trustee of the Holocaust Memorial Day Trust. Does the noble Viscount agree that it is welcome that the learning centre will focus not just on the Holocaust but on all other genocides and that it is important that we do not forget the horrors of the past?

Viscount Younger of Leckie: Yes, indeed. I repeat what I said earlier: the learning centre, which still requires a lot of input, will focus on the Holocaust but will also cover other genocides.

Lord Singh of Wimbledon (CB): My Lords, we all recognise that the Jewish people have suffered probably the most horrendous genocide in human history. However, we should not forget that other genocides have wiped out millions of people. Although the Holocaust memorial should focus on the suffering of the Jewish people, it is appropriate for it also to recognise that other communities suffer and will continue to suffer unless we recognise that politicians—to use the word in its worst sense—can turn communities which had previously lived together peacefully against each other, to the point where they massacre each other.

Viscount Younger of Leckie: I know that there are strong feelings in the House on this matter and I can only repeat that the memorial will look at other genocides. I mentioned Cambodia, Rwanda and Bosnia. The main point is that it will use the lessons of our shared past to inform the decisions that affect our future.

House of Lords: Future Location

Private Notice Question

3.07 pm

Asked by ***Lord Foulkes of Cumnock***

To ask Her Majesty's Government what consideration is being given to relocating the House of Lords out of London.

Earl Howe (Con): My Lords, the Conservative Party manifesto committed to looking at the role of the House of Lords and to reviewing the relationship between the Government, Parliament and the courts in a constitution, democracy and rights commission. The Government have not yet decided what will be in the

[Earl Howe]
scope of the commission and whether it will include the role of the House of Lords but we will make an announcement in due course.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, that does not answer the Question. Can the Minister confirm the reports that No. 10 has said that this is a serious proposal? No. 10 also says that it is one of a range of options being considered. What are the options? Will the Minister outline them? Do they include moving both Houses, which I would prefer, and how does he reconcile all this with the billions now being spent on the restoration and renewal programme of this building?

Earl Howe: My Lords, I know the noble Lord to be a powerful advocate for the idea referred to in his Question. On the one hand, it is the case that some years ago, the Joint Committee on the Palace of Westminster looked at the option of Parliament moving outside of London and decided against it, principally on grounds of cost and the absence of proximity between Parliament and government. On the other hand, there is no reason why these matters should not receive renewed scrutiny and, as I have said, the options are being looked at.

Lord Wallace of Saltaire (LD): My Lords, is it an indication of the depth of research undertaken by the Government on this that the briefing to the *Sunday Times* said that one advantage of York is that it is now only three hours by train from London? When I came back directly from York to London last weekend, it took me just under two hours. Does this suggest that the Government have not thought this through?

The Government are now mulling over two suggestions. One is whether to devolve power to the north of England, which they have not yet fully addressed, particularly in refusing the One Yorkshire proposals. The other is reform of the House of Lords, regarding which regional representation for a substantial part of the House is already on the table—something that, again, the Government have not addressed.

Earl Howe: My Lords, I agree that those are two important issues. The Government have an aspiration that all parts of the United Kingdom should feel connected to politics and indeed to politicians, including unelected politicians. On his first point about whether the idea of relocating of the House of Lords should be taken forward, I am sure that all logistical aspects would be examined.

Lord King of Bridgwater (Con): My Lords, the matter of what the House of Lords is going to do should be decided first. I believe that one candidate for the party opposite is in favour of abolishing it altogether. It seems to me that the idea of movement before the future shape, structure and role of the House of Lords are decided makes this a completely irrelevant Question.

Earl Howe: My noble friend puts it very well. That is exactly why my party's manifesto committed to looking first at the role of the House of Lords and taking matters further in the light of conclusions.

Baroness Smith of Basildon (Lab): My Lords, can the Minister confirm that this announcement comes from the same policy brain at No. 10 that, desperate for a Brexit headline, came up with

"bung a bob for a Big Ben bong"?

We know what happened to that. But there is a serious issue: this House is part of the scrutiny of Parliament as a whole. Clearly government must better engage with the regions and the nations, but does the Minister agree that moving just one part of Parliament, albeit to the fantastic city of York, sounds more like the PM is as worried about Lords scrutiny as he is about Andrew Neil?

Earl Howe: My Lords, far greater minds than my own are applying themselves to this important question, but I shall ensure that the noble Baroness's observations are transmitted to the appropriate quarter.

The Lord Bishop of Chelmsford: My Lords, I found myself taking a renewed interest in this Question. I put on record that I will later this year have a large garden available in York where a suitable marquee could be erected for these purposes. Some of the most important business that we do in these Houses happens not in the Chambers but in the corridors, so it seems to me to be a serious threat to our democratic processes if we are not in the same place. Could we reconsider this one, please?

Earl Howe: My Lords, I am not sure how far the idea has progressed but I have no doubt that the right reverend Prelate's observations are extremely useful.

Lord Kirkhope of Harrogate (Con): My Lords, yesterday morning the people of Yorkshire woke up to the knowledge and excitement of the possibility of Parliament coming back to the north of England. However, I think the excitement was somewhat sullied by the later indication that it was only the House of Lords that would be coming to York. While York would welcome that, I suggest that my noble friend also looks carefully at a new location for the House of Commons. In the interests of national unity, perhaps he should consider the Commons going to either Edinburgh or Glasgow.

Earl Howe: My Lords, I felt sure that all sorts of useful ideas would emerge from this debate. Getting back to my noble friend's first point, we all know the people of York to be most hospitable, as I am sure they would be with 793 of our number arriving on their doorstep.

Lord Winston (Lab): My Lords, with deference to the right reverend Prelate, am I right in remembering that the centre of the great city of York was the Shambles slaughterhouse? Is this not really an attempt by the Prime Minister to cull the House of Lords, and might that not end up being another shambles?

Earl Howe: My Lords, as I said earlier, I am sure that all logistical aspects of the idea will be examined. However, I take the noble Lord's point.

Lord Forsyth of Drumlean (Con): My Lords, does my noble friend think that when people in so many constituencies in the north lent their votes to the Conservative Party they were longing for more politicians to be sent to them? Or does he think that they wanted a Government who would concentrate on the things that actually matter, such as health, social care and infrastructure? Should the special advisers in No. 10 not turn their attention to those matters?

Earl Howe: My Lords, I agree with my noble friend. There may be other and possibly more substantial ways to bring jobs and investment to the north of England than relocating the House of Lords.

Lord West of Spithead (Lab): My Lords, as a great maritime nation, if we are going to do anything as Bodmin as splitting us from the Commons, I hope No. 10 might consider using one of the great Cunarders as somewhere for the Lords to be based. It could then be used to go and visit all parts of the United Kingdom.

Earl Howe: My Lords, the noble Lord puts forward an extremely imaginative idea, which again will be listened to.

Viscount Waverley (CB): My Lords, the interaction between Government and Parliament was mentioned earlier. How would the Minister feel if he had been called in to answer the Question posed today but the trains affected his ability to get to York on time?

Earl Howe: Well, my Lords, we all know what happens to Ministers when they arrive late for your Lordships' Oral Questions. It is certainly a risk.

The Duke of Montrose (Con): My Lords, does my noble friend recollect that we are now at the 20th anniversary of the time when this Chamber was debating whether the House of Lords might have to move? A particular concern at that time was what would happen to the offices of state if we went to Scotland.

Earl Howe: My noble friend is absolutely right. To get back to the serious core of the Question, this issue has been debated many times in your Lordships' House and, indeed, the other place. I have no doubt that the conclusion reached by both Houses—which was unanimous, incidentally—will be factored into the discussions currently under way.

Lord Harris of Haringey (Lab): The Minister is held in very high esteem by this House and therefore we have enjoyed his responses to these questions, particular given the flimsiness of the contents of the folder in front of him. I notice that he suggested that minds greater even than his might be considering these matters, and that is a point of some substance. Could he tell us whether his noble friend the Lord Privy Seal was briefed in advance of the statements being made about the intention for your Lordships' Chamber?

Earl Howe: I am not aware that she was, but I shall ask her.

The Lord Speaker (Lord Fowler): We must move on.

Unconscionable Conduct in Commerce Bill [HL]

First Reading

3.19 pm

A Bill to create an offence of conduct in trade and commerce that is unconscionable; and for connected purposes.

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

Pavement Parking Bill [HL]

First Reading

3.19 pm

A Bill to amend the law relating to parking on verges and footways in England outside of Greater London and in Wales.

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

Divorce (Financial Provision) Bill [HL]

First Reading

3.20 pm

A Bill to amend the Matrimonial Causes Act 1973 and make provision in connection with financial settlements following divorce.

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

Video Gaming Health and Wellbeing Strategy Bill [HL]

First Reading

3.20 pm

A Bill to provide for the Secretary of State to develop and publish a video gaming health and wellbeing strategy and to provide for the Secretary of State to develop health advice on video gaming.

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

Duchy of Cornwall Bill [HL]

First Reading

3.21 pm

A Bill to amend the succession to the title of Duke of Cornwall; to remove various powers, exemptions and immunities from the Duchy of Cornwall; to make provisions relating to the Treasury Solicitor and any solicitor or attorney appointed in the affairs of the Duchy; and for connected purposes.

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

European Union (Withdrawal Agreement) Bill

Report (1st Day)

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

3.21 pm

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

Amendment 1

Moved by ***Lord Oates***

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

"Rights related to residence

(1) The Secretary of State must by regulations make provision implementing—

(a) Article 18(4) of the withdrawal agreement (right of eligible citizens to receive a residence document),

(b) Article 17(4) of the EEA EFTA separation agreement (right of eligible citizens to receive a residence document), and

(c) Article 16(4) of the Swiss citizens' rights agreement (right of eligible citizens to receive a residence document),

including making provision for a physical document providing proof of residence.

(2) Subsection (1) applies in the same way to—

(a) persons within the personal scope of the withdrawal agreement having the right to reside in the United Kingdom, and

(b) persons to whom the provisions in paragraph (a) do not apply but who are eligible for—

(i) indefinite leave to enter or remain, or

(ii) limited leave to enter or remain,

by virtue of residence scheme immigration rules (see section 17)."

Member's explanatory statement

This amendment removes the Bill's references to a constitutive system and instead makes clear it will implement the Withdrawal Agreement via a declaratory registration system that ensures EU citizens can receive a physical document to prove their right of residence in the UK.

Lord Oates (LD): My Lords, Amendment 1 is in my name and those of the noble Lords, Lord Warner, Lord Kerslake and Lord McNicol of West Kilbride. It seeks to achieve two things. First, it would provide citizens covered by the settled status scheme with a right to a physical form of proof of status; at present, only a digital proof is available. Secondly, it would shift the settled status scheme from a constitutive application scheme to a declaratory basis, meaning that rights were based on eligibility and not forfeit as a result of not meeting an arbitrary deadline.

I want to be clear at the outset. This amendment is not a partisan matter. It is not in any way an attempt to challenge Brexit, frustrate this Bill or change the substance of the rights established under the settled status scheme and in the withdrawal agreement. It simply seeks to ensure that the scheme will work effectively; that a plethora of problems that will, on the current basis, be encountered inevitably by the Government and EU citizens after the registration cut-off period are avoided; and that EU citizens have the option to have physical proof of their status should they wish it.

As noble Lords will recall, in June 2016, the current Prime Minister, Boris Johnson, the current Home Secretary, Priti Patel, and the current Chancellor of the Duchy of Lancaster, Michael Gove, made the following, unequivocal statement:

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

Sadly, although a great deal of progress has been made with the settled status scheme, these commitments have not been honoured.

First, the settled status scheme is not the automatic route to indefinite leave to remain that was promised. It is an application-based system with a finite cut-off date of 30 June 2021. The only thing automatic about it is that after midnight on that date, any person who has not applied will be criminalised—deemed to be unlawfully in the United Kingdom, whether or not they would otherwise have been eligible for permanent residence under the scheme—and subject to deportation. We know that despite its best efforts the Home Office will inevitably not be able to reach, and grant settled status to, every one of the 3.6 million-plus eligible EEA and Swiss citizens resident in the UK. As a result, possibly tens of thousands of otherwise eligible people may find themselves undocumented and criminalised in as little as 18 months' time. Inevitably, those most at risk will be the most vulnerable: young people in care, the elderly and the marginalised.

The Government's argument for a cut-off date seems to be that it will help avoid a repeat of the injustice inflicted on people by the Home Office in the Windrush scandal, but it will do nothing of the sort. The cut-off date will simply empower the Home Office lawfully to inflict such injustice. Under the settled status scheme, there will be no hope of redress, as there was for at least some of the Windrush victims, because after June 2021 EU citizens will have automatically lost their lawful immigration status by virtue of having failed to meet the cut-off date, regardless of being otherwise fully eligible under the scheme. That cannot be right, and it is not what the Prime Minister and the current Home Secretary promised.

A second issue with the settled status scheme is that, unlike the system of indefinite leave to remain for non-EU, EEA and Swiss citizens, it does not provide successful applicants with physical proof of their right to be in the United Kingdom. Instead, they must rely entirely on a code issued to them by the Home Office, which has to be entered on the relevant website by whoever requires proof of their immigration status. The group the3million, which represents EU citizens in the UK, has published today the largest survey undertaken so far of settled status scheme applicants. It finds that 89% of EEA and Swiss citizens surveyed wanted physical proof of their right to reside because they are afraid of the difficulties that a lack of physical proof will inevitably cause. Interactions with landlords, airline staff or other officials obliged to check immigration

status will become fraught with anxiety for them, dependent on the frailty of an internet connection and the resilience of a government IT system.

I have seen at first hand how these problems can arise, even before the settled status scheme comes into force. Some months ago, I was travelling back from Kenya to London with a colleague who is a German citizen and permanently resident in the UK. At the airline check-in desk, the official wanted proof of her right to residence in the UK because with all that was going on about Brexit, that was how he understood the situation. She explained that she did not need any proof; she was an EU citizen and, as such, had the right of entry to the UK. But we can imagine many circumstances in which people trying to travel will find themselves asked to provide physical proof but be unable to do so. Given that physical proof is provided to other people, such as non-EU citizens who have permanent leave to remain, this will inevitably cause confusion to officials around the world.

Your Lordships can see that if you are to tell people that you do not have physical proof but do have a number that an official must look up, on many occasions you would just be looked on with incredulity. If the internet is down or there is a problem with the Government's IT system—I understand that it happens on occasion—then what predicament will that airline traveller be in? Will they be carried by the airline concerned but be unsure of their status? Will the carrier be liable if they allow that passenger to board?

As the noble Lord, Lord Warner, said in Committee, we must live in the real world. In the real world, in respect of permanent residence, proof of immigration status is in physical documentation; that is what people are used to. Those expected to comply with immigration rules will expect physical proof, and EU citizens will be severely disadvantaged if they do not have it.

3.30 pm

The amendment does not seek to change the settled status scheme; it seeks to build on it and improve it. It would protect the Government from the severe difficulties that would otherwise occur after the registration cut-off date by establishing a declaratory system which protected the rights of those eligible under the scheme after that date and alleviate the practical difficulties that EEA and Swiss nationals would otherwise face by providing for physical documentation alongside the digital register, just as is the case for any non-EEA citizens who receive indefinite leave to remain in this country.

This is not a debate about technicalities, constitutional principles or partisan differences; it is a debate about people's lives, about the deep and genuine concerns of EU citizens about the scheme as it currently operates, about their confidence that they will be able to travel to and from the country that they have made their home without let or hindrance, and about whether their interactions with landlords, airline staff and others who are required to comply with the immigration system become fraught with difficulty and whether they will face discrimination as a consequence of being treated differently from other permanent residents in this country. It is also about whether the rights of the most vulnerable of those EU citizens remain protected after June 2021.

It is in the hands of the Government to allay such concerns by accepting this amendment. I appeal to them to do so, to try to walk a little in the shoes of those subject to the scheme who have indicated their deep concerns and, in doing so, to show some flexibility and good sense. I beg to move.

Lord Warner (CB): My Lords, I support the amendment, to which I have added my name. I want to make just a couple of points in support of the very elegant speech made by the noble Lord, Lord Oates.

This is also a matter of government competence. We made it clear in Committee that there were doubts in all parts of the House about whether people going about their business who were legitimately here and had been given leave to remain and settle here would face challenges to that right on a regular basis. That was because there was no guarantee that they would have some physical manifestation to demonstrate to people whom they had to convince that they were indeed entitled to be here. We cited many of the circumstances; the noble Lord, Lord Oates, cited more today. There are landlords; there are schools; there are GPs; there are airlines; there are many things which we all take it for granted that we can do in our daily lives where other people may have to prove that they are entitled to be here in order to do them.

I do not think that the Government convinced many of us in Committee that they really understood this issue. They were still touchingly attached to their idea of giving people a code to get into the Home Office computer, which the person who had to be convinced would then use to see that they could be here. Just spelling that out suggests that there may be some doubts in the Government about their ability to understand how today's world really works.

There is also the issue of whether the Government could rely on the Home Office computer systems to be working reliably 24/7 for 365 days of the year. I do not know what others' experience has been but, in the real world, things sometimes go a little awry in the Home Office and not everything works as smoothly as we would like.

My noble friend Lord Oates made the point very well about the risks that now await many of these people in about 18 months' time. As I recall, in the Conservative Party manifesto there were concerns about the way the criminal justice was struggling, and a need for an independent review of that system. Does it really make a lot of sense to take the risk that, in 18 months' time, we will criminalise another large number of people who may have to go through that system, which is creaking at the seams? That is the risk that the Government are taking in the way they are going about this exercise.

This amendment does not call into doubt the Government's right to have new rules on immigration as a result of Brexit. It is about whether the scheme itself will do that effectively and efficiently. It is about whether a lot of people who have proved their right to be here will be put to a great deal of trouble to prove that they have the right to go about their legitimate day-to-day business. I strongly support the amendment.

Lord Kerslake (CB): My Lords, I will speak in support of the amendment, and add my voice to those of other noble Lords who have spoken so well on it. I am sorry that I was not able to be here when the amendment was debated in Committee, which clashed with another public meeting that I had agreed to chair. I am grateful to my noble friend Lord Warner for stepping in and speaking on my behalf. I have, of course, read the report of that debate.

I think that we can agree on two things here. The first is that EU citizens are innocent bystanders in the Brexit battle; this is not a fight of their making. They have made a big contribution to the economic and social well-being of this country. It follows, therefore, that we must take every reasonable step to ensure that they are not disadvantaged by our departure from the European Union. Secondly, the way forward on this issue is entirely in the UK Government's hands. Agreeing the amendment need not delay Brexit, nor does it require changes to the withdrawal agreement. It is our choice to make.

I fully appreciate that good progress has been made on the application process, but it is a long way from complete and almost certainly it will never be so. In Committee, the Minister said that the Government will take a pragmatic approach to providing a further opportunity to apply for those who have reasonable grounds for missing the deadline. I have no doubt of the Minister's sincerity on this. However, as the Windrush scandal has shown, pragmatism, good judgment and fairness have not always been strong features of our immigration system—and, as we also know from Windrush, the consequences for those on the wrong side of our system are very serious.

The two changes proposed in the amendment—adopting the declaratory system and providing physical proof—are simple safeguards that do not, as the Government suggest, in any way undermine the applications process that is now under way. They just provide more reassurance and safeguards to those affected.

In the conclusion of Amelia Gentleman's brilliant book on the Windrush experience, which ought to be required reading for anyone interested in these issues, she talks about her shame, on hearing of the experiences of those affected, that we could treat our citizens so badly. She expresses the hope that the memory of the Windrush scandal will linger and ensure that such extremes of institutional cruelty are never allowed to be repeated. Approving this amendment today is one way that we can act to reduce that possibility.

Lord Anderson of Swansea (Lab): My Lords, I adopt the wise words of the noble Lords, Lord Oates, Lord Warner and Lord Kerslake, and echo what they said about the danger of rerunning Windrush and about the fallibility of government computer systems, which we have seen in many cases.

I will add only one further point. I had the honour to serve, during the last Session, on your Lordships' EU Justice Sub-Committee, ably chaired by my noble friend Lady Kennedy of The Shaws. It was a friendly committee and we worked in a consensual way. The committee examined EU citizens' rights after Brexit, and one of the key concerns that we expressed was precisely that the EU citizen in the UK, for reassurance, needed some physical proof of the fact that they could remain in the UK. Certainly, some of us thought that Ministers, in seeking to justify their position—not pragmatically—seemed just a little uneasy. The committee heard much evidence, both oral and written, from a number of representatives of EU citizens, travelled to two parts of the UK and, importantly, met representatives of all the EU embassies on two occasions. They were able to represent the concerns of their citizens—so it was not, therefore, a capricious conclusion that we reached, but one based very firmly on evidence.

We tried to put ourselves in the shoes of those EU citizens in the UK. Of course, they would be used to ID cards, but some might have a certain hesitation about authorities and would certainly need an assurance, as the Government have said on a number of occasions. Have they had adequate protection? Not in my judgment, because a physical document is necessary to give those citizens confidence. In passing, it would also show that the Government do listen to one of their committees that has researched the project quite thoroughly.

Viscount Waverley (CB): My point, following the noble Lord, Lord Anderson, is that there does need to be supporting digital, because, for example, a government agency from the UK has on occasion questioned the validity of a Portuguese residency card—I have first-hand experience, being resident in Portugal—as being either fraudulently obtained or else open to counterfeit.

Lord Carlile of Berriew (CB): My Lords, I venture to suggest to your Lordships that it is sometimes wise to address and solve problems before they occur and to avoid the distress that otherwise would occur. In my nine and a quarter years as Independent Reviewer of Terrorism Legislation, I often stood at border posts, airports and sea ports, watching people being stopped, sometimes for absolutely no reason. But, whether there was a reason or no reason, one saw the shades of emotion of the people who were stopped, ranging from real distress to quiet acquiescence. The advantage of the simple measure suggested in this amendment would avoid the distress; it would mean that speeding through the border post really was quick, and we would solve a problem that is bound to occur if we do not resolve it now.

Baroness Hamwee (LD): My Lords, I am glad to follow the noble Lord, Lord Carlile, on that point. In Committee, the Minister thought that I was advocating two separate systems: a digital one and an analogue paper system, if you like. I was not, and neither is my noble friend Lord Oates; he used the term "alongside".

The Minister was also concerned that a physical document would be forgeable. There are many documents in use which are sensitive and important. Yesterday, I fished out from my office my Disclosure and Barring Service enhanced criminal record certificate. That is on watermarked paper; so is my copy of my birth certificate, a certified copy which is watermarked, though I discovered—I had not realised this—that the seal on it is not actually impressed. So why not have a physical document?

3.45 pm

As has been said, computer systems are immune neither to those who wish to interfere with and distort them nor to simple failure. I do not suppose that I am the only Member of this House who has stood in an airport looking at all the screens which say "No internet access". It is a bit disconcerting.

I get the feeling that the Government have got themselves into a position where they think that they will lose face if they tweak the system in the really quite small way which your Lordships are asking for. This would not stop Brexit. It would not change the rights other than as my noble friend has said. If it is a declaratory system, there would not be that change in the middle of 2021. However, it would be a recognition of what the noble Lord, Lord Warner, has called the "real world".

When we first discussed the issue of citizens' rights in this Chamber, some noble Lords said that there should be complete reciprocity in every detail of how EU states deal with UK citizens. Others of us pointed to the advantage of doing the right thing, which a declaratory system would be. My noble friend's proposal is the right thing.

Lord Cromwell (CB): My Lords, there seems to be a slight pantomime element to this. Many from the3million say, "We need physical proof"; the Government simply reply, "No you don't", and so it goes round and round. We are going to have to rebuild relationships with many of these people, who have been bruised by the lack of clarity, by being referred to as "bargaining chips" and by other unkindnesses. My point is simply this: the Government can have their cake and eat it. This is not two parallel systems. You can provide physical evidence which will bear that identity number, which anybody who needs to can be obligated to look up. They are not two systems. I support this amendment.

Viscount Ridley (Con): My Lords, I have a reservation about this amendment, based on a possible unintended consequence of physical proof of identity. The noble Lord, Lord Anderson of Swansea, mentioned identity cards. It is not impossible that, if there was physical identity documentation in existence, we would get to a situation, whether intended or not, where people would be asked to produce proof in this form. An identity card required of EU citizens but not of UK citizens would come in by the backdoor. That would be a worrying development. It might be a remote possibility, but it is one we should take into account.

Lord Campbell of Pittenweem (LD): My Lords, I flew down from Edinburgh today. I was asked to prove my identity before I was allowed on to the aeroplane. It is a common request. I may be missing something here, but, if I want to be able to drive a motor vehicle in this country, I make an application; it is recorded somewhere, I have no doubt, that I have been granted a licence, and I am given a document. It is perhaps a modern form of document, but it makes it clear any time I am stopped by a policeman that I have a legitimate licence. What is wrong with applying that system to the circumstances we are describing here?

Lord Cashman (Non-Afl): My Lords, as in Committee, I speak in support of this amendment. I previously served on the EU Justice Sub-Committee, where we undertook a long inquiry into this very issue. We were reassured neither by the then Home Secretary nor by the officials from the Home Office. It seems absolutely clear that the two systems are complementary: we have nothing to lose by running them together and everything to gain by doing the right thing and leading on this issue, and making people feel that after 31 January—bongs or not—they belong in our country.

Baroness Deech (CB): My Lords, like several previous speakers, I too have been a member of the EU Justice Sub-Committee. We questioned Ministers on this, and their answers about there being no need for physical proof have been very unconvincing. They show a touching belief in the power of digital and wi-fi, yet all of us know that, at moments of stress, and in places such as airports, schools and hospitals, it is extremely unlikely that the internet will work properly. I cannot see why a simple piece of paper or a little card should not be issued to everyone who has successfully applied.

As for the point made by the noble Viscount, Lord Ridley, in fact we all have ID cards of one sort or another, as has been pointed out—it is just that the 3 million EU citizens are slightly less likely than the rest of us to have driving licences, national health cards and so on, and therefore are all the more in need of a small piece of paper or card to prove that they are entitled to be here. I therefore support this amendment.

Baroness Altmann (Con): My Lords, I congratulate my noble friend in the Government on their statement that there will be pragmatism in applying this system. However, what contingency plans are there or could there be in place should there be a major IT failure which prevents somebody, for example, who wants to rent a flat, being able to prove digitally that they have indefinite leave to remain? Maybe the department could consider that further.

Lord McNicol of West Kilbride (Lab): My Lords, I thank all noble Lords for their comments in the debate.

The amendment to Clause 7, in the name of the noble Lord, Lord Oates, and supported by myself and other noble Lords, is a variant of that tabled in Committee. As the noble Lord, Lord Oates, previously outlined, we are far from convinced by the responses we have heard from government—I think the noble Baroness, Lady Deech, said that the Government were "unconvincing".

Indeed, there have even been a number of contradictory statements from No. 10 in response to Friday's comments by the European Parliament's Brexit lead, Guy Verhofstadt. He claimed that the Secretary of State had provided assurances over the provision of physical documentation, as well as confirming a policy of no forced deportations if individuals fail to apply for settled status by the June 2021 deadline. However, the newspapers carried a contradictory quote from a government official, who said of the meeting:

"They discussed their respective position on physical documents. There weren't any offers or changes from yesterday's meeting."

A statement from the Home Office later added:

[Lord McNicol of West Kilbride]

"There is no change to our digital approach. It has always been the case that people could print a copy of their confirmation letter, but this can't be used as evidence of status."

The noble Viscount, Lord Ridley, said that this could lead to ID cards. The response to that is that people will be asked for physical documentation that proves their status now—as I will come on to, people are already being asked for it. If the Government could make this small change, we would be able to move on.

We should look at the last statement from the Home Office. When we travel abroad and hire a car on the continent, before we go we can print out a document from the DVLA which is proof that we are legally able to hire a vehicle and that the driving licence is covered. While the DVLA holds that documentation on computer, we can get physical documentation that proves the position. Again, it would be fantastic if we could see a little movement by the Government on this.

Under the evidence, we are not satisfied that the Government will provide assurances on physical documents, although I hope they will, or that they will verify the policy of no forced deportations for those who do not apply for settled status by the deadline. As the noble Lord, Lord Oates, touched on, a new poll of EU citizens living in the UK found that an overwhelming majority of 70% would favour physical documentation. These are people who have chosen to make the UK their home and to live, work and play in and thus be part of our countries and our society. On this evidence, the Government are going against good practice and the wishes of EU citizens currently living in the UK.

I shall go back to the point made by the noble Viscount, Lord Ridley. As many as 11% say that they have already been asked for proof of their status, and there have been warnings from private landlords that the new system could introduce the risk of discrimination.

Why would the Government implement a system that puts people who contribute greatly to our society at the risk of facing discrimination? Are they saying that the current proposal for a digital-only system is risk free? The arguments on documentation and deportation at the end of non-registration or non-agreement to pre-settled or settled status were well rehearsed in Committee and we have heard a number of contributions to that effect today, so I will leave it there. We recognise that the Government have provided some comfort as regards the appeals procedure, but there is too much uncertainty about other aspects of EU citizens' rights. A representative of the3million campaign group has rightly pointed out that far from providing certainty, the current system is best described as giving an "unsettled status".

We continue to believe that the declaratory system is the best way forward and that EU citizens should enjoy the same rights as many UK citizens living on the continent. Negotiations have already started and hopefully further talks will secure the position as we go forward. If the Minister is unable to promise to table a suitable government amendment at Third Reading and if the noble Lord, Lord Oates, chooses to push his amendment to a vote, we will support stronger protections for the millions of EU citizens who have made this country their home.

I shall touch briefly on the comments made by the noble Lord, Lord Kerslake. He said that the Government should take every reasonable step to ensure that EU citizens who choose to make the UK their home are treated fairly, and the simple safeguards set out in the amendment would achieve that.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank the noble Lord, Lord Oates, for his explanation of the amendment, but he will not be surprised to learn that we reject it. The amendment would require the Government to establish a declaratory system for those eligible for residence rights under the withdrawal agreement, the EEA EFTA separation agreement or the Swiss citizens' rights agreement, which for the sake of brevity I shall call from here on in the agreements. References to EU citizens should likewise be taken to include EEA, EFTA and Swiss nationals and their family members.

The noble Lord has continued to press for this change in the belief that it will reassure EU citizens already resident here. The Government have already provided this certainty through the EU settlement scheme—not as a proposal, as the noble Lord, Lord McNicol, has suggested, but as something that is up and running and which the noble Lord, Lord Kerslake, acknowledges is working well.

Fundamentally changing a system that is working well would have the opposite effect to that which I believe the noble Lord is trying to achieve. Amendment 1 would create a declaratory system under EU law, whereby EU citizens may apply for a document confirming their residence status if they wish but do not have to do so. The Government do not agree that this is the right way to secure the status of EU citizens resident in the UK at the end of the implementation period.

After the implementation period, free movement will end and those who are not British or Irish citizens will require a UK immigration status to enter and reside in the UK. The EU settlement scheme is a vital part of transitioning the UK from free movement to a new, points-based immigration system that starts in 2021.

4 pm

The UK's immigration system has long been predicated on individuals applying to the Home Office to be granted leave to enter or remain under what we call a constitutive system. A requirement to apply for individual status by a deadline provides a clear incentive for EU citizens living here to secure their status in UK law and obtain evidence of this. A declaratory system under which individuals automatically acquire an immigration status would significantly reduce the incentive to obtain evidence of that status. That risks creating confusion among employers and service providers and would inevitably impede EU citizens' access to the benefits and services to which they are entitled. Such an approach could also lead to EU citizens who had not applied for documentation suffering inadvertent discrimination compared with those who had. It is something that my noble friend—

Viscount Ridley: I apologise for interrupting. On that very point, I was not reassured by what the noble Lord, Lord McNicol, said. It seems to me that if landlords or other authorities are already beginning to ask for proof of settled status, this would get worse if there were known to be a system where they could produce a card. It would then de facto become a card that they had to produce.

Baroness Williams of Trafford: I totally agree with my noble friend Lord Ridley. His point about ID card creep is also part of this point. It is exactly what happened to the Windrush generation. The Government are adamant that we must avoid a situation in which, years down the line, EU citizens who have built their lives here find themselves struggling to prove their rights and entitlements in the UK.

The approach suggested in the amendment is also unnecessary. Managing the end of free movement in the UK and providing certainty for resident EU citizens during that transition has been an absolute priority. We firmly believe that the current, constitutive approach under the EU settlement scheme is the right one. According to the latest internal figures, more than 2.8 million applications have been received and 2.5 million grants of status have already been made. The Home Office, as I said the other day, is processing up to 20,000 applications a day.

We are working with communities up and down the country to raise awareness of the scheme and keep up this momentum. It already allows EU citizens who would be protected by the agreements and other people the Government have chosen to protect, such as many non-working spouses and primary carers not covered by the agreements, to obtain a UK immigration status, enabling them to remain here permanently after the end of the implementation period. This status will mean that their rights and entitlements under the agreements are guaranteed. However, the new clause would interrupt the flow of a system that is well under way, already working well and achieving precisely what it was designed and implemented to do: providing certainty to those who have made their lives here.

EU citizens resident in the UK before the end of the implementation period will have different, enhanced rights compared with those who arrive afterwards. It is therefore essential that these citizens have the evidence they need to demonstrate their rights in the UK. This is also why we are seeing many other EU member states planning to take exactly the same approach and establish a constitutive system for UK nationals living there.

The EU settlement scheme means that those who have built their lives here will not find themselves struggling to evidence their rights in the UK, or have to carry around multiple bits of paper to evidence their previous UK residence. We are legally required to issue all successful applicants under the EU settlement scheme with a written notification of their UK immigration status, and all successful applicants are given a letter confirming their status. The status can be viewed online and shared securely with others, but as noble Lords have said, it is not proof but confirmation.

Access to the online status service is via secure two-factor authentication using the document, such as a passport or national ID card, which the individual used to prove their identity and their date of birth. The user is then required to input a one-time use code, sent to their mobile number or email address. This ensures that no one else can access the individual's information without their permission. Once in the service, users can view their information and update their details, and can choose to share their status information with third parties. This might be with employers, to prove their right to work, or with other service providers, to prove their right to access public services, benefits or the NHS.

When an individual chooses to share their information, they share only the content that is specific and relevant to the checks in question, as I went through the other day. This will include their name, their image and any information that is relevant to that particular purpose. This supports data minimisation, ensuring that only the information required is made available, which is not possible with a single physical document.

All our digital services are designed and developed to be robust and reliable, with extensive internal and user testing before launch to ensure that they perform as expected. We will monitor services to ensure that any issues are identified and acted upon. Mechanisms are already in place for users to report any technical issues with the service. We continue to refine and improve these processes, and all data will be treated in compliance with data protection law.

We do not want to go back to issuing physical documents, which, as we know, can be lost, stolen or tampered with. Our vision for the future is a digital status and service for all migrants. The continuation of a declaratory system would force employers, banks and other service providers to wade through various documents to establish for themselves whether the person is indeed protected by the agreements. Such an approach would be burdensome, for the citizens and others, and for the very systems we have committed to protect.

I will pick up a number of questions which noble Lords asked. Several noble Lords talked about airports. The noble Lord, Lord Oates, gave the example of a friend who was questioned at the airport, and the noble Lord, Lord Carlile, talked about the border, too. What happens at the border is proof of identity to cross the border, as opposed to proof of status to be in the UK.

The noble Lord, Lord McNicol, talked about hiring a car abroad. In doing so, he inadvertently proved the point that, with the dispensing of the paper part of the licence, all one needs when abroad is a code to prove that you can hire a car. You do not need the physical document, you need only the code—as I learned to my peril when I did not realise that that was what you had to do.

Baroness Kramer (LD): I must correct the Minister. Having had great faith and gone abroad with my code, on attempting to rent a car in the United States and Spain, I found on both occasions that the process failed miserably. Only the fact that I had a piece of paper with me enabled me to rent the car. I hope the Minister will reply to the noble Baroness, Lady Altmann, who asked what the back-up is when it goes wrong or there is a cyberattack.

Baroness Williams of Trafford: I will of course respond to my noble friend, and to other noble Lords who raised that point, but the point I was trying to make is that we have not had a paper part of the licence for some years. Whether it worked for the noble Baroness or not, to hire a car one gets a code from the DVLA. We do not have a paper part of the licence.

Lord Cromwell: There appears to be a certain amount of confusion and a lot of people are gesturing to show that they have a plastic card in their hand. I think we have plastic driving licences; we have not done away with them.

Baroness Williams of Trafford: That is not the point that I was making. We used to have paper accompaniments to the licence and we no longer have them. We used to have a paper part of the licence and it was phased out, but to hire a car you need a code.

Lord McNicol of West Kilbride: The noble Baroness is correct that the paper part of the licence has been phased out, but when you go abroad you need proof for the insurance to hire a car. The noble Baroness might well be correct that you can just use a code but, as we have heard, if you go with just a code there is no proof with it. I, many other noble Lords and many other people would print out proper documentation and proof that you have that code with the DVLA's name at the top of it. That is what we are saying: it does not just show it when you hire a car, but proves it.

Viscount Waverley: My Lords, while the noble Baroness is still sitting down, would it be possible, or is it anticipated, for government agencies in the EU 27 countries concerned to have access to our official databases so that they can look up and access data to confirm all these relevant issues, whether for borders or for whatever reason?

Baroness Williams of Trafford: The point I was trying to make was that any agency that has access to information about proof of digital status has access only to the information for the purpose it is required to prove, such as right to work or right to rent. Data is given only for the purpose for which it is required.

The noble Lord, Lord Oates, talked about deportation and criminality for those failing to apply by the deadline. I explained in Committee that EU citizens who failed to apply to the scheme by the deadline will not be acting unlawfully in the same way as illegal entrants or overstayers and will not be subject to automatic deportation—they will not have knowingly entered the UK in breach of the Immigration Acts or overstayed their leave. Once free movement has ended, they will need leave to remain in the UK. That is why we set up the EU settlement scheme. As the noble Lord, Lord Kerslake, and my noble friend Lady Altmann said, we have been clear that we will take a pragmatic approach. In line with the agreements, those with reasonable grounds for missing the deadline will be given further opportunities to apply.

On the reliability of IT systems, I say to the noble Lord, Lord Cromwell, and my noble friend Lady Altmann that immigration decisions have been securely recorded and stored digitally since the turn of the century, so this is nothing new. I ask the noble Lord not to press his amendment.

Lord Oates: My Lords, I thank all noble Lords who have taken part in the debate. I thank the Minister for her response, but I must say that I am utterly bewildered by it. This really is not a complicated issue. Millions of EU, EEA and Swiss national citizens are desperately concerned and asking for physical proof.

In Committee, the Minister said that to provide them with physical proof would be confusing and create a two-tier system. We have a system of permanent residence in this country for non-EU citizens; my husband is one of them. In his passport is a Home Office sticker, a nice colourful thing with watermarks and all sorts of anti-fraud protection, which gives him permanent leave to remain. It is physical proof. Doubtless it is also recorded on some Home Office computer system—I certainly hope so. There is no complication about this; we can do it. We just need the same scheme. The complication with a system where there is no physical proof is that landlords, employers or others who may be used to having physical proof may not accept, or find it difficult to deal with, people who do not have it.

Let me pick up on a few points. The Minister talked about the driving licence issue. We have a physical driving licence. The Minister is indicating that I have missed her argument but the licence is proof of my right to drive. All these people are asking for is physical proof of their right to residence, which the Government are not providing. The Minister also said that there was a danger of ID-card creep; I do not think there is any danger of that. Again, we already have a system for permanent residence in which physical proof is provided.

The Minister said that the system is working well because a large number of applications have already been made. I will say two things about that. First, the argument that we have always made about why we need a declaratory system is to do not with the number of people who have applied by now but with the number of people who will not have applied by the cut-off date. That is what concerns us. Secondly, the Minister says that the system is working well, but I refer her to the information provided by the Public Law Project from freedom of information requests. It shows that 90% of those decisions to give people pre-settled status under the scheme—rather than settled status when they have come under administrative review, at a charge of £80 to the people applying for it—have been found to be wrong.

In summary, people having the right to physical proof is a critical issue. It is absolutely essential that the Government honour the commitments that the Prime Minister and the Home Secretary made at the time of the referendum. In view of how important this issue is, I beg leave to test the opinion of the House.

4.18 pm

Division on Amendment 1

Contents 269; Not-Contents 229. [The Tellers for the Contents reported 270 names; the Clerks recorded 269 names.]

Amendment 1 agreed.

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4.35 pm

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

Amendment 2

Moved by ***Lord Hutton of Furness***

2: Clause 15, page 18, line 21, at end insert ", comprising a majority of non-executive members"

Lord Hutton of Furness (Lab): My Lords, in moving Amendment 2, I shall speak also to Amendments 22 to 28. The withdrawal agreement requires the United Kingdom to establish a new independent body to monitor the implementation of the citizens' rights provisions contained in the agreement once the implementation period has elapsed. As noble Lords will be aware, there are over 3 million EU and EFTA nationals living in the United Kingdom today. The independent monitoring authority to be set up under this Bill will therefore have an essential role in helping the United Kingdom to meet its international obligations. It goes right to the heart of our standing as a nation governed by the rule of law and on respect for human rights and individual liberties, so this is a very important part of the Bill. My main concern with Schedule 2 as it stands —this is why I have tabled these amendments—is that it appears to place administrative convenience ahead of the proper enforcement of citizens' rights. This is unacceptable; my amendments are designed to address this imbalance.

Amendments 2 and 22 relate to the composition of the independent monitoring authority. It must surely be a matter of principle that a body such as this, charged with the important responsibilities that we are about to give it, should comprise a majority of non-executive members. That is consistent with every principle

of good, corporate governance. These amendments will make that clear. At the moment, it is not clear—in fact, quite the opposite. Under Schedule 2, it is possible for the body to be properly constituted and make decisions even without a majority of non-executive members. If we allow that position to go unchallenged, there is a risk—small perhaps, but not a risk we should be prepared to run—of executive capture. We should not let that happen.

Amendment 23 deals with the balance of the non-executive members. The Bill does not require the non-executive members to reflect properly the nations of the United Kingdom. The words "so far as possible" are inadequate in this context and should be removed. There can be no excuse not to ensure a proper reflection of the nations in the membership of the IMA.

Amendment 24 deals with defective appointments and vacancies. Given the importance of the work of the IMA, it should surely be possible to ensure a full complement of non-executive members. In the case of defective appointments, I do not think that decisions taken by people who have not been properly appointed should be treated in the same way as the decisions of people who have been properly appointed. Otherwise, what on earth is the point of our requiring the Secretary of State to follow a particular appointment process?

I turn now to Amendment 25. Under the schedule as currently drafted, the IMA could delegate to any official of the authority all or any of its decision-making powers other than the production of its annual report. I do not think that that can be right either. Surely the powers to investigate and reach decisions on individual cases or complaints brought to the IMA must be the sole preserve of the members of the IMA itself. My amendment would ensure that that is the case.

Amendment 26 also deals with quite an important issue of principle. In my view, sub-paragraph (4) as it is currently drafted is completely at odds with sub-paragraph (3). If the IMA is satisfied that the UK has failed to comply with its international obligations under the agreement or it is satisfied that a public authority has acted in contravention of the agreement—that is what this part of the schedule is dealing with—then surely it would be astonishing if the IMA could simply ignore this and decide not to take any action at all.

When the composition of the IMA was first revealed and the Department for Exiting the European Union published its document explaining the remit and mandate of the authority, it said:

> "The IMA will be established to monitor the UK's application of the citizens' rights parts of the Agreements and identify any breaches."

However, sub-paragraph (4) allows the authority to completely ignore any evidence of a breach of the UK's international obligations; it allows it not to pursue an inquiry even though it is satisfied that such a breach has occurred. So it might decide to investigate some breaches of our commitments under the agreement but not all, and I do not think that is right. My amendment would therefore delete that provision from the schedule altogether.

Amendment 27, which I have tabled, also deals with a fundamental question of procedure. Sub-paragraph (3) in this part of the schedule seems to me to drive a coach and horses through the whole concept of an effective monitoring body. It is hard to imagine that many of the complaints we can envisage being made to the IMA will not involve at least the potential for an issue to be resolved or referred to the courts. This sub-paragraph gives the IMA a carte-blanche power to simply refuse to make any inquiries even if there is evidence that such a breach has taken place or that it believes that the proper redress is for an individual action in the courts. I do not believe there can be a justification for such a carte-blanche power, and certainly not one that is as widely drafted as this is.

On Amendment 28, many noble Lords have focused on the powers granted under the schedule for the Secretary of State to transfer the functions of the IMA to another body at some point in the future. Here I definitely can see why the Secretary of State might want to do this at some point in the future, but we should insist as a minimum threshold that any new body that might discharge these important statutory powers has the same constitutional safeguards—regarding independence and regional representation, for example—as the IMA. That is how we are setting it up under the schedule so surely any new body should reflect those essential provisions. I therefore do not think this amendment is asking for very much. It would simply require the Secretary of State to satisfy himself that any such body that these functions are transferred to is constituted in the same way as the IMA.

Lastly, on the point about dissolving the IMA, perhaps the Minister, whose response I am looking forward to, could confirm that under Article 159(3) of the withdrawal agreement the joint committee would have to agree the abolition of the IMA anyway, so the UK has already ceded authority—to use that argument—over the continued existence or otherwise of the IMA. I beg to move.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, I thank the noble Lord for his amendments. Given his long experience of government, he will understand that we have designed the IMA's constitution as set out in Schedule 2 in line with the best practice for the establishment of new public bodies. I fear that the amendments he has tabled risk undermining that approach.

As noble Lords will be aware, we have introduced a number of requirements relating to the membership of the IMA's board in line with the well-established procedures relating to the governance of public bodies. An important principle of this is that the board of public bodies must contain more non-executive than executive members. That is why we have required the Secretary of State to ensure that, as far as possible, the number of non-executive IMA members exceeds the number of executive members. It is also why the Bill sets out that an IMA board meeting is quorate only if there is a majority of non-executive members present. Because these restrictions exist elsewhere in the Bill, Amendment 2 is unnecessary.

4.45 pm

Although I understand the concerns that motivated the noble Lord to table Amendments 22 and 23, I can assure him that the current drafting approach is appropriate in ensuring that the requirements relating

[Lord Callanan]
to the IMA's board are met. It is common practice for legislation to require a Secretary of State to meet a duty "so far as possible". Without this caveat, the Secretary of State could be in breach of the law, even if they had done everything in their power to ensure that the IMA's membership requirements had been met. For example, the Secretary of State would be breaking the law if a non-executive member had to vacate their post for reasons entirely outside of the Secretary of State's control, such as illness. We do not believe that that can be right. The drafting approach we have taken in these paragraphs is entirely normal and is designed to prevent counterintuitive situations like the one I just described. I therefore hope that the noble Lord will not press Amendments 22 and 23.

We have also taken a precedented and proportionate approach to the drafting around a defective IMA appointment. Removing this provision would risk invalidating the proceedings of the IMA unnecessarily, or halting them while a vacancy is filled, which could have unintended negative consequences for EEA and EU citizens in the UK. I therefore hope that the noble Lord will not press Amendment 24.

I can reassure the noble Lord that the way in which we have given effect to the IMA's functions as required by the withdrawal agreement will ensure they are exercised effectively, in a manner consistent with the IMA's status as an independent body. Therefore, I hope he will not press Amendments 25 and 26. Amendment 25 would result in an inappropriate number of operational decisions being escalated to the IMA's board, in a way that would be inconsistent with its role of setting the body's strategic direction. It would also require the IMA's board to conduct all inquiries, without any delegation. We believe that that would prove unworkable in practice.

On Amendment 26, there are many good reasons why the IMA could decide not to carry out an inquiry after the necessary conditions in sub-paragraph 25(3) have been met. For example, it may decide that the public authority has indicated that it is committed to remedying the failure; it could decide that it would be more appropriate to bring legal action against the public authority in question, rather than conduct an inquiry; or another public body or regulator may already be seized of the issue. In all these scenarios, it should be for the IMA, as an independent body, to decide the best course of action. That is appropriate in the circumstances. Amendment 26 would undermine the IMA's operational independence by indicating that it should conduct an inquiry in every instance that the necessary conditions are met, even if this runs contrary to its own judgment.

In establishing the IMA, it has been the Government's intention to avoid, as far as possible, the duplication of existing processes and structures around citizens' rights which individuals can already access. Amendment 27 would run contrary to this approach, by removing the requirement that the IMA considers whether other routes would be more appropriate for a given complaint. Doing so would risk the IMA duplicating the functions of existing structures, in a manner unhelpful for the citizens whose rights it is designed to protect. I therefore hope the noble Lord will not press Amendment 27.

I have previously sought to reassure the House about the Government's intentions behind the power to transfer the IMA's functions. We had debates on this in Committee. As the House is already aware, in any transfer of the IMA's functions the Government can make changes to the constitution of the transferee that the Secretary of State considers appropriate. This has been included so that, for example, the important role of the devolved Administrations and Gibraltar in the IMA can be retained. Constraining the power so that the IMA's constitution must be replicated in its exact current form could force us to amend the transferee's constitution inappropriately. For example, if the transferee has a wider remit than that of the IMA, it may require more board members or different expertise compared to that of the IMA. What is important, in our view, is that the transferee should be given the powers to fulfil the functions of the IMA and comply with the UK's international obligations under the withdrawal agreement and *EEA EFTA Separation Agreement*; that is already allowed for in the legislation in its unamended form. Amendment 28 is therefore impractical and unnecessary, and I hope that the noble Lord will not press it.

I hope that I have provided the noble Lord, Lord Hutton, with adequate reassurances to address the concerns that have motivated his amendments. As set out in their unamended form, Clause 15 and Schedule 2 establish the IMA in line with well-established principles for the governance and operation of new public bodies, and any amendments to this drafting would be a departure from such principles. Lastly, to address his question about whether the joint committee would need to agree to abolish the IMA the answer is yes, it would. In the light of the reassurances I have been able to give, I therefore hope that the noble Lord will withdraw Amendment 2.

Lord Hutton of Furness: My Lords, I am grateful to the Minister for his reassurances. He has, however, confirmed my suspicion that what matters most to Ministers is the administrative convenience of this new body, rather than its effective operation as a monitoring authority. I am certainly prepared not to press my amendments. I do not intend to test the opinion of the House; that was never my purpose in tabling them. However, I suspect that we will return to this issue in the months and years ahead. I fear that we are setting up a body in a way that is not consistent with its purpose. Its purpose is clear under the withdrawal agreement; time will tell whether the Minister is right or I am right. I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

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

Amendment 3

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

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

Member's explanatory statement

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

Baroness Hayter of Kentish Town (Lab): My Lords, I beg to move Amendment 3 on behalf of myself and the noble Lord, Lord Tyler. I shall also speak to Amendments 4, 5 and 7. These amendments are all tabled for the same reason: because the Government seem to like deciding things for themselves, with no reference to Parliament. That is possibly why they want to shove us up to York, where our voice will not be heard as loudly as it is in Westminster—although they have missed a trick by not trying to send us to Coventry.

Amendment 5 is needed because when the Government signed the withdrawal agreement allowing the EU-UK joint committee to amend the agreement itself, they failed to allow for scrutiny of the joint committee. The Government have this power under the Bill which is, in the words of our EU committee, a power immune from

"clear scrutiny procedures or parliamentary oversight".

Clause 21 contains significant new powers to amend by statutory instrument the 2018 withdrawal Act, in what our DPRRC describes as

"a most potent form of Henry VIII clause, allowing regulations to modify their parent Act".

It is not just unusual for the Government to have that power with only the most cursory of scrutiny to amend primary legislation; it is also unexplained.

Implementing the Northern Ireland protocol may well prove challenging, of course, but we have seen nothing to suggest that this would demand changes to the 2018 Act. Nor does the letter of 16 January from the Minister, the noble Lord, Lord Duncan, provide comfort when it states that the power could not be used to repeal the devolution settlement but be exercised only for the purposes of implementing the protocol and the Government's policy on unfettered access. If that is the case, why is the power there to repeal? While the Minister says that the power would not be used to repeal any power in the 2018 Act, there is still no reason given as to why it is there, nor why Amendment 3 cannot be accepted, given that it would simply take out from the Bill the ability to amend the 2018 Act by statutory instrument, which the Minister says the Government will do not do anyway.

Amendment 4, in the name also of the noble Lord, Lord Beith, is needed because, as the DPRR Committee states, the Bill contains

"a … potent form of Henry VIII clause … creating a new legal regime that would otherwise require",

an Act of Parliament. Furthermore, these Clause 21 powers have none of the restrictions which are found in respect of similar powers elsewhere in this Bill or in the 2018 Act. Amendment 4 would insert the same limitation on the Clause 21 regulation-making powers as exists elsewhere in this Bill and the other Act. After all, it would be pretty exceptional for Ministers to be able to create new criminal offences, including with two-year terms of imprisonment attached, to set up public bodies—just referred to by my noble friend Lord Hutton—or to levy taxes, yet the Government want the power to do that. The assurance in the letter of 16 January from the noble Lord, Lord Duncan, that this would be by affirmative procedure is of no comfort to this House, given that such a procedure is effectively never used to stop a Minister doing exactly what he or she wants.

Amendments 5 and 7 are in the name of the noble and learned Lord, Lord Thomas of Cwmgiedd, who rightly said at Second Reading that it would be a terrible precedent if we altered the devolution legislation other than by primary legislation. The amendments would simply prevent Ministers using Clause 21 and 22 powers to amend the statutes which embed the devolution settlements. As we know, there is a perfectly viable, acceptable way of amending the Welsh statutes without primary legislation where the National Assembly agrees with the change; that is, through a Section 109 Order in Council. We have been given no reason why the Government have written themselves these powers, which I fear can mean only that they want to change the devolution settlements without the consent of the National Assembly and Welsh Government.

Given that, even now, the Government seem determined to push this Bill through without legislative consent from the Welsh Assembly, these powers are understandably fuelling suspicion. I therefore trust that the Minister will accept Amendments 5 and 7 and, by doing so, rule out any chance of the Government trying to amend the Government of Wales Act without the consent of the National Assembly.

The Minister knows full well that the Assembly is due to debate its legislative consent Motion tomorrow. It would be a shame—in fact, it would be more than a shame; it would be a constitutional landmark and a bad one—if this consent Motion were to be withheld due to the powers in this Bill, which appear to threaten the Government of Wales Act. Amendments 5 and 7 are therefore of some consequence.

We have been given no satisfactory explanation for why Parliament should give Ministers powers to amend by order the withdrawal agreement, the 2018 Act or the devolution statutes. Frankly, unless and until we have such an explanation, this power must come out of the Bill. I beg to move.

5 pm

Lord Tyler (LD): My Lords, I am a co-signatory, with the noble Baroness, to Amendment 3, which leads this group. There is little that I need to add to what she has already said or, indeed, to what was said in the debate last week. However, I would like to raise one or two points with the Minister.

Looking at this as dispassionately and objectively as one can, one wonders whether Clause 21 was drafted before there was any confidence that there would be a new devolved Administration in Stormont. The impression is given that everything was going to have to be decided in London still, whereas since then there has been a very dramatic and welcome change in Northern Ireland—I give credit to the Minister and his colleagues for the part that they played in that. However, it looks as if this was thought through before that element was fully appreciated. It makes much better sense to go through the proper process of primary legislation and not to divert into secondary legislation for this purpose.

Last week, I quoted the noble Lord, Lord Anderson of Ipswich, who referred to this clause as being, "Henry VIII on steroids". It is the most egregious example of a really powerful use of a Henry VIII power in the whole Bill. There are several others, but this is the most obvious one because, as the noble Baroness

[Lord Tyler]
has already said, it allows the change in the statute to be made without a reference to Parliament fully in its role as scrutineer. The Minister will recall that, in a powerful recommendation, the Delegated Powers and Regulatory Reform Committee said:

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

The Bill should spell out how the power should be used, rather than the House just getting assurances from the Minister.

In last week's debate, the Minister was kind enough to refer to this issue in the following terms:

"It would be very easy for me to say: 'You have just got to trust me'. That is not what I am trying to say, and it would be foolish as noble Lords should not try to trust me. The important thing is to test me, and to test the Government. That is why, as well as putting these points to the House now, and setting out the areas in which we do need these necessary powers, I am happy to put that in to a note which I will supply and make available to all noble Lords who are interested in this, so they can see where we believe this power will be required to deliver the very thing that Northern Ireland wants: safety and security within the United Kingdom of Great Britain and Northern Ireland."—[*Official Report*, 14/1/20; col. 639.]

As the noble Baroness has said, there is apparently such a letter: I have not seen it. I took part extensively in that debate. I was in the Committee until almost the last moment on Thursday; I was in the House again this morning at 9.30 am. I cannot be accused of being absent on leave; I have been around. Why did that letter not come to me? From what the noble Baroness said, I can assume that there is an attempt to justify this part of the Bill. I have huge respect for the Minister and his respect for this House is well known, but, frankly, it is not satisfactory for Members of your Lordships' House to be given that sort of undertaking from a Minister. It makes it very difficult for me and, no doubt, other Members who attended that debate but did not take part, if they have not seen the justification given in the letter.

Given that the House has now voted to amend the Bill, it is going to the Commons, even if it is for a very short time. There must surely be an opportunity for the Minister to explain on the record—not just with a letter, which may go astray—why the exceptional use of Henry VIII powers which I have described is being made at this juncture. That is all I need to say at the moment, but I shall listen with great interest to what the Minister may say. Perhaps he is going to read us the letter.

Lord Howarth of Newport (Lab): The noble Lord, Lord Tyler, refers to this as an "exceptional use" of Henry VIII powers. I wish I could be comforted to that extent, but it seems to me that the use of Henry VIII powers is an endemic vice in government, and I wonder why Ministers and officials never learn. The Henry VIII powers taken in relation to Clause 21 are very extensive indeed. I certainly accept what the Minister says, that it is not their intention to amend the devolution settlement, which ought to be amended by primary legislation. It is, none the less, offensive in principle to take such powers: it does not need to be done. The Government seem to think it is expedient, but it is actually very bad for trust between Parliament and the Executive, and, I think, bad for trust between politics and the people.

The Minister and I had a brief exchange in Committee on this, and on the particular question of whether the powers that the Government propose to take to themselves to alter primary legislation, or even abolish primary legislation by statutory instrument, would be subject to the affirmative or the negative procedure. He said his advice from his officials was that they would be subject to the affirmative procedure, and I agree that that is indeed the case where Clause 21 is concerned, but when we come to Clause 41, which is the most all-embracing, there is a socking great Henry VIII power. It is an almost megalomaniac provision and there is no such assurance available. As I understand the legislation, and as the Delegated Powers and Regulatory Reform Committee, more significantly, understands the legislation, the exercise of those powers under Clause 41 would be by the negative procedure. That is even more offensive, and it would be very helpful if the Minister would comment.

I hope the Minister will accept that, as a matter of general principle, the use of Henry VIII powers is objectionable; that if they are to be taken, they need to be defended in very clear and specific terms, as they have not so far been in the consideration of this legislation; and that the offence is compounded where the proposal is that the exercise of those powers should not be subject to the affirmative procedure.

Baroness Butler-Sloss (CB): My Lords, I support what the noble Lord, Lord Howarth, has just said. Clause 21 says:

"Regulations under subsection (1) may make any provision that could be made by an Act of Parliament (including modifying this Act)."

That is about as broad as the power could possibly go. It seems to me to be entirely unacceptable that there should be absolutely no curb of any sort upon the powers of any Government, and I consider that it is something that this House ought to be very worried about.

Lord Beith (LD): My Lords, I am a signatory to Amendment 4 and my willingness to support it is partly based on a constant desire to police the boundary that ought to exist in the use of regulatory powers, so that they do not permit the imposing of taxation or fees, the making of retrospective provision, the creation of criminal offences or the establishment of public authorities, some of which could arise as a result of what is in the protocol. The Minister may well want to explain to what extent he thinks the protocol itself limits the powers that can be used under this section.

This is an area we have often been reminded of by the noble and learned Lord, Lord Judge, who until his recent departure was such a valued member of the Constitution Committee. If we had not policed the boundary, he would have been urging us on to do so. Indeed, he may have something to say on this amendment. It is an issue we keep having to come back to, because there are those within government who seem to think they can keep putting these kinds of powers into Bills, and we know how dangerous they are.

Lord Judge (CB): My Lords, I cannot resist the invitation. First, a word of apology to the noble Baroness, Lady Hayter; I was not here for her very first words, but I was on my way.

Can we just pause? We are going to give a Minister power, if he so chooses, to impose taxation. The whole basis of our democracy started because no taxation was allowed without representation. The Americans picked it up in 1776, but it goes right back to Clause 12 of Magna Carta. The way Henry VIII powers are being used now has led to constant protests by the parties in opposition and by Cross-Benchers.

The time has come for us to address the difficult problem and decide that, if the powers given under these Henry VIII clauses are being misused, we will reject the affirmative process when they are put before us and take it on. If and when Labour comes to power, and one day it will, or if and when the Liberals come to power, and maybe they will, let us hope that when they are addressing Parliament and creating Henry VIII clauses they will remember their hostility to them now and allow the then Opposition, the Conservatives, to lead an attack on affirmative resolutions misusing these powers.

Lord Thomas of Cwmgiedd (CB): My Lords, I will speak to Amendments 5 and 7. The same arguments apply to both, so I will deal with them together.

The purpose of these amendments, as with all the amendments we have moved, is to try to ensure that, for the future and in the passage of this Bill, the union is strengthened. To that end, it is of the greatest importance that amendments to the devolution statutes should be made only by primary legislation or by the procedures under the pieces of legislation, such as Section 109 of the Government of Wales Act, that allow amendments to be made by consent. Secondly, we should go forward in our negotiations with the European Union and in the adjustments necessary within the UK in a spirit that honours the constitution as changed as a result of devolution—not merely its letter, but its spirit.

The amendments that we seek to raise address two distinct points. First, why are these powers needed, if it is said that they are, to implement the international obligations of the United Kingdom? Secondly—this is quite a distinct issue—why are these powers needed to implement the United Kingdom Government's commitment to unfettered access for Northern Ireland goods to Great Britain? They raise entirely different constitutional issues and need to be looked at separately.

As regards the claim that they are needed to implement the international obligations of the United Kingdom, the powers under the Government of Wales Act, particularly Sections 82 and 114, give the Government very significant powers to direct the Welsh legislature and Welsh Ministers, so that what they do complies with international obligations. It is difficult to see why those are not sufficient.

Secondly, the astonishing breadth of these powers enables the Minister to repeal the devolution statutes. The Minister has in his helpful letter indicated that the Government would never contemplate doing so. Indeed, it is asserted that there would be no power to do so given the restrictions in the Bill on what can be done in respect of these powers to the implementation of the protocol. If that is the case, why is this not spelled out in legislation? Why is there not some limit on the Henry VIII powers?

5.15 pm

That is the first purpose of these powers. The second purpose—the commitment to give unfettered access to the Great Britain market for Northern Ireland goods—raises a different point. The Government, in their statement on 9 January 2019, recognised that what was done must take into account

"the devolved competences of the Scottish and Welsh governments, and recognise that we need to preserve a level playing field for businesses throughout the UK."

Of course, I recognise the need to do what is necessary to ensure the strengthening of the union by making arrangements for access to the markets in Great Britain for Northern Ireland goods. I am sure everyone wants to do all they can to preserve the union by ensuring that Northern Ireland businesses remain able to trade to Great Britain without let or hindrance, and I am sure that the Welsh Government and the Welsh Assembly will similarly want to do all they can.

However, if the union is to be strengthened, this should be done by consultation and agreement with the other devolved Governments and legislatures. We should not be going down the route where it appears that unilateral action can be taken to help one part of the union which involves overriding the constitutional statutes and protections of the other nations without their consent. There should therefore be no change to the devolution statutes for these purposes without consent. The present proposal gives Ministers free rein to rewrite the devolution settlements, to take away competences that Parliament has given to the devolved legislatures, and without any right of the devolved legislatures to have any say in that.

A strong union requires consensus, not unilateral action in respect of one part. It is clear that there is a special issue in relation to Northern Ireland. It is right that it is represented in the joint committee that will supervise the negotiations between the UK and the EU. The other two nations, of course, are not included in that committee; they rely upon the Joint Ministerial Committee. I shall return to that issue when we discuss Amendment 17.

As regards this amendment, everything possible should be done to achieve consent, and I see no reason why consent should not be the way forward in dealing with the issue of unfettered access. We should not go near the route of enabling one part of the United Kingdom to be preferred in such a way that actions taken for it can involve overriding the devolution statutes by means other than primary legislation.

I hope that the Minister will tell us why this extraordinary power is needed and why, as regards both the international aspects and the internal aspects, we cannot go forward either with the existing powers in primary legislation or by a route of consensus.

Baroness Finlay of Llandaff (CB): My Lords, I will also focus my remarks on Amendments 5 and 7 in this group, to which I have added my name.

[Baroness Finlay of Llandaff]

My noble and learned friend Lord Thomas has explained in some detail the legal reasons for our concern at Ministers' unwillingness to consider these amendments. For my part, while I understand the importance of the promises that the Government have made to Northern Ireland, surely it cannot be right that Welsh and Scottish devolution appear to be treated as less important than that of the six counties of Northern Ireland. The Northern Ireland Executive are assured that they will have direct representation when bodies under the joint committee consider matters relevant to Northern Ireland, but the Government fail to give any assurance to the devolved institutions in Scotland and Wales that their interests will be protected during the negotiations which are to come.

As I and other colleagues have repeatedly argued, there is a perfectly adequate way, through Section 109 Orders, to amend devolved competence where there is agreement between the Welsh and UK Governments. Such an approach involves both this Parliament and the Welsh legislature. I also understand that if an issue falls outside the scope of Schedules 7A or 7B to the Government of Wales Act, other powers may need to be used, but any suggestion that this may happen must be fully consulted on with the Welsh Government from the outset. Wales cannot be ridden over roughshod or treated as a second-class nation. If in extremis such agreement cannot be reached, it is of course open to the Government to ask Parliament to amend the Government of Wales Act, but such extreme measures should be used only as a very last resort.

If this clause is not amended, it will remove the incentive for Ministers of the Crown to reach a reasonable accommodation with the Welsh Government and the Senedd if and when it emerges that changes affecting the nature or implementation of devolved responsibilities and regulation are needed. There is a need to rebuild and regain trust. It may seem trivial, but as the noble Baroness, Lady Hayter, has said, despite the fact that we are on the verge of seeing the Senedd vote against legislative consent, I believe for the first time, and despite the Minister having suggested to me that direct dialogue between the Governments would be helpful, it is with regret that I understand that there have been no conversations between the Secretary of State and Welsh Ministers for the last 10 days. I assure noble Lords that that is not due to any reluctance on the part of Welsh Ministers.

The letter of 16 January from the Minister, the noble Lord, Lord Duncan of Springbank, states that under this Bill, the Government are "wholly incapable" of repealing the devolution statutes. Can he explain the absolute limits on the powers as written in the Bill because, as my noble and learned friend Lady Butler-Sloss has pointed out, no limits seem to be defined in the legislation before us? The letter also contains the phrase that it is not "normal" to use the main power set out in Clause 21 in areas of devolved competence without the agreement of the relevant devolved Administration. Can the Minister also explain the use of "normal", which feels a bit like a get-out term?

In conclusion, let me say that Amendments 5 and 7 in no way seek to block or slow down Brexit—I remind the House that Wales voted in favour of Brexit—and they would not stand in the way of the Government's wish to make a success of the Northern Ireland protocol. We are simply trying to avoid the perverse consequence of undermining faith in the union in Wales as a result of trying to shore up belief in the union in Northern Ireland.

Lord Morris of Aberavon (Lab): My Lords, I support these amendments, in particular Amendments 5 and 7 spoken to by the noble and learned Lord, Lord Thomas of Cwmgiedd. They are of fundamental importance and go to the heart of the devolution settlements. For a number of reasons I was not able to take part in the Committee stage of the Bill, although I was present for a great deal of the debate.

My interest in a devolved model of government began to crystallise when I was a postgraduate student at Cambridge as far back as 1954. As the Welsh Secretary, I was fortunate to have the opportunity to frame the architecture of a Welsh Bill in 1975, ill-fated as it was, but in 1998 I was given a second chance as a law officer in the Cabinet Committee to contribute to a more acceptable Bill. Anything that casts doubt on it or the important advances made since arouses my suspicion, because we have moved on. My principle is that once a matter is devolved, there is no going back. Once the hand of Westminster grants devolution, it cannot then be withdrawn. The Government must ensure that any suspicion of backsliding is removed.

New subsections (2) and—probably—(5) in Clause 21 cause deep suspicion for me. New subsection (2), which has already been referred to, says that a Minister may make by regulation

"any provision that could be made by an Act of Parliament (including modifying this Act)."

This year I have enjoyed reading the book on Thomas Cromwell; I commend it. It is the life of the greatest political manipulator this country has ever seen—and probably the deviser of Henry VIII powers, because his hand was a very firm one on the tiller in all the legislative processes of that time. I ask the Minister frankly: could anything be wider than new subsection (2)? It is the Trojan horse that could amend the statutes that embed the devolution settlement.

As it stands, my suspicions are justified. The power is there to make changes to the devolution settlement even if the National Assembly and Welsh Government are opposed to the change. If Westminster has the Assembly's agreement to changes, there is a perfectly respectable machinery for making them. It has already been referred to in the debate. In uncharted waters, such changes may be necessary.

I ask the Minister specifically: have the Government considered the alternative, a Section 109 Order in Council? This is the machinery available and could be used for any changes that might be required. Above all, they would be consensual as opposed to imposed changes. My second specific question is: will the Minister clarify and emphasise that legislative consent would normally be required for any regulation that would be brought in under this Act? Thirdly, have the Government discussed with the Welsh Government the anxieties they have? I commend these amendments.

Baroness Humphreys (LD): My Lords, my concerns in Amendments 5 and 7, to which I have added my name, lie around relationships, trust and respect—because, for all the legalese, that is essentially what is at issue here.

The National Assembly for Wales will be 21 years old this year—in human terms, a coming of age: the age of maturity and majority. Over these last 21 years, I have watched the Assembly take on more powers and responsibility—successfully, on the whole—and have seen many of its politicians increase in expertise and stature. But the inclusion in the Bill of these clauses, which would enable Ministers of the Crown to amend the devolution settlement, can only be described as a retrograde step and will surely have a detrimental effect on the relationship between Westminster and Assembly Governments.

These clauses give the Government the power to amend the Government of Wales Act in certain circumstances, without the consent of the Welsh Assembly. It is a recipe for a breakdown in trust and respect. The words "potential major constitutional conflict" have been mooted, and the potential for such a situation concerns me greatly. Far better, then, to use the route already open to the two Governments and already referred to by the noble Baronesses, Lady Hayter and Lady Finlay: consultations that could lead to the Assembly agreeing with changes to its own competence through a Section 109 Order in Council.

Whether we are talking about families, schools or workplaces, or, as in this case, politics, trust and mutual respect are key to successful relationships. The taking away of freedoms and powers is a means of control, and not a constructive act of relationship building between adults, or adult institutions—unless of course in this instance the aim is to disregard the relationship and impose the will of the UK Government on the Assembly Government. This Government, with their large majority in the other place, are in a position of power, but they have a duty to avoid unnecessary conflict and relationship breakdown by using that power wisely.

5.30 pm

Lord Wigley (PC): My Lords, I have an apology to make to start with: I am so sorry that Wales sent Henry VII and Henry VIII through to Westminster to impose the sorts of powers that are now being used in the way they are. Henry VIII was also responsible for the Acts of Union, and I am sorry about that as well.

With regard to Wales, quite clearly these powers are being drawn up in a way that is, at best, cack-handed and, at worst, causing immense reaction in the National Assembly. It is no overstatement to say that Members across party divides in the National Assembly are seething about these powers being brought forward. It follows two years of discussion and debate about fears of a power grab, with powers being taken away from the National Assembly, and indeed possibly from the Scottish Parliament—no doubt Scottish Members of this Chamber can speak up for themselves on the situation there, although I must admit that I have heard very few Scottish voices in these debates. However, as far as Wales is concerned, there is real fear that, in areas such as agriculture and on the question of the single market and the purchasing power of the Assembly, powers may be taken back. That might be done on the pretext of their being necessary for the UK single market, or possibly for other reasons.

Given that there has been co-operation in Wales across party boundaries to make sure that the settlement we have is worked out in a sensible way and progressive additional powers have been given, and, by and large, that successive Governments in Wales have worked in collaboration with Governments in London, for this clause to be put forward in this way is, frankly, not acceptable. The Government of Wales Act could itself be amended, or even overturned. How on earth can these powers be necessary when there are other ways of achieving the objectives the Government may have in the context of international treaties, as the noble and learned Lord, Lord Thomas, mentioned a few moments ago?

I beg the Government to look again at this. They are stoking up unnecessary conflict between Cardiff and Westminster. There may well be areas where we will have conflict and differences of opinion, so, for goodness' sake, do not do it gratuitously. I ask the Minister to look seriously at this again and, if he cannot accept these amendments, to bring forward amendments on Third Reading to deal with this situation.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy and Northern Ireland Office (Lord Duncan of Springbank) (Con): Forgive me, my Lords—I was too premature in eating my Polo Mints; I will save them for later.

As expected, this has been quite a technical debate, and I will do what I can to offer further details on some of the elements I have spoken of. The first thing I should stress to the noble Lord, Lord Tyler, is that the letter was sent to his Whips for onward distribution; it would have gone there on Thursday of last week, and I believe that the same is true for those on the Labour Benches. The letter has been sent out and made available. I am very happy to resend it, so that he can have the details, and I will not belabour the House by reading it out again.

At issue in this debate is the question of the scope and depth of the powers, and we have heard much reference to Henry VIII. I emphasise that Clauses 21 and 22 are required to enable both the UK and the devolved Administrations to fully implement the Northern Ireland protocol. Secondary legislation will be needed to further implement certain elements of that protocol before December 2020, which is the end of the implementation period. As a number of noble Lords noted, failure to do so could affect the ultimate agreement between the EU and the UK, with negotiations being conducted in the light of the UK not fulfilling its obligations under the withdrawal Act. What we are saying is that, in the calendar year ahead, there is much to be done and much is still uncertain, because it will emerge from the negotiations that take place between the UK and the EU. It is important to stress also that, where the issue affects the Northern Ireland protocol, the Northern Ireland Executive will have a role and be involved.

[Lord Duncan of Springbank]

The powers we seek are broad, but they are constrained. First, they are Northern Ireland protocol-specific and can be exercised only to implement the protocol, to supplement it within domestic law or to deal with matters arising out of, or related to, the protocol. Regulations beyond this scope are ultra vires. It is important to stress that, as it limits what these powers can be used to do. A number of noble Lords have suggested that they could be wide-ranging and could up-end or repeal the fundamental devolution settlements for Scotland and Wales. In fact, because they are so specific, that is not a possibility.

Further, any use of the power in Clause 21 that seeks to amend primary legislation, including the fundamental devolution statutes, will be subject to the affirmative procedure. There is no suggestion whatever that this will be done in secret, or in any attempt to blind-side this or the other place. The purpose is to ensure that there is full scrutiny by all the authorities within these Houses. The procedure attached to the use of this power means that there are no circumstances where the Government could change or amend the devolution statutes without the full involvement and scrutiny of both Houses. It affords the fundamental opportunity, according to custom and practice, for this and the other place to be engaged. On the Government of Wales Act 2006 and the Scotland Act 1998, the Bill grants no vires for wholesale repeal of any of the devolution statutes—and I repeat "any".

I turn to the specific points raised in the amendments. On Amendment 3, the powers are necessary to align Northern Ireland with certain elements of EU law. It is therefore necessary to ensure that the power in Clause 21 can be used to amend the withdrawal Act to ensure that the arrangements required in the protocol are operational and the statute book does not contain uncertainty. That is to happen in the time we have spoken of—by the end of this year.

The power will not be used to repeal any substantive provision in the European Union (Withdrawal) Act 2018. The noble Baroness, Lady Hayter, asked why the Government would wish to amend the withdrawal Act. I assure the noble Baroness that the Government have included the power with due consideration. If the statute book is not clear and in legal conformity with elements of the withdrawal Act, confusion and uncertainty could well result. Again, I reinforce that the Government cannot use this power to make changes to the 2018 Act for any purposes beyond those required for the full implementation of the protocol. It is the protocol itself that gains the ascendancy and restricts the onward actions in a wider sense.

The limits in Amendment 4 risk preventing the United Kingdom fulfilling its international obligations under the Northern Ireland protocol. The proposed restrictions create problems. Several details of the protocol require further decisions in the UK-EU joint committee to become fully operational. The Government have committed that representatives from the Northern Ireland Executive will be invited to form part of the UK delegation in any joint committee meetings where Northern Ireland-specific matters are discussed, and where the Northern Ireland Government are present. This is evidence that the UK places significant importance on maintaining Northern Ireland's unique place in the union. It is important that, after a very long absence, we now have an Assembly and an Executive in Northern Ireland.

The Government will not use these powers to repeal the devolution statutes wholesale. Indeed, they are wholly incapable of doing so because of the inherent limitations of the power, which I have already touched on. It is the Government's firm intention to fully engage with the devolved Administrations, and it will be important to do so with regard the withdrawal agreement, and to ensure that the protocol itself is correct and delivered in the right manner.

On Amendment 7, the power is necessary to implement certain elements of the protocol that are within devolved competence. Any modification of the Government of Wales Act 2006 by way of the power in Clause 22 could in practice occur only with the agreement of the Welsh Government; it is only with their full participation that Clause 22 could be delivered. The amendment could impede the Welsh Government in exercising their own legitimate power when implementing the protocol in areas of devolved competence in a manner that they deem appropriate. So, again, the clause, if amended in that way, would cause the Welsh Government a problem in the natural fulfilment of their powers.

The Government fully seek and intend to proceed in the spirit of engagement and co-operation with the devolved Administrations, and that will include the Joint Ministerial Committee. We should bear in mind that that committee has two strata that we are concerned with. The first is one with which the officials themselves are fully engaged; a lot of the issues that we are talking about regarding the Northern Ireland protocol are technical issues that will be dealt with primarily at official level. The second is the ministerial level at which decisions can be taken. The powers themselves are deemed to be essential and are required to implement the protocol.

I will try now to address some of the specific points raised by noble Lords today. The first, which is the most important, is the question of why the Government do not seek to use a Section 109 Order in Council. A number of Peers raised this point, suggesting that it is the correct way. I too was curious and sought specific advice on this. A Section 109 order can be used where appropriate to make amendments to Schedules 7A or 7B to the Government of Wales Act 2006. It would work in those areas. However, if amendments outside the scope of a Section 109 order were required, as updates to the protocol might require, it would not be possible to rely on a Section 109 order to make them. It is important to stress as we look at that that the Section 109 order would be adequate in only certain circumstances, not in all circumstances. Therefore, we cannot rely on that method to move forward.

There was also a question about other means that could be used. A question was raised by a number of noble Lords about whether powers to direct Welsh Ministers could be used to deliver this. Powers to direct are to compel acts in areas of devolved competence. Section 82 of the Government of Wales Act, which the noble and learned Lord, Lord Thomas, referred to, does not allow for amendment of the devolution statutes, which might be needed to implement the protocol.

So, again, this route is not available to the Government to address the matters that might result from the ongoing negotiation between the EU and the UK.

I am being corrected, so I will put this on the record. On the joint committee, I should have said that for meetings discussing NI-specific matters and where the Irish—not the Northern Ireland—Government are present, representatives from the Northern Ireland Executive will be invited. Let me be clear on that.

The difficulty we face in this regard is that we now have before us several elements that we need to keep focused on. We will need powers to change the elements required for the Northern Ireland protocol itself. On the question of the concomitant impact on the Scotland Act or the Wales Act, the reason we have been so clear on this is that they will potentially be affected as elements of the negotiations unfold. That is why there needs to be an opportunity for them to be amended in the focused area, as required by the Northern Ireland protocol. They cannot be amended in a wholesale manner, whereby they could be repealed, revoked or amended beyond their constitutional necessity. That is why I was very clear in a letter that I wrote that the important point to take here is that these themselves can be addressed only via the need to institute the elements of the Northern Ireland protocol.

I am fully aware that this is an important issue and that people in Northern Ireland, Wales and Scotland are looking at this with some interest. The reality is that over the next few months we will have a serious negotiation on the future relationship between the UK and the EU, particularly on the Northern Ireland protocol. That will impact on the whole of the United Kingdom and all its manifest elements. However, I am also aware that I might not have fully satisfied your Lordships. If I have not, your Lordships might wish to take the mood of the House, because I will not be able to return to this matter at a later stage.

Lord Howarth of Newport: Before the Minister sits down, will he explain why the very extensive and potentially arbitrary powers the Government propose to take under Clause 41 are not subject to the affirmative procedure?

Lord Duncan of Springbank: I had a note on that. I will have to write to the noble Lord, because I am not sure that I can put my hands on that particular matter at this second. If he will allow me, I will come back to him on that. The point is that the amendments we are talking about concern Clauses 21 and 22, not Clause 41, which would not be amended by these particular amendments.

Lord Thomas of Cwmgiedd: Before the Minister sits down, could he possibly give some illustration of the kind of provisions for which he and his officials feel it would be necessary to use these very extensive powers that cannot be done under the various sections of, for example, the Government of Wales Act, to which we have referred? Can he give some assurance about what they are? Are they merely technical issues or are they further? It seems extraordinary that, when there are these detailed powers and it is asserted that they are insufficient, no illustration can be given as to why they are necessary.

5.45 pm

Lord Duncan of Springbank: The noble and learned Lord raises a point that needs to be addressed head-on. The point is that we know that the existing powers whereby we can direct Welsh Ministers, or by using a Section 109 order, might well be inadequate for certain elements of the types of negotiations we anticipate. The problem we would have is that, if we place in the Bill all those aspects that we anticipate, we will run into some difficulty. They are primarily technical in nature, as might be expected in a negotiation of this complexity. The purpose of the powers is therefore to ensure the technical alignment of the various elements as we go forward to implement the Northern Ireland protocol. The ambition to do so will be done using the various instruments already available to us, including the Joint Ministerial Committee, which is primarily a method whereby we can examine the technicalities. The negotiations that will unfold will be technical and it might well be that out of that will emerge no elements in which we will need to invoke these powers—but, if we do need to do so, in areas where we anticipate that the current means to do so are not available, we would need to have these additional powers to move this matter forward.

Lord Morris of Aberavon: I might be a slow learner, but, following the point made by the noble and learned Lord, Lord Thomas, I would like to know which specific points cannot be dealt with by a Section 109 order.

Lord Duncan of Springbank: I cannot give the noble and learned Lord the answer to that question, but I can give him the assurance, from speaking to my legal advisers, that in the negotiations that will unfold there will be areas that we think will be under discussion that might stand outside those areas I have touched on regarding Section 109 and the ability to direct Welsh Ministers.

Baroness Finlay of Llandaff: Before we finish this, I understand that the Minister cannot foresee all the issues that might arise, but what mechanism is there to ensure that, the moment something comes up that will clearly involve the specific competencies, responsibilities and regulations held by the Government of Wales, the Welsh Government will be involved from the outset—however much behind the scenes—and will have early warning that something might be coming down the road and that the Henry VIII powers might be used? The track record to date is not very reassuring.

Lord Duncan of Springbank: The noble Baroness is right to draw this to our attention. It is not the Government's plan in any way to seek to surprise any of the devolved Administrations on these matters. It will be necessary, as matters arise from the negotiation's focus on the Northern Ireland protocol that have an impact on Wales or Scotland, to ensure full dialogue with the Welsh, the Scots and the wider Northern Ireland community to ensure that they are fully aware of why these matters are necessary.

The structure that we have traditionally used is the Joint Ministerial Committee. As I said a few moments ago, our purpose is to ensure that the technical discussions

[Lord Duncan of Springbank]
are dealt with primarily at the level of technicians, to enable us to find the correct way to ensure we are in full conformity with our international obligations in good time within calendar year 2020. On that part, the Government will fully commit early and engage often on these matters to ensure there is neither a surprise nor a disappointment in these matters. Again, I stress that these are elements that will be required to deliver the Northern Ireland protocol itself. It will not be in any way an endeavour to try to reach beyond, into the current statutes within the Wales Act or the Scotland Act. That is not their purpose, and indeed they cannot do that.

Baroness Hayter of Kentish Town: I thank the Minister, but he is struggling. I have three points to make.

First, this is political. The Minister knows jolly well that he should be making these amendments, and No. 10 is telling him that he cannot. He must have heard from across the House that there are serious concerns about two elements. One is regulation-making powers, and the other is this very important one concerning Wales in particular, as we have heard from the Welsh accents today. A Government who had not been told by No. 10 to make no changes would have made some changes, and I regret that the Minister finds himself in that position. His answers are, frankly, inadequate. He says that this is all going to happen in 2020, but if I am right—and I look to be reassured that I am—there is no sunset clause on these powers, so we are not just talking about this year. We are talking about powers going well into the future.

As the Minister has heard, there is deep concern in your Lordships' House about the Henry VIII powers and the ability to amend an Act and bring matters such as criminal offences or setting up public bodies which otherwise could be done only by an Act of Parliament. We have heard concern from the noble Lords, Lord Tyler and Lord Howarth, and the noble and learned Baroness, Lady Butler-Sloss, who used the word "unacceptable." She said that there are no curbs on these powers. The noble and learned Lord, Lord Judge, took us back to Magna Carta—before my time—and the importance of things such as taxation not being done by ministerial fiat; and that is what we are being asked to give here. That is one side of it. As the noble Lord, Lord Beith, said, keeping that boundary between what Parliament can do and what a Minister can do is key.

The second aspect is Wales. Maybe it is because the Minister is Minister for Northern Ireland and Scotland but not for Wales—or, he is indicating, for only a little bit of Wales—that he does not understand. He has the father of Welsh devolution here, the noble and learned Lord, Lord Morris. It is worth hearing about how it was implemented and about the trust, or lack of trust, at the moment. Here we are, a day before the Government ask Wales to give its legislative consent to this Bill, being told that the Government want to do things without the consent of Wales because of some spurious things that Section 109 does not go far enough on—although we have not heard examples—or because the international direction is not covered, even though the protocol is an international obligation. The most regrettable thing is that the Minister is saying, "Take me out: do this by a vote," because he will not bring back an amendment at Third Reading. That is the sign of a closed mind. I regret that.

I am not, sadly, going to test the opinion of the House, but I leave the Minister with the words of warning from, I think, the noble and learned Lord, Lord Judge: test us on this, and we will vote down those affirmatives. That would be much more serious in the long term for the way government works, and I really do not advise that. But for the moment, I beg leave, with great sadness, to withdraw the amendment.

Amendment 3 withdrawn.

Amendments 4 and 5 not moved.

Amendment 6

Moved by ***Baroness Ritchie of Downpatrick***

6: Clause 21, page 25, line 30, at end insert—

"8D Power in connection with Ireland/Northern Ireland Protocol in withdrawal agreement: supplementary provision

(1) Regulations under section 8C(1) must enable businesses in Northern Ireland to continue to be able to sell their qualifying goods to Great Britain without tariffs, origin requirements, regulatory import controls, dual authorisations or discrimination in the market, regardless of whether they trade directly with Great Britain or trade via Dublin port.

(2) Any regulations made under this Act or any other Act that would introduce new requirements on goods traded from Northern Ireland to Great Britain (including, but not limited to, import customs declarations or origin checks) may not come into force without the consent of the Northern Ireland Assembly.

(3) Regulations under section 8C(1) may not provide for additional official or administrative costs to be recouped from the private sector.

(4) Regulations under section 8C(1) must provide for mitigations to safeguard the place of Northern Ireland businesses and consumers in the UK internal market in accordance with the Government's obligation, under Article 6.2 of the Protocol on Ireland/Northern Ireland, to use its best endeavours to facilitate trade between Northern Ireland and other parts of the United Kingdom."

Baroness Ritchie of Downpatrick (Non-Afl): My Lords, Amendment 6 is in my name and in the names of the noble Lord, Lord Hain, and the noble and right reverend Lord, Lord Eames.

There is a sense of déjà vu about this debate, because last week in my absence—which I apologise for, but it was due to a family funeral—this debate took place in Committee stage. This amendment is a consolidated amendment, or a consolidated clause, made up of about three of those amendments. The amendment requires regulations made under Section 8C(1) of the European Union withdrawal Act, to facilitate access for Northern Ireland firms to the GB market, as well as requiring consent from the Northern Ireland Assembly for the introduction of any new checks on goods traded from Northern Ireland to GB.

Many of us from Northern Ireland—and not from Northern Ireland but noble Lords none the less—have met the business interests in Northern Ireland, and their main, abiding concern is to ensure that there is unfettered access for businesses from Northern Ireland to GB. Why would that be the case? They do not want tariffs; they do not want import controls; they do not want dual authorisations or discrimination in the market. There is a necessity, therefore, to provide for mitigations.

Why is this necessary? This is necessary to protect Northern Ireland business, which trades in large part with colleagues—for want of a better word—in Great Britain. If any restrictions are placed on that, it will cause untold damage to those businesses at a time when the Northern Ireland Executive and the Government are trying to ensure the reform of the Northern Ireland economy to increase job creation and to ensure that, in the fullness of time, there may be a lowering of corporation tax—all to underpin our local economy, which is vitally important. I find it unbelievable that the Government do not want to bring forward that legislation or these amendments, or do not consider it appropriate, particularly at a time when the Northern Ireland Executive have been restored.

It is interesting that today the Northern Ireland Assembly declined to agree to the legislative consent Motion which deals with certain aspects of the withdrawal Bill relating to Northern Ireland. I saw statements from the various political parties. There is striking new unanimity on this issue of unfettered access, as was displayed last week in this House—across all parties and none—and across all parties in Northern Ireland, and above all in the business community. They wrote to noble Lords on Friday afternoon saying that the amendments before us this evening, in my name and that of the noble Lord, Lord Hain, and the noble and right reverend Lord, Lord Eames, and the other amendments in the names of the noble Lord, Lord Morrow, have the support of all the main political parties and of the broadest representation of the Northern Ireland business community. This level of common purpose and collaboration is unprecedented. The intention is to ensure that Northern Ireland businesses are supported and protected to continue trading unfettered and with no additional costs as full and valued members of the UK internal market.

I was not at the debate last week, but I listened on BBC Parliament. Some might think that was a rather sad thing to do, but this issue is of such vital importance to business and the wider community in Northern Ireland that direct participation is necessary. The noble Lord, Lord Hain, very ably put forward the explanation for those technical amendments, and, as a former Secretary of State for Northern Ireland, he is well equipped to understand not only the political machinations but also the political difficulties that can ensue if things do not work out.

The document that was agreed by the five parties and the British and Northern Irish Governments says:

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

Noble Lords will forgive me if I am a little sceptical about that.

First, I want to know how much and what work has been done with businesses, because I have talked to them. I also want assurance from the Minister, the noble Lord, Lord Duncan of Springbank, that immediate discussions and meetings will take place with those businesses, the Northern Ireland Executive, the Northern Ireland Assembly and the leaders of the political parties in Northern Ireland to ensure that this is given effect. If it is not, and if the Government do not see fit to do so at this stage, what is the timeframe for those references to legislation? Also, will this be done through primary legislation, statutory regulation or—that old chestnut we faced for years in Northern Ireland—an Order in Council, which you cannot amend?

6 pm

We need to know about all these issues because one thing is sure: we have a very delicate political framework in Northern Ireland; we have businesses that are crying out for help—not a hand-out—and that help means that they need unfettered access to the GB market for all their goods and services. In discussions earlier, I mentioned to the Minister the issue of fish caught in the British section of the Irish Sea, by fishermen from the County Down ports, but landed in Whitehaven and then either processed there or taken back to the County Down ports. The fish producer organisations are of the firm belief that they will have to pay tariffs, so there are east-west and west-east considerations there.

At the end of the day, it would have been better if the Government had legislated on unfettered access at this time. Like the noble Baroness, Lady Hayter of Kentish Town, I feel that, in the main, the reasons for not doing so are largely political—obviously, Downing Street does not allow it, but maybe the noble Lord the Minister would like to do it. I would like to see a change of heart on the Government's part to support our fledgling, new Northern Ireland Executive and underpin businesses and the local economy in Northern Ireland. I beg to move.

Lord Hain (Lab): My Lords, I support the excellent speech of my noble friend Lady Ritchie of Downpatrick. I remind the House that I spoke at some length and in detail in Committee last Tuesday, so I will speak only briefly in support of Amendment 6 and do so with increased urgency.

Since last week's debate on essential damage limitation amendments to the EU withdrawal Bill—I remind the Chamber that they have the support of the entire business community and, as the noble Lord, Lord McCrea, pointed out last week, not just cross-party but all-party support in Northern Ireland—the Chancellor of the Exchequer has confirmed what many of us had long believed: that the Government are hell-bent on an ideologically hard Brexit that could do untold damage to the small and medium-sized enterprises that make up the overwhelming bulk of businesses in Northern Ireland.

When he told the *Financial Times* last week that there will be no regulatory alignment with the EU after Brexit and insisted that firms must "adjust" to new regulations, the Chancellor blithely said that businesses have had since 2016 to prepare. However, businesses in Northern Ireland were not presented with the Northern

[Lord Hain]
Ireland/Ireland protocol until last November, just a couple of months ago. How on earth are small and medium-sized businesses, which are the cornerstone of Northern Ireland's private sector economy, supposed to adjust in only 11 months to a unique and complex set of relationships with the internal UK and EU markets —and just when the Northern Ireland economy slowed last year because of a contraction in the private sector?

When the Secretary of State said in terms in the other place that the Assembly and the Executive should take greater responsibility for Northern Ireland's economic and financial future, I doubt that many here, or indeed in Northern Ireland, would say he was wrong, but the Government cannot have it both ways. They cannot demand that and at the same time inflict serious damage on many private sector businesses through erecting obstacles to trade across the Irish Sea and through their hard Brexit policies.

As was stressed by speaker after speaker from all sides of the Chamber last week, these amendments are essential to protect the very businesses that the Government say they want at the core of Northern Ireland's economic future. They are intended simply to put into law what the Government profess to support: that there should be no impediments to trade in both directions across the Irish Sea.

The Minister wrote to noble Lords offering what I am sure he hoped would be reassurance on the issues raised here, but we are not remotely reassured. To be frank—I say this as an admirer of the Minister—the letters were full of warm words and elegant waffle. The core message was, "Don't worry. Trust us and it will all be all right on the night." But business leaders and politicians in Northern Ireland do not want mere reassurance. They want action and they want it without delay, through either accepting Amendment 6 or the Government coming up with their own mechanism in law that will have precisely the same effect.

I have huge admiration for the Minister. I know that he is in a difficult position because No. 10 is flatly refusing to listen and accept amendments, but that is not acceptable. Businesses in Northern Ireland should not be sacrificed on the altar of government dogma and be forced to incur obstacles and charges when trading both ways across the Irish Sea.

Lord Eames (CB): My Lords, I added my name to that of the noble Baroness, who spoke so eloquently on this subject this afternoon, for one reason: throughout my professional life, I have come to value the core of Northern Ireland life through its business community. In many cases, those businesses were small. They are the heartbeat of the Northern Ireland community. Given the sensitivities of our situation both politically and economically—politically because of the sensitive nature of reaching the recent agreement, which we all welcome—and of our geographical position, having on our shore what is soon to become the border between the United Kingdom and the European Community, there is no better word than "sensitivity" to be adopted regarding the wording of the amendment.

During the lengthy debate in Committee, I coined the phrase "the reality of reassurance". Behind what has already been said this afternoon, that remains the key reason why we make a strong plea to Her Majesty's Government to take seriously not just the amendment's wording and technicalities but the motive behind it: the reality of reassurance. No one can tell how this will develop once Brexit is a reality. The noble Baroness quoted the letter that came to us from right across the business community, which is united in making a plea for this reality of reassurance. At this stage, I simply say this: I realise the difficulties faced by the Minister and I accept the sincerity of his position, but I urge the Government to realise that there is a lot more to this amendment than simply technical phrases.

Lord Morrow (DUP): My Lords, I shall speak to Amendments 8 to 11, which stand in my name and that of my noble friends Lord McCrea, Lord Hay and Lord Browne. These amendments and the amendment moved by the noble Baroness, Lady Ritchie, are very similar. Indeed, some might say that they overlap slightly, but I think that is no bad thing because of the situation in which we find ourselves.

I speak as a unionist and a supporter of the leave cause. We are clear that the withdrawal agreement does not get Brexit done, but that is to be proved. It merely creates an opportunity to get it done for Great Britain, but not for the United Kingdom. The final agreement will determine whether it is done for Great Britain and the United Kingdom. I will be happy to be proved wrong on this occasion, but I suspect—I say it myself—I will not be proved wrong.

The withdrawal agreement leaves Northern Ireland behind in the single market and, despite the legal technicalities, inside the EU customs union. The vote to leave was a vote not of Great Britain but of the United Kingdom. It does not respect the referendum result. There was never any discussion about the difficulties of a land border. The European Union dismissed all solutions, and, shamefully, many used the implicit threat of republican violence to make it appear unsolvable. The result was not to solve the trade and customs issue but to move the problems from the UK-Irish border to inside the UK.

The EU can hardly now approve a series of alternative arrangements that it spent three years dismissing as unworkable and undeliverable without admitting it was disingenuous on the land border. The act of putting a regulatory customs and tariff border between Northern Ireland and Great Britain did not solve the trade problems; it multiplied them. Great Britain is Northern Ireland's largest market, and something like 70% of Northern Ireland's retail goods come from Great Britain, so these potential checks will be more harmful than if they were at the land border.

The Prime Minister has given many interviews and there were commitments in the Conservative manifesto saying that our concerns are mistaken. I hope we are mistaken, as I said earlier. If we are, there can be no difficulty in putting those words and commitments into law. It would add a further layer of confidence that, in any breach or failure to fully implement the Prime Minister's words and his Conservative Party's manifesto commitments, it should not be Northern Ireland businesses and consumers who pay for that failure but the Government.

In the coming year, there is not one negotiation but two: the UK-EU free trade agreement and the Joint Committee working on the Ireland-Northern Ireland protocol, which has often been spoken about here today. This measure in law would reinforce and bolster a strong negotiating position in a joint committee. The Government's comments to address the concerns of Northern Ireland at the next stage of negotiations are being given practical action with legal weight.

I turn briefly to Amendment 9. The United Kingdom internal market is vital for the well-being of Northern Ireland, as others have said. We trade more with the rest of the UK than with the rest of the world. As a unionist, I do not want to see any barriers to trade placed inside my country, but from a practical, economic point of view it harms Northern Ireland to have any impediment to internal trade with the United Kingdom. This amendment attracted not just cross-party but all-party support in Northern Ireland. That has already been stated, and it cannot be stated often enough. That level of support is rare in itself, but on Brexit it is unprecedented.

The recently published *New Decade, New Approach* ushered in the restoration of devolution a little more than a week ago. It states:

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

This amendment can put that government commitment into action. Furthermore, the Government have stated that there will be no negative impact on Northern Ireland businesses. The only way to demonstrate that is to carry out the assessment called for by this amendment. It will ensure that there is ongoing monitoring, not just a one-off snap-shot.

6.15 pm

Amendment 10 again will ensure that the Government put action behind their words. Everyone can welcome the Government's commitment to the UK internal market, but action is needed to back it up. No one in the Government could oppose putting the Conservative Party's manifesto into legislative effect. The Government's assessment has identified the problems that would be caused by the Northern Ireland protocol. This amendment allows a route to be pursued that can negate those problems by ensuring that the protocol does not continue to apply.

One of the greatest benefits of leaving the European Union is the ability for the United Kingdom to move forward with trade deals. The problems of securing EU-wide agreement on such deals are well known. Leaving the European Union gives the UK the ability to leave the cumbersome vehicle of the European Union behind and secure economic advantage through trade deals. As part of the United Kingdom, if we are truly to leave the European Union as one country, Northern Ireland should be able fully to participate in such trade deals. Amendment 11 will assist that. Trade is one of the key planks within the United Kingdom that binds us tighter as a nation.

Lord Empey (UUP): My Lords, last week in Committee I supported the amendments in the name of the noble Baroness, Lady Ritchie, and others. It is only due to me being late getting to the office that my name is not on this amendment, but I support it nevertheless.

The Minister did his best in his letter. The only thing missing from it was a poetical quote; otherwise, he pretty well exhausted every lever at his disposal to make a silk purse out of a sow's ear. I congratulate him on attempting to do it.

I have always felt, and have said to colleagues, that the key to what we are discussing today will evolve as we go through the rest of this year. The necessary parts of the negotiations will ensue, and we will see what happens. The Minister was kind enough to quote my widget example in his letter. It was merely to illustrate the enormous complexity and difficulties, and it does not immediately occur to me how we solve them. We spoke to the business community. Reference has been made to the letter that was sent to the Minister on 17 January. Not only is such a letter unprecedented, but I think it is worth mentioning who has signed it. It states:

"The amendments that have been laid down"—

those are the amendments we discussed in Committee—

"have the support of all the main political parties … and the broadest representation of the Northern Ireland business community. This level of common purpose and collaboration is unprecedented."

It is.

"The intention of these amendments is not to seek subsidy or hand-out but, rather, to ensure that Northern Ireland businesses are supported and protected to continue to be able to trade unfettered, and with no additional costs"—

that is an important factor, because that goes directly to competitiveness—

"as full and valued members of the UK's internal market."

That was signed by the FSB, the CBI, the Dairy Council, the Freight Transport Association, Hospitality Ulster, the Institute of Directors, Manufacturing NI, the Mineral Products Association Northern Ireland, the Northern Ireland Chamber of Commerce and Industry, the Northern Ireland Food and Drink Association, the Northern Ireland Meat Exporters Association, the Northern Ireland Retail Consortium, Retail NI and the Ulster Farmers' Union. To get all those bodies to sign anything with all the political parties is quite an achievement. The Minister must be very proud of what he has achieved in provoking that. But we are not simply politicking here; we are trying to speak on behalf of an entire community.

References have been made to the new Executive and how they should be engaged. We warmly welcome the fact that they are in place and, one hopes, will be able to speak on behalf of the community and get our message across. Many of us have been extremely worried over the past few years, because during these negotiations the people of Northern Ireland have effectively had no one to represent them. That has been a huge tragedy, and a lot of the mistakes that have been made have, in part, been linked to that. Despite repeated requests, there was little or no significant impact from Northern Ireland's voice, because it was not at the table, where it was needed.

[Lord Empey]

I hope that when the Minister replies he will understand that and understand the competitiveness issues involved. He has to acknowledge that, as we sit here today, there are not on the table the practical solutions that will allow unfettered access. Our anxiety is that those solutions may not be there and that in a year's time "unfettered" will become "fettered"—that there will be differences, competitiveness issues and costs. I sincerely hope that the Minister is able to square the circle when he concludes this debate. I support the amendment in the name of the noble Baroness, Lady Ritchie.

Lord Bruce of Bennachie (LD): My Lords, I, too, support the amendments. Having spoken in support of the principle last week, I shall be brief.

It is fair to say that this and the previous group of amendments are based fundamentally on a problem of trust with the Government. The Minister has given us detailed assurances as far as he is able, but the words of the Northern Ireland protocol and the assurances given by the Prime Minister do not seem to square with the facts. Understandably, therefore, it is difficult for people in business to feel comfortable that "unfettered access" means what it says. The noble Lord, Lord Empey, has indicated that there is a question over that. For example, being based in Northern Ireland, you may well have access to the Great Britain market but you may still have to fill in a customs declaration. That is a fetter and a tie, and it involves a cost. There is also the issue of at-risk goods, which may or may not cross other borders and will perhaps have to be separated out. That will involve an administrative cost and will be a problem. The Minister is fully aware that businesses in Northern Ireland—many of them small, as has been said—are facing Northern Ireland being half in and half out of both unions: half in and half out of the UK, and half in and half out of the EU. If anything is a recipe for confusion, that is it.

The point that the noble Baroness's amendment makes is, given that in reality it looks as though there will be rules and regulations that change and that will have implications, what is required is a guarantee that businesses in Northern Ireland will be compensated or covered for that so that they will not be worse off. Many of us see a real intellectual challenge as to whether that is even practically achievable within the proposed framework. The Minister is not allowed to accept amendments to demonstrate good faith. He writes extremely detailed and genuinely constructive letters but they are not law, and that leaves us in this rather uncertain scenario.

To be absolutely blunt—I think that the Chancellor's interview with the *Financial Times* last week made this clear—the hardliners are in charge. What is being practised is a hard Brexit and Northern Ireland is almost like a nut in a nutcracker. Many people feel that Northern Ireland is not the Government's top priority in "getting Brexit done": there is a worry that it is expendable.

The Minister needs to understand that behind these amendments is a genuine concern—even a fear—that all the assurances being given will be very difficult to square with the realities of the Brexit we will get, in terms of both how we withdraw and the future agreement. There needs to be a real and positive recognition that Northern Ireland cannot be left to be squeezed in between all that. If the United Kingdom means anything and if the commitments mean anything, Northern Ireland deserves those assurances, which is why these amendments have been tabled.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, I support the amendments in the name of the noble Baroness, Lady Ritchie, and those of my noble friends, to which I have added my name. The Minister knows that in discussions my colleagues and my party supported Brexit. We did so believing and agreeing that Northern Ireland would leave the EU on equal terms with the rest of the United Kingdom. However, what is proposed certainly does not do that.

Over the years, those running businesses in Northern Ireland have faced many challenges. Indeed, for 30 years they faced the bomb, and they did so with great courage. We ought to salute them in coming through those years of terror and tragedy. However, we had hoped that those challenges had been left behind and that the door would be open for prosperity. There was great hope for the future for the generations to come. However, we now find that businesses face further challenges.

I am reminded of the words in the document that was presented to the parties in Northern Ireland. In fact, I can still see the Secretary of State for Northern Ireland and the Foreign Minister from the Irish Republic standing at Stormont presenting the document and practically saying, "Take it or leave it". That document contains the clear statement that,

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

However, what is proposed does nothing of the sort.

I appreciate that the Minister did his best in the letter that he sent to us but there is no cast-iron guarantee that fulfils what is promised in that document, *New Decade, New Approach*. I listened very carefully to the debate that exercised many noble Lords a short while ago and noticed that the Northern Ireland protocol and the problems it has caused were emphasised over and over again. However, the reality is that that is because of the sorry state that the Government got themselves into when they negotiated the protocol, and now Northern Ireland is left as a pawn in the game.

Last week, the EU's chief Commissioner confirmed the checks and controls between Britain and Northern Ireland under the agreement that will govern the UK's exit from the EU. As the noble Lord, Lord Hain, has already mentioned, the Chancellor of the Exchequer said in his statement that there will not be regulatory alignment with the EU after Brexit and that firms will simply have to adjust. That throwaway statement is not worthy, bearing in mind the question of quite how businesses in Northern Ireland are simply to adjust. The small and medium-sized enterprises are left confused and deeply worried about the future.

Can the Minister categorically guarantee that there will not be a raft of checks and controls placed on the movement of goods to and from Northern Ireland and Great Britain? Does he acknowledge that, if any

of these were a reality, there would be a barrier to trade and Northern Ireland businesses would be at a competitive disadvantage in both the internal UK market and the EU? Additional bureaucracy will only add to the financial burden placed upon those small and medium-sized businesses that are least able to afford it. As the noble Lord, Lord Hain, said, they have been the backbone of the Northern Ireland economy.

6.30 pm

This Government need to listen to the ordinary business men and women on the ground, no matter how great the majority in the other place. Failure to do so will inflict great damage upon the economic future and prosperity of Northern Ireland. Our amendment asks that

"the Minister or public body must ensure that the cost of implementing, enforcing or complying with these"

regulations

"does not fall on Northern Ireland public bodies, businesses or consumers."

Can he give us that promise: that the cost of implementing any of the regulations within this legislation will not fall upon the businesses in Northern Ireland?

Lord Murphy of Torfaen (Lab): My Lords, it has been a very good debate, not least because this is the first time in decades that we have heard in this Chamber from both nationalist and unionist representatives in the House of Lords. It is also many years since they have agreed—and that is good. I am delighted to say that we will support the amendment in the name of the noble Baroness, Lady Ritchie, because it sums up the position of unanimity in Northern Ireland. It sums up the point referred to by the noble Lord, Lord Empey, that every single business organisation, commercial organisation, trade union and politician in Northern Ireland believes that the substance of these amendments is correct.

It is a matter of mere hours since the Northern Ireland Assembly—happily back again this week—this afternoon passed a Motion declining legislative consent to this Bill, largely because of the issues that we are now debating. That is very unfortunate. On the points made by noble Lords regarding the decision of the Prime Minister and the Government not to accept any amendments at all, I suspect that this has caused the Northern Ireland Assembly to do what it has done. I am sure that that is not the Minister's view, but he has to do what he has to do. The Government have a majority of 80 and the power to do what they want; but whether they have the right to do that is quite another thing, certainly with regard to Northern Ireland.

However, should we find that the amendment is not agreed to, Annexe A to the *New Decade, New Approach* agreement published last week says that the British Government commits that

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

So, we hope that the Government will revisit this. We will look at the strength of feeling in Northern Ireland. We will be able to look again in the course of the next nine months or more; indeed, when the trade deal is being negotiated, we will look very carefully at the implications for Northern Ireland as they have been outlined today.

Before concluding, I will make one final point in relation to the previous debate on devolution. We now have three functioning devolved Administrations in the United Kingdom. I am not convinced that the Government have understood the significance of that change in the political landscape. Yes, of course we have to implement this Bill, because the people have agreed by referendum, and now by election, for it to happen. But, at the same time, the Government should do this in co-operation with the devolved Administrations and Parliaments.

There is no evidence that this is happening. Worse, if the Welsh Senedd, or Assembly, decides soon not to give legislative consent to this Bill, as is likely, then Edinburgh, Cardiff and Belfast will all have declined to support it. That is not good. It is not good for democracy or for our leaving of the European Union. So I look forward to some interesting comments from the Minister on how he can assuage the concerns that have been raised at this afternoon. This is one of the most important issues affecting Northern Ireland—its economic, commercial and business future. We all look forward to listening to him.

Lord Duncan of Springbank: My Lords, noble Lords may be looking forward to hearing my response rather more than I am looking forward to giving it, if that helps. I will try to address some of the specific points raised but will also make some of the more generic points that I must make; that is something I need to be clear on.

I will start by saying where I believe we are in agreement. We do not want to see a hard border on the island of Ireland; we are in clear agreement on that. We also recognise that Northern Ireland is, and must remain, an integral part of the UK internal market. It is important to stress that this means that there shall be no impediments to the trade between Northern Ireland and Great Britain. The noble Baroness, Lady Ritchie, asked about fishermen, and gave the example of Northern Irish fishermen fishing in British waters, landing on the coast of England and then returning to Northern Ireland. There should be no tariffs at all at any one of those process stages; it is important for me to stress that. If the noble Baroness permits, I would be very happy to sit down with representatives of the fishermen of Northern Ireland to discuss this further. I will reach out to Alan McCulla of the ANIFPO body to try to make that happen. I should say "I or my successor," depending on the outcome of the reshuffle.

It is important to recognise also that there is a new kid on the block; that is true. There is now an Assembly in Northern Ireland and an Executive. It will be important in the calendar year ahead that the voices there are heard loud and clear in the ongoing negotiations that will take place under the arrangements with the joint committee. That will be absolutely essential.

I am also very aware that the business bodies that have written have come together across almost every aspect of the wider economic sectors of Northern

[Lord Duncan of Springbank]
Ireland to write as one. It is important that we do not lose sight of what that means. The noble Baroness, Lady Ritchie, asked when we would be engaging with these bodies. To a large degree, we have been doing so under a different guise, because there were different elements pre last weekend. But it is now time to say that we need to turbocharge that dialogue. There needs to be a serious dialogue with everybody affected by this reality going forward. It should be not a one-off chat but a dialogue that recognises the evolving situation in the ongoing negotiations as they impact on Northern Ireland.

The important thing to stress in this instance is that our commitment as a Government to Northern Ireland's place in the union is absolutely unwavering. As I said the last time that I addressed these matters, both the manifesto of my party, which was endorsed by the people, and the personal remarks of my right honourable friend the Prime Minister, have given a very strong commitment that we shall ensure unfettered access in the calendar year ahead. It is important also—

Lord Reid of Cardowan (Lab): With the leave of the House—as I was called away just after the speech by the noble Baroness, Lady Ritchie, and therefore missed part of the debate—I want to put a simple question to the Minister. Does he not yet realise that he is the unfortunate victim of the Prime Minister's propensity to promise people that they can have their cake and eat it? In short, he promised that there would be unfettered access between the British mainland and Northern Ireland and that there would be unfettered access between Northern Ireland and the Republic of Ireland. It does not take a genius to work out that that promise means that there will be unfettered access between the United Kingdom and Europe—which is impossible to achieve if we leave Europe. Would it not be better now to admit that, however hard they try, this will not happen? Otherwise, the disappointment in Northern Ireland will grow into disillusion and the disillusion will grow to bitterness, and that is where our problems will start.

Lord Duncan of Springbank: I welcome the noble Lord's introduction where he said he was making a simple point. In a sense, he has made a very specific point. The commitments that we have made to the internal market of the UK are strong, and the ongoing negotiations that will deliver the reality of both our free-trade arrangement with the EU and, specifically, the protocol for its delivery are yet to be had. What will be important is that the negotiation is conducted in good faith and, I hope, delivered as the expectations have been set out. If it is not so delivered then I think there will be disappointment and disillusionment, but I have faith and confidence that we will deliver them as we have said we will try to, and that is important to stress.

The noble Baroness who moved her amendment asked about the timetable of what will happen and how it will be done. It is important to stress that this will be done not by Orders in Council but by regulation. It is also important to stress that the—I almost used the word "backstop"; let us not use that word—end point in this scenario, which will be the end of this year, sets the point at which we must have on our statute book each of the functioning elements in order to deliver this particular commitment. Again, in this place and the other place there will be full engagement in those elements to deliver that particular legislative commitment and there will be full scrutiny, using all the normal procedures to achieve that.

I am aware, as I look at the reality, that I need to go into more detail about the specifics of the amendments. I need to stress the purpose here. That is difficult, in the light of the speeches made today and last week by the noble and right reverend Lord, Lord Eames, because it is very easy to get caught up in the technicalities. While my speech is not quite warm words and elegant waffle—although I admire the fact that the noble Lord, Lord Hain, put the word "elegant" into the waffle description; that was very much welcomed—there are some technical parts that we have to emphasise in this regard to ensure that the protocol and the issue that we are discussing actually work in practice. However, to return to the noble and right reverend Lord's notion of the reality of reassurance, I am also aware that there is a reason why technocrats do not write poetry. When you are trying to talk about technical issues, it is very difficult to in any way soar to the heights of explaining a noble cause or a noble adventure. It is almost impossible for me to do that today, and I am quite sad that I cannot, but the notion of the reality of reassurance will be vital.

I will briefly interject a small aside: the noble Lord, Lord Bruce, mentioned "The Nutcracker", one of my favourite ballets. The story has been described thus:

> "The nutcracker sits under the holiday tree, a guardian of childhood stories. Feed him walnuts and he will crack open a tale."

I am trying to work out whether I am the nutcracker or the nut. I have a suspicion that I am probably the nut in this analogy.

The challenge that we face is therefore to move forward on the specifics, so I am afraid I will have to divorce myself from any of the poetry available to me in order to look at that. First, Article 1 states that its provisions do not undermine the constitutional status of Northern Ireland within the UK. That goes to the point raised by the noble Lords, Lord McCrea and Lord Morrow. Article 4 is explicit that Northern Ireland remains within the customs territory. It is important to emphasise that Article 6 makes it clear that

> "Nothing in the Protocol shall prevent the United Kingdom from ensuring unfettered market access for goods moving from Northern Ireland to the rest of the United Kingdom's internal market."

Importantly, *New Decade, New Approach*, which the noble Lord, Lord Murphy, referred to, sets in place the timescale, timetable and dates by which we must be able to legislate to guarantee the delivery—again, 1 January 2021. The protocol itself also contains the outstanding decisions that the UK/EU joint committee will need to take. I touched on this in the earlier discussion that I had: although we can set out in some regards what we intend to achieve, it is a negotiation and it will be required to move forward on that basis.

As I said previously, it will be vital that the Northern Ireland Executive are invited to be part of the UK delegation in any meetings of the UK/EU specialised or joint committees discussing Northern Ireland-specific matters that are also being attended by the Irish Government as part of the EU's delegation. That is to ensure not just that the voice of the UK Government is heard there in a loud and booming tone but that the people who are affected by this are part of that open dialogue and discussion. It will be important for businesses in Northern Ireland to have trust not just in the UK Government in that process but in the Northern Ireland Executive.

6.45 pm

The problem that we have with Amendment 6 is the rigid definition of access for Northern Ireland goods to Great Britain at this stage without allowing this to be properly informed by the detailed engagement of businesses and the Northern Ireland Executive. We are very much trying to avoid setting out in the Bill specifics that we believe should be better informed by the very individuals who are now gathered together and reconstituted in Northern Ireland.

The other issue with Amendment 6 is that it would hand a veto to the Northern Ireland Assembly on any regulations made by the UK Government, including those in reserved areas. Noble Lords will appreciate that that is something that we could not countenance as it would undermine our ability to deliver, and it would be inconsistent with the devolution settlements.

Amendment 8 might limit our ability to effectively deliver unfettered access by creating real doubt as to what form the lawful exercise of the powers in Clauses 21 and 22 would take. That would have the effect of preventing the proper implementation of the protocol or compliance with other international obligations. Again, we come back to the technical elements of this rather than the higher-level elements.

Amendment 9 would require the duplication, on at least an annual basis, of much of the information in the impact assessment that the Government have already published in support of this Bill. The requirement of this kind of annual report would undermine the Government's ability to take an approach that fully considered the whole range of impacts at the right time. It is important to stress that we will not be shy of having information about this ongoing dialogue and debate because there is no way that we can deliver this, and the legislation that will underpin it, unless the other place and this place are fully informed about what it actually means in practice. Even more importantly, it is all very well for us to be informed but actually it is the businesses of Northern Ireland that will need to understand how this will work in practice, what it will mean for their balance sheet and what will happen in future.

Amendment 10 would limit the Government's flexibility in negotiations and could well result in a worse outcome for the UK. It is clearly not for Parliament to set a negotiating objective for the Government; that has to be the Government, and we would do so, as I have on this occasion and previously, in dialogue with those most affected. That will be absolutely critical.

On Amendment 11, I address my remarks specifically to the noble Lord, Lord Morrow. I assure the noble Lord that the Government absolutely share his commitment to the union. Northern Ireland's constitutional position in the UK is assured through the Belfast or Good Friday agreement and the Northern Ireland Act 1998. Nothing in the withdrawal agreement or the protocol will change that. As stated in Article 1 of the protocol, its provisions do not undermine in any way either the constitutional status of Northern Ireland within the UK or the principle of consent. It is clear that the only way that Northern Ireland's integral place in the union would ever be changed is if the people of Northern Ireland consented to that change. That in no way is undermined by this process.

I recognise that it will be difficult as we go forward and consider these high-level objectives. The simple statement "unfettered access" is so easy to say and yet will be the subject of very detailed negotiations. Those negotiations will ultimately be the test of the Government, and it will be a serious test for us to deliver not just against our manifesto commitments but ultimately against the words stated by the Prime Minister as a measure of our will and our desire to deliver this outcome.

I have heard the message from the businesses that have written as a collective and from the Northern Ireland parties that have come together in wishing to see the outcome of unfettered access delivered; on that, we are in agreement. The test for us all now is to ensure in the calendar year ahead that at each step of the way we have full involvement with the Northern Ireland Assembly and the Executive and full engagement with businesses as we begin to develop the negotiating elements of this, and that both Houses here are fully informed as the process progresses, as they need to be, in order to move it forward.

I would like to think that I had given the noble Baroness enough to withdraw the amendment but I turn my eyes gently towards the noble Lord, Lord Hain, and wonder if I have just given some more warm words that might not quite satisfy him in this regard. If indeed that proves to be the case—I see a gentle nod of his head—then I am afraid I will have to ask the noble Baroness to test the will of the House at this point because I will not be able to return to this matter on a later occasion.

Baroness Ritchie of Downpatrick: My Lords, there has been striking unanimity on the issue of unfettered access to the GB internal market for businesses in Northern Ireland. The Minister raised certain issues which will require further investigation and monitoring. I add this by way of caution: noble Lords will do this, to ensure that that piece of legislation is in place and meets the requirements of businesses in Northern Ireland to allow them to grow, develop and be nurtured. Due to the time this evening, rather sadly, reluctantly and under protest, I beg leave to withdraw the amendment.

Amendment 6 withdrawn.

Clause 22: Powers corresponding to section 21 involving devolved authorities

Amendment 7 not moved.

Amendments 8 to 11 not moved.

Clause 26: Interpretation of retained EU law and relevant separation agreement law

Amendment 12

Moved by ***Lord Beith***

12: Clause 26, page 30, line 13, leave out paragraph (b)

Member's explanatory statement

This amendment would remove the power of Ministers by delegated legislation to decide which courts and tribunals should have power to depart from judgments of the Court of Justice of the European Union and by reference to what test.

Lord Beith: My Lords, I rise to move Amendment 12. This amendment will not delay Brexit. It will not even delay this Bill, which is going to the Commons in any case. However, it will avoid a great deal of legal confusion and safeguard the independence of the judiciary. It reflects concerns held by the Constitution Committee, several members of which have taken part in the debates, including of course our chair, the noble Baroness, Lady Taylor. The background is that European Court of Justice case law will be relevant in interpreting retained European law. We recognised that in the 2018 withdrawal Act and made provision for it to be dealt with, so that the Supreme Court and the High Court of the Justiciary would be able to depart from EU case law when they thought it right to do so.

Clause 26 of this Bill gives Ministers very wide regulation-making powers to decide which courts can depart from CJEU case law. It could be any court, right down to the magistrates' court, the county court or the sheriff court. Through unamendable statutory instruments, Ministers could decide what test the courts should apply when considering whether to depart from EU case law. Ministers could effectively direct the courts to disapply case law in specified circumstances. Bear in mind that lower courts cannot bind other courts, so we will have conflicting interpretations and a lot more litigation as a result.

These are not appropriate powers to be exercised by regulation. They open the way to ministerial interference with the courts. If any of this needs to be done, it should be done in primary legislation. I would have been happy to see provision in the Bill to extend the powers in the 2018 Act to the Appeal Court and the Inner House of the Court of Session, for example. However, I have tabled these amendments on Report because last week's proceedings in Committee were inconclusive. I said then that when such serious concerns are raised by so many noble and learned Lords, including those with a lifetime of experience in interpreting the law, Ministers need to think again and respond.

I encouraged the noble and learned Lord, Lord Mackay of Clashfern, to use his skills when he spoke in the debate to think of ways in which we could get through this and to encourage Ministers to do so, which he certainly has. Amendment 14, his valuable amendment in this group, would be very helpful. It does not do all the things I sought to do by deleting some of these powers, but it would very much clarify the situation I am worried about, of lower courts making rulings which conflict with those of other courts. If the noble and learned Lord decides that he wants to press his amendment to a vote, in circumstances which I will refer to in a moment, I would be happy to make way by withdrawing mine in due course to enable him to do so. I hope he can make it clear to us when he explains his amendment whether that is the course of action he wishes to take.

I said that reconsideration was necessary. I believe that such reconsideration had taken place and that the noble and learned Lord, Lord Keen of Elie, was ready to move an amendment at Third Reading which would have met all our concerns. I have a copy of that draft amendment. The noble and learned Lord was expected to wind up this debate, but is no longer doing so. That seems very significant to me. I think he knows full well that the Bill as it stands would be a source of legal confusion and would lead to this danger of Ministers having the power to impose an unspecified new legal test on the courts, a test which could not be amended by Parliament. Parliament is about to make bad law which Ministers know to be bad. I am afraid that my conclusion is that No. 10 Downing Street is in a sulk because this House carried an earlier amendment to the Bill. The noble and learned Lord, Lord Keen, is an entirely honourable man who serves the House very well and is always a man of his word. I think his absence from the debate at this stage indicates that some exchanges in the Government have led to this House being asked to make law that it knows to be bad. I beg to move.

Lord Mackay of Clashfern (Con): My Lords, when we debated this clause in Committee, we looked at two key provisions: which courts should be able to look at this matter, and what the test should be. I was particularly concerned about saying what the test should be, because I regarded that as an interference with judicial independence—and I still regard it as such. If Parliament sets out the test, as it did in the 2018 Act, for the Supreme Court and the High Court of the Justiciary, that is the law and the courts can therefore take it and act on it. However, it seemed to me and a number of your Lordships that it was not proper for a Minister to deal with the judiciary in these circumstances. Having the Minister set what the test should be by regulation really should not happen. That was the conclusion of the debate in Committee, generally speaking.

When I thought over that, I concluded that we were blocking altogether what the Government were seeking to achieve. I therefore felt strongly that it was my responsibility, along with others, to see whether there was some other way of dealing with this problem. I have thought about it a good deal and, as I understand it, the Prime Minister said that he was in favour of every court being able to deal with this matter. I was anxious that my proposal should achieve that, if at all possible, because he had said that in good faith as part of his election campaign. Therefore, I felt that I should try to think up an amendment which gave that power. Amendment 14 does that because it allows any court in the United Kingdom to consider this matter and make a judgment on it. However, because of the nature of the judgment, there is a requirement that it be referred to the Supreme Court, which should have a power to grant the result, on condition that it has a power not to hear it if it feels that the application was not very substantial or very good, as it has for many appeals in the ordinary course of events.

I can see that having that sort of burden on the Supreme Court might be rather disagreeable. Therefore, it was quite reasonable to think of giving that power, the result of the reporting power, to the Court of Appeal in England—I think Wales and Northern Ireland would also be covered by that—and to the Inner House of the Court of Session in Scotland, which is its equivalent. The High Court of Justiciary would of course also have that responsibility in criminal cases. I am very open to negotiating how this should happen, but I venture to think it important that we consider this issue carefully. I hope that your Lordships may feel that we should pass this amendment.

7 pm

In the situation that we face, I would like to see this option laid before the House of Commons. I know, as we all do, that there is a strong majority for the Government in the Commons and it is therefore entirely up to them. But if we do not pass my amendment or something like it, the House of Commons has no way at all of dealing with this issue at this time. I am very much in favour of this House trying to help the Government to do properly what they want to do. That is what motivated me to put forward this amendment: so that they should have this opportunity.

Many of your Lordships have a lot of experience in this area. The noble and learned Lord, Lord Woolf, was pleased to suggest that I had some. I have certainly had the considerable duty of departing from a decision of no less a distinguished judge than Lord Wilberforce when I sat as Lord Chancellor in the Judicial Committee of the House of Lords, so I have been much in this area—long ago, of course, but the memory of it still stays with me. I feel strongly that if we do not pass this amendment, it will be difficult to make some progress on this aspect.

There is also the problem that the regulations which the Minister makes under the existing powers would have to be approved. I can see some difficulty arising in that area. My proposal would make the law come into effect immediately upon the provisions in the Act of Parliament being made the law. There would therefore be no delay, whereas I can imagine that considerable delay might arise if it is done by statutory instrument with doubtful powers. I commend Amendment 14 to your Lordships and to Her Majesty's Government as a way of achieving what I think the Prime Minister, in all honesty and good faith, said in answer to the question he was asked about this during the election campaign.

It is a pity for me that we have not succeeded in getting far with the Government in negotiation up to this point, but there is always the hope that something may happen. I certainly want to show as open a way to the Government as I possibly can to try to get on with this matter, which is important constitutionally, although it may not look that important to politicians generally. However, it is a very important part of our constitutional arrangement to secure the independence of the judges. I therefore intend to pursue this amendment, subject to what your Lordships may have to say about it.

Lord Pannick (CB): My Lords, I declare an interest as a practising barrister. I have signed Amendments 12 and 13, tabled in the name of the noble Lord, Lord Beith, but I am very happy to support the amendment in the name of the noble and learned Lord, Lord Mackay of Clashfern. The reason is that Clause 26 is fundamentally objectionable, because it would give the Minister a delegated power to decide which courts should be able to depart from judgments of the Court of Justice and what test those courts should apply. These are powers which step well over the important boundary between the Executive and the judiciary. They are matters which should not be decided by Ministers.

Perhaps I may briefly respond to the points made by the noble and learned Lord, Lord Keen, the Minister in Committee, because I anticipate that the noble Lord, Lord Callanan, will make the same points as his substitute today, as we have heard from the noble Lord, Lord Beith. The first point that the noble and learned Lord, Lord Keen, made was that we are not, as he put it, in "novel territory", because Section 6 of the 2018 Act has already looked at which courts should have this power. The simple answer is that what is novel is a delegated power for Ministers, which I have described.

The noble and learned Lord's second point was that there are safeguards because Clause 26 requires Ministers to consult the judiciary. That does not reassure me; it is still Ministers who will decide these important matters. His third point was that the power would, as he put it,

"be employed in a way that is consistent with our own constitutional norms and traditions".—[*Official Report*, 15/1/20; col. 691.]

I suggest that it is no answer to the conferral of unacceptably broad powers to have Ministers assure us that they will exercise those powers reasonably. The objection is to the powers being conferred on Ministers, because once they are conferred the political and legal constraints if they decide to act unreasonably are limited.

The noble and learned Lord's fourth point was that there are diverse views on the question of which courts should be able to depart from Court of Justice decisions, but this is not a new issue. We debated it at length on the 2018 legislation. Ministers have had plenty of time to consider whether the solution adopted in 2018 requires amendment. If Ministers want more time, and want to consult, the answer is not for them to take unacceptably broad powers. The answer is to bring a short Bill before Parliament, in a month or so, proposing such amendments—and then Parliament can decide.

These amendments raise issues of considerable constitutional concern and importance. As the noble Lord, Lord Beith, said, they have absolutely nothing to do with the merits of Brexit, the terms on which we leave the EU or the timetable for Brexit. It is, I suggest, our constitutional responsibility, when a Government bring forward a provision as constitutionally objectionable as Clause 26, to ask the House of Commons to think again. That is particularly so when, as the noble Lord mentioned, the Government have been in two minds—to put it politely—on this issue today.

Lord Howarth of Newport: The noble Lords and noble and learned Lord who have already spoken have advised us, rightly, that there are extremely important constitutional issues raised in Clause 26. They have dwelt upon the manner in which Ministers would trespass upon the proper responsibility of the judiciary.

[Lord Howarth of Newport]
I simply add the thought that by taking powers to deal with these matters under regulations, Ministers are also trespassing upon the proper responsibility of Parliament, because Parliament would not be able to give adequate consideration to what could be very important policy decisions by Ministers. They might be seeking to require the courts to consider different tests where environmental policy, or workers' rights policy and law, are concerned. These must be matters for Parliament to be able to consider fully and deal with in primary legislation.

The adoption of these powers by the Government would be doubly offensive in constitutional terms. The noble and learned Lord, Lord Mackay of Clashfern, has proposed a partial remedy at least that is, as always, both wise and practical. I simply say to the House that if we approve the amendment that he has tabled, and I hope we will, it is no more than damage limitation and does not undo all the mischief that this clause provides.

Lord Carlile of Berriew: My Lords, there are a few countries in the European Union, all in central Europe, where the independence of the judiciary has been under attack for the past two to three years, as is evidentially measurable. We in the United Kingdom, of all political persuasions and none, have repeatedly condemned what has happened in those countries. My understanding was that one of the reasons put forward for leaving the European Union was that we could revert to our own best traditions of the law, with judicial independence, with the rule of law guaranteed by it and with the separation of powers intact.

I am not one who subscribes to the view held by some that the present Government wish to undermine the independence of the judiciary. It would be inconsistent with the basic views they expressed in relation to leaving the European Union. However, if one reads Clause 26 carefully, one sees that, textually, it raises the possibility of the independence of the judiciary being interfered with politically. That is not acceptable, and I do not believe that in their heart of hearts—if they have a heart or a heart of hearts—the Government wished to achieve that end.

My legal practice, lasting the best part of 50 years, has, I confess, been less esoteric and possibly more worldly than those of some other noble Lords and noble and learned Lords in this House, especially those sitting on these Cross Benches. However, my years as a practitioner, both as an advocate and as a part-time judge, have led me to magistrates' courts all over the place, to county courts in parts of Wales whose names some of your Lordships would struggle to pronounce and to Crown Courts all over the country, including London. I have sat in some of those courts. Frankly, it fills me with concern that the Government would be able to determine by statutory instrument or ministerial fiat which of that huge number of courts would be able to make the determinations under discussion.

The proposal in Clause 26 undermines the consistency of decision-making and the importance of precedent—the principle of stare decisis—which have enabled barristers in ordinary courts around the country to know what the law is on sometimes very complicated issues and therefore to be able to make submissions to judges, who also know what the law is. What is proposed will remove that consistency and undermine the importance of precedent unless the decision-making on these issues is limited to a number of courts which are genuinely regarded as binding by the other courts; that is, as courts of record. If we are given the opportunity, my preference is that we should vote for the amendment proposed so brilliantly by the noble and learned Lord, Lord Mackay of Clashfern, and that the Government should then have the opportunity to amend that amendment before it comes back to your Lordships' House to include, as the noble and learned Lord suggested, the Court of Appeal and its equivalent in Scotland. I suggest to your Lordships that this is realistic, it is practical, it is certain, and it is probably what the Conservative Party really meant anyway before it was maybe trapped into a little bit of rhetoric which has gone wrong.

Lord Goldsmith (Lab): My Lords, I did not have the privilege of attending the House when Committee took place, but I have read every word of the debate on this clause. It is so powerful to see, I think, three former Lord Chief Justices, a former Lord Chancellor, a former Law Lord, the chairman of our Constitution Committee and other distinguished people speak perhaps not unanimously as to the right outcome but certainly unanimously condemning what the Government seek to do. We have heard it again today; I fully agree with what was said by the noble Lord, Lord Pannick, by my noble friend Lord Howarth and, of course, by the noble and learned Lord, Lord Mackay of Clashfern.

7.15 pm

The Bill cannot stay in this form, for the reasons given by a number of your Lordships. It will create uncertainty; it will create risks as to the independence of the judiciary. Almost the most powerful reason given in Committee was expressed by the noble Lord, Lord Anderson of Ipswich. I shall quote his words as an experienced advocate and legislator. He said that he would support the amendments even though

"these paragraphs and the legal uncertainty they unleash bring the prospect of endless work and riches as yet undreamed of".—[*Official Report*, 15/1/20; col. 680.]

To pass legislation which creates that risk of legal uncertainty and work for lawyers in that way cannot be what your Lordships think is the right way to deal with this important issue. The issue had been dealt with in the 2018 Act; if it needs some adjustment, that could be considered, but it is not what is proposed here.

From these Benches, we support the amendment put forward by the noble and learned Lord, Lord Mackay of Clashfern. We do not think that it is ideal or perfect, so the solution proposed—that if the amendment is passed by your Lordships it can be considered and debated further by the other place to make it perfect—at least goes some considerable way to deal with the mischief that we have.

I see the hour; I apprehend that noble Lords would wish to take the opportunity of expressing their opinions in relation to the amendments. I hope that the noble and learned Lord, Lord Mackay, will seek to test the

opinion of the House. I understood from what he said that he would press his amendment to a vote. If it is passed, we will be happy to see it stand and not push for a further amendment.

As to the position of the Government, we will wait to hear what the noble Lord, Lord Callanan, has to say. Noble Lords will have noted what the noble Lord, Lord Beith, said in opening about the position of the noble and learned Lord, Lord Keen of Elie, whom I too admire and consider a serious lawyer and a proper and ethical person. That he is not here says a lot about the state of the Bill as it stands.

Lord Callanan: My Lords, I shall speak to Amendments 12 and 13 in the name of the noble Lord, Lord Beith, and Amendment 14 in that of my noble and learned friend Lord Mackay of Clashfern. We debated this matter at length in Committee and the Government have noted the strength of feeling across the House about both a power in principle and the different uses to which it might be put. However, I regret to inform the House that the amendments cannot be accepted.

The clause provides for an important principle: UK courts should be able to interpret UK laws. After the implementation period, that is a matter for us to decide. My noble and learned friend Lord Keen and I have had significant engagement on this issue with noble Lords across the House during the past few days. I can say on behalf of both of us that we are grateful to those noble Lords who met us. While I know that it has not been possible to allay noble Lords' concerns, I hope that it has become clear that the Government will implement this policy sensibly and in a way that works for courts across the whole United Kingdom.

As my noble and learned friend Lord Keen noted when we debated the matter in Committee, two vital safeguards are built into the Bill. First, we must consult the senior judiciary. The Government are also happy to make it clear that, where the clause requires us to consult other appropriate persons, we also intend to engage with the devolved Administrations.

Secondly, this power can only be used before the end of the implementation period—a critical issue. There is no way in which a Minister can interfere with a live case, nor seek to unpick a single historic judgment which the Government have taken a dislike to. This is a power to allow the Government time to consult, consider and soberly extend the jurisdiction of UK courts to the historic case law of the Court of Justice of the European Union, properly reflecting that, after the end of the IP, such case law will form part of our domestic legal order. The way in which courts are to do this will be made clear. At all times, there will be legal clarity on the rules of interpretation when any cases concerning the body of retained EU law come before those courts. Again, I thank noble Lords for their contributions to this debate and their constructive engagement with our proposals.

Amendments 12 and 13, in the name of the noble Lord, Lord Beith, would mean that retained EU case law would continue to bind our courts, other than the highest courts of appeal, long after the end of the implementation period. For this reason, those amendments are not acceptable to the Government. Amendment 14, in the name of my noble and learned friend Lord Mackay, is an interesting suggestion but, as drafted, it would create a reference process and confer a role upon the Supreme Court that would be novel in a domestic context and could have unintended consequences, including serious implications for the role and case load of the Supreme Court. We look forward to continuing to work closely with noble Lords in the development of these regulations and will continue to listen to the many constructive ideas that have been put forward on this subject. With our commitment to work closely across the House and consult on this issue over the coming months, I hope that the noble Lord will be able to withdraw his amendment.

Lord Beith: My Lords we are no further forward at all on which courts it is intended shall acquire the power; on what the test they will be required to carry out is; or on any reliable process by which we can ensure that Ministers do not get involved in specifying the circumstances in which courts, at any level, can depart from existing case law. The beauty of the amendment in the name of the noble and learned Lord, Lord Mackay of Clashfern, is, as he explained, that it seeks to satisfy the Government's objective—as restated now by the noble Lord, Lord Callanan—that any court in the land should be able to engage in this process. This is not a very wise thing to do but, if it is going to be done, it should be done with the protection suggested by the noble and learned Lord: that it should involve a reference process which the Supreme Court can take up if it sees reason to do so. On that basis, and knowing in what high regard the noble and learned Lord is held, I am content to seek the leave of the House to withdraw my amendment, so as to facilitate him pressing his.

Lord Mackay of Clashfern: It would be right for the noble Lord, Lord Beith, to continue with his two amendments, because I am proposing the option in my amendment in the event of his disappearing. I think I am right in saying that. I may be wrong; I stand to be corrected. I understood from the Public Bill Office that I did not need to put my name to Amendments 12 and 13—in fact I could not, because there were four there already. It may be that those amendments should just stand.

Lord Beith: The consequence of my amendment, if it was carried, would be that the amendment in the name of the noble and learned, Lord, Lord Mackay, could not then be taken, because the words upon which it bites would have been removed. I would be content to divide on my amendment, to test the opinion of the House.

Baroness Taylor of Bolton (Lab): My Lords, it would be possible for the Government to bring back something along the lines suggested by the noble and learned Lord, Lord Mackay, should this amendment be carried. It would be foolish not to allow the House to make a clear decision about what it thinks on Clause 26(1)(b). As has been said, time and again, this is a serious and constitutionally significant move. It would, therefore, be wise to test the opinion of the House.

Lord Beith: I have received advice from two quarters for which I have particular respect, including my own committee chairman. It being the case that if my amendment were carried there would be no need for the amendment in the name of the noble and learned Lord, Lord Mackay, but if it were not then we could still press for a Division on his, I will test the opinion of the House.

7.24 pm

Division on Amendment 12

Contents 241; Not-Contents 205.

Amendment 12 agreed.

Division No. 2

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7.38 pm

Amendment 13 not moved.

Amendment 14

Moved by ***Lord Mackay of Clashfern***

14: Clause 26, page 30, line 20, leave out paragraph (d) and insert—

"(d) after subsection (5) insert—

"(5A) Where a court or tribunal other than the Supreme Court or the High Court of Justiciary is of the opinion that any retained EU case law that is relevant to an issue before it should be departed from, that court or tribunal must—

(i) in its judgment set out the reasons for that opinion, and

(ii) refer the case to the Supreme Court or, as appropriate, the High Court of Justiciary,

and if the Supreme Court or High Court of Justiciary grants leave for the case to proceed, it must decide whether to depart from the EU case law on the issue before it.", and"

Member's explanatory statement

This amendment would introduce a procedure which could be initiated in any court of the United Kingdom and result in a decision which is authoritative in the United Kingdom without any interference with the independence of the judiciary.

Lord Mackay of Clashfern: My Lords, I have spoken to and certainly want to move the amendment. It is with great regret that I am voting against the Government, but that is what I want to do.

7.39 pm

Division on Amendment 14

Contents 206; Not-Contents 186.

Amendment 14 agreed.

Division No. 3

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7.50 pm

Amendment 15

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

15: Clause 30, insert the following new Clause—

"Parliamentary oversight of progress in negotiations on the future relationship

After section 13B of the European Union (Withdrawal) Act 2018 (certain dispute procedures under withdrawal agreement) (for which see section 30 above) insert—

"13C Parliamentary oversight of progress in negotiations on the future relationship

(1) A Minister of the Crown must, within the period of 30 days beginning with the day on which this Act is passed, make a statement setting out Her Majesty's Government's objectives for the future relationship negotiations with the EU.

(2) A Minister of the Crown must, before 15 June 2020 and every two months thereafter until IP completion day, make a statement setting out the status of Her Majesty's Government's future relationship negotiations with the EU.

(3) A statement under subsection (2) must include—

(a) a report of the negotiations carried out to date or since the last statement, and

(b) a declaration of whether, in the Minister's opinion, agreements on trade and security which are consistent with the contents of Parts II and III of the Political Declaration setting out the framework for the future relationship between the EU and the United Kingdom can be concluded and ratified before IP completion day.

(4) The requirement to make statements under subsection (2) lapses if—

(a) agreements on trade and security are concluded and ratified before IP completion day, or

(b) a Minister of the Crown makes a statement to the effect that the United Kingdom will not conclude or ratify agreements on trade and security before IP completion day.

(5) A statement under subsection (4)(b) must contain details of Her Majesty's Government's proposals for mitigating the absence of trade and security agreements with the EU.""

Member's explanatory statement

This amendment requires a Minister to make an initial statement setting out the Government's objectives for the future relationship negotiations and then provide regular updates on the progress being made. If no future relationship can be negotiated before the end of the implementation period, the amendment would require a further statement to outline proposed mitigations.

Baroness Hayter of Kentish Town: My Lords, this is perhaps one of the most significant amendments before your Lordships' House. It deals with a major constitutional issue—the accountability of the Executive to Parliament—and with matters of prime concern to our country's future: that is, the trading, security, diplomatic and cultural links that we build with our close allies and close neighbours across the continent.

The trade talks in particular will have major implications for the regions and nations of our country, and for different sectors of our economy. Despite this, the Government seem to want to listen to no one. Business has been pleading with Ministers to involve the relevant businesses in the trade talks, with alarmed reactions over the weekend, as we have all seen, to the Chancellor's statement that there will be no alignment on EU regulations going forward, diminishing any chance of frictionless trade.

We have heard from the food and drink industry about its fears, both for particular parts of the industry but also with wider implications of likely food price increases. Indeed, it even talks of the death knell of the concept of frictionless trade with the EU. Agriculture, the motor industry and manufacturing are all worried about jobs, investment and their competitiveness in their vital EU markets. Despite that, they feel excluded from the Government's thinking. As the CBI says, businesses need to be brought into trade talks with both the EU and the US, and it calls on government to work with business

"closely, comprehensively and transparently throughout every stage of negotiations, from mandate setting through to implementation."

It is right—as are consumers and farmers, whose futures are at stake.

Shutting Parliament out of the discussions on the objectives of, as well as the progress on, negotiating talks, means that it is almost impossible for MPs to represent and answer external concerns that are brought to them on a daily basis. It seems clear that that is exactly what Ministers want to shut out: any voices that conflict with their ideology or which bring them practical problems about the implementation of new rules and checks, and tariffs or indeed non-tariff barriers. No wonder that some think that this is about allowing

[Baroness Hayter of Kentish Town]
for a final no-deal relationship at the end of December: a free-for-all, WTO basis for our trading, with immense risks to part of our industry and regions.

In the election, the future of UK plc was voted into the hands of the Government. However, in our system of democracy, that does not mean that the Government should not be accountable to Parliament and should not get its plans approved by Parliament, as all their other plans are, via debate, a vote on the Queen's Speech, and votes on their Bills, which are enacted only with the agreement of Parliament. Here we are talking about something else: the preparations for a treaty which will affect our living, working, trading, policing, security and environmental relationship with those close friends and near neighbours—decisions which will, one way or another, affect every citizen now and in the future.

So it is perfectly normal to say that, just because the treaty will not be a Bill, that is no reason not to have the equivalent of Second Reading and Committee before we arrive at the final Third Reading equivalent—that is, the final treaty, which will come to Parliament for approval only at the end via the CRaG. At that ratification stage, it is basically too late to say, "Well, actually no, not really—this bit doesn't work", "This affects our industry" or "That affects a particular region". It will be too late then to make changes to the treaty.

So, without this amendment, which gives Parliament a say, Parliament will be shut out of these crucial talks, other than through the odd take-note debate or response to a Statement. That is not enough for your Lordships' House, and it is certainly not enough for the elected House of Commons. We must ensure that the Commons has some real input throughout the process and, crucially—something that is allowed for in the amendment—if a December deal looks unlikely, the Commons must have some ability to make the Government explain their plans for that eventuality. That is what Amendment 15 would provide. I beg to move.

Lord Hannay of Chiswick (CB): My Lords, I support the amendment moved by the noble Baroness, Lady Hayter. I point out that the amendment on the Order Paper on Report is a considerably reduced text from the one that was discussed in Committee. That is to say, those of us who have put our name to it have listened to some of the Government's objections—in particular, to their wish to avoid any appearance of a formal mandate—and we have gone for a much lighter procedure, which is now on the Order Paper. So attention has been paid to what was said from the government side.

However, the case for this amendment has been hugely strengthened since Committee last week by the interview that was given by the Chancellor of the Exchequer to the *Financial Times* last Thursday. In that interview, he made policy that had not hitherto been set out, without, as far as one can see, the agreement of Cabinet, certainly of the House of Commons, or of this House, or even knowledge of what he was about to say. So the case for setting down some process by which the Government need to come to both Houses and explain what they are doing at various stages in what will be an extremely complex negotiation has been greatly strengthened by that action by the Chancellor of the Exchequer.

The position he took on the question of no regulatory alignment is akin to the decisions that were taken by the previous Prime Minister when she went to the party conference in the autumn of 2016 and, in one breath, ruled out the single market, the customs union or any jurisdiction of the European Court of Justice. That did not end terribly well, and I rather doubt whether what the Chancellor of the Exchequer now said will end terribly well either. What he said sounded—and is, if you read the wording—extraordinarily categorical. He did not say that there will not be alignment on all matters—that we will not, as it were, remain in total alignment with European regulations—but that we will not be in alignment on anything.

He is effectively ruling out the possibility for example of the motor industry being put on a system of alignment. That would not be a ridiculous thing to happen, since it has been working to the same standards with its continental counterparts for something like 25 years. However, he has ruled all of that out, so the case for requiring that from now on the Government should at least tell and consult both Houses about what they are planning to do and how they are getting on seems to have been greatly strengthened in the interim by the Chancellor of the Exchequer.

8 pm

Incidentally, I was pretty startled to note that the Chancellor of the Exchequer seems to think that the large number of Nissan and Toyota cars he sees driving around the country all come here on ships from Japan. They do not, they come from Derbyshire and Sunderland: that is, they are built within the single market and the customs union. Where the Toyotas and Nissans of five or ten years' time will come from is anybody's guess, but I would not put a lot of money on it being Derbyshire and Sunderland.

The other point I would like to make is that when there is talk of a level playing field—this is all about the level playing field, basically—it needs to be properly discussed in Parliament before the Government take an absolutely categorical view of the sort now taken by the Chancellor of the Exchequer. The requirement for a level playing field is not made up by some mad federalists in Brussels, it is what is in pretty much every free trade agreement around the world that involves large industrialised economies that are in geographical proximity to each other.

If you look at the content of the revised Canada/Mexico/US agreement, you will see that what the US requires of its negotiating partners is the elements of a level playing field. It has made it a requirement that certain labour standards are observed by all the parties. This is not a silly idea and it is not just a Brussels one. The Trans-Pacific Partnership, which has blossomed into something with an even longer name that I will not weary the House with because I cannot remember it, has masses of level playing field stuff in it. The freedom of trade that is contained in that very desirable international agreement is accompanied by level playing field requirements on the parties which, if not met, will break up the free trade agreement.

As the noble Baroness, Lady Hayter, has said, that is what makes this an extremely important issue. It is one of the most significant and important ones in the legislation. It is why I am afraid that the Government have got off on the wrong foot. They have not got very far down the road, but they are on the wrong foot, and they would be well advised to accept the somewhat modified and more modest requirements set out in the amendment now before your Lordships compared with the one tabled for Committee.

Lord Howarth of Newport: The noble Lord, Lord Hannay, has remarked on the fact that the ambition and scope of this amendment are quite modest compared with the amendment that we debated last week in Committee. The redrafting has been wise. Gone is the requirement that Parliament should approve the negotiating mandate and stance of the Government and in effect give them their marching orders in the negotiations. The Executive must be allowed to do their job and in turn Parliament should do its job, and we should respect the separation of powers. It is for the Executive to negotiate the future relationship and it is for Parliament to hold the Executive to account. Parliament has numerous means of holding the Executive to account in the form of Questions, debates, Select Committee inquiries and many other procedural resources, and I anticipate that it will use that array of resources very extensively in the months to come.

I would add that I do not think that it is appropriate for parliamentary procedure to be prescribed in statute, and it is particularly inappropriate that this unelected House should make proposals of this nature to the House of Commons, which I suspect will not take very kindly to being told how to do its job.

All in all, I welcome the modification of the approach that is reflected in the amendment and I congratulate my noble friend and her colleagues who have thought it wiser to proceed on this basis rather than the one proposed the other day.

Lord Wallace of Saltaire (LD): My Lords, this is an unusual Bill in a number of ways. We were debating in Committee that it has a clause which restates that parliamentary sovereignty has been established, so we are talking about some fairly fundamental constitutional issues. The relationship between Parliament and the Government is one about which I have heard Ministers make a number of self-contradictory comments in the days and weeks since the election in the rather triumphalist tone they have adopted. One Minister referred during the Committee stage to restoring the "normal relationship" between Parliament and the Government, by which I think he meant a nice safe majority in the Commons so that it does not criticise too much what the Government want to do.

The noble and learned Lord, Lord Keen, talked about the dualist approach to international negotiations whereby treaties, once they have been agreed, have to be transposed into domestic law and thus Parliament comes in, as it were, after the event. Given the importance of this negotiation, if one does believe in the principle of parliamentary sovereignty, the Government need to carry Parliament with them. That is the constitutional set of issues here, and we look forward to further discussions on what the constitution commission the Government are going to set up will be about. If it has the sort of forethought and consideration which was shown in the suggestion thrown out this weekend that the House of Lords might move to York, I have to say that it is not going to be a very good commission because it is quite clear that there was no thought behind that whatever.

It is not just the constitution; it is also about wisdom. Some of us heard the noble Lord, Lord Wilson of Dinton, remark in Committee that in his long career he had noted that it is when Governments are most self-confident and convinced that they can survive criticism that they are most likely to make mistakes. Here we are after an election in which the Government have established a majority on less than 45% of the vote, but it is a majority in the Commons according to our current antiquated rules. The wisdom of carrying the public and Parliament with them as they negotiate—particularly if they are going to negotiate for as hard a break with the European Union as the Chancellor has suggested—seems to me very powerful.

While I was at Chatham House, I was much involved in the various discussions about establishing the single market, and I remember all the talk then about why the Prime Minister was persuaded that the single market was in Britain's interest and the extent to which we were taking our regulations for a large number of industrial and other standards from the United States extraterritorially. The Government are now suggesting that we will establish our own independent standards. An editorial in the *Times* this morning said that maybe we should not exclude chlorinated chicken, so we can begin to see that, if we move away from European standards, we will move under American standards, and that will be part of what emerges from the US/UK trade agreement.

I support this amendment on constitutional grounds and on the grounds of political wisdom. Parliament deserves to be carried along with the Government and the Government need to explain and justify their objectives as they proceed.

Lord Bowness (Con): My Lords, I have added my name to this simplified amendment. In Committee, I appealed to the Government to recognise that many people remain concerned about the nature of our future arrangements with the European Union. This is not about for or against Brexit but about the future. The Government appear to want us to take everything on trust, but we need to know in advance not the details of their negotiation but the approach they will take in negotiations.

This is not a novel idea. I know that in the United Kingdom we are not keen on adopting approaches taken by other countries, but—without going into the details—I refer Ministers to the working of the grand committee of the Finnish parliament. It is a good start to learn how other parliaments reconcile coming to an agreement with their Governments about their approach to European Union matters and the attitude we seem to be taking. That approach, with modifications, is to be found in the proceedings—and indeed, so far as Finland is concerned, in the constitutions—of member states. It is not a novel idea.

[Lord Bowness]

Statements, Questions and take-note Motions in arrears of events are no substitute for the kind of procedures to which we refer. The citizens who accept Brexit but want to ensure that we try to keep as many of the benefits of the last 40 years as possible need to be listened to. If the Government do not bring forward any amendment at Third Reading to deal with this, I am afraid many people will feel that the Government, in the name of an ideological pursuit of a hard Brexit and possibly no deal, have no intention of healing the divisions in the country. The Government need to establish some trust among the rest of us.

Lord Bridges of Headley (Con): My Lords, I will speak very briefly on this, largely echoing a lot of what the noble Lord, Lord Howarth, said. In Committee, much was said about how the Government are "deliberately cutting" Parliament

"out of any meaningful role",—[*Official Report*, 15/1/20; col. 719.]

to quote the noble Baroness, Lady Hayter. We heard it again just a moment ago, when she said the Government are shutting out voices from the debate.

I concede entirely that—as the noble Lord, Lord Hannay, rightly put it—this amendment is a watered-down version of the one debated in Committee, but my objections to it remain the same. I will not overstate the case; it is important not to do so. For example, I would not claim that this amendment will bind the hands of Government, and of course it will not thwart Brexit. I will make just two simple points.

The first is that the amendment creates what I see as a legislative straitjacket that binds us into an inflexible parliamentary process that cannot really take account of the diplomatic and political reality of the negotiations, which—as we all know—by their very nature will not abide by the bi-monthly reporting cycle that the amendment sets out.

The second and much more profound point—this is what the noble Lord, Lord Howarth, was referring to—is that Parliament already has considerable powers of scrutiny to hold the Government to account. I know my noble friend slightly dismisses them; I do not. I see them as absolutely intrinsic to the way that this House and the other place work. I am not talking here about the shenanigans we saw in the last Parliament, with MPs taking control of parliamentary business, but those traditional means of scrutiny—the other means that Parliament has, in this House and the other place, to interrogate and scrutinise.

I asked the Library to do some research for me. I asked how many PNQs, Urgent Questions, Oral Statements, Select Committee reports, Written Statements, Oral Questions and Written Questions have touched on Brexit since the day of the referendum. The noble Baroness, Lady Hayter, may say that this is nothing or is irrelevant; I totally disagree. In the calculation the Library made, it excluded the Bills we have debated, including the 650 hours this House has spent on debating EU-related issues. Let me give your Lordships the results of this exercise. Since the referendum, there have been, in Parliament as a whole: 10 Private Notice Questions related to Brexit; 32 Urgent Questions; 116 Oral Statements; 179 Select Committee reports; 743 Written Statements; 6,241 Oral Questions and supplementaries; and 15,366 Written Questions. I do not think this can be just waved away as nothing; I see it as fundamental. This is 22,687 items that drive a coach and horses through the need for this amendment, 22,687 ways in which Parliament has had a meaningful role. It can interrogate Ministers on the points that the noble Lord, Lord Hannay, made, and I believe this is 22,687 reasons why we do not need the amendment.

Lord Hannay of Chiswick: If the noble Lord's research had gone a little further back, he might have been quite startled by what he found. He would have found that the procedures laid down in this amendment are almost precisely those that the Conservative Government applied in 1970 when negotiating our accession. Regular reports to Parliament, regular Questions by all in both Houses—they are all there, and there is nothing wrong with it.

Lord Bridges of Headley: I totally take that point, but I do not believe we should be setting this out in statute—as the noble Lord, Lord Howarth, said. There is nothing to prevent the Government and Ministers coming to this House and the other place to make that point, nothing to prevent MPs calling for Urgent Questions and so on and so forth, so I am sorry to say that I disagree with the noble Lord.

8.15 pm

Lord Barwell (Con): My Lords, I had not planned to take part in this debate, but I wish to make three brief points. First, in response to my noble friend Lord Bowness, it is very clear what the Government seek to negotiate in this next phase of the negotiations; it is set out in the political declaration. For example, in relation to level playing field provisions, the political declaration goes into quite some detail about the kinds of level playing field provisions that will be required as part of the future trading relationship.

Where I certainly have sympathy with the proposers of this amendment is that, of course, it is important that Parliament has the ability to hold the Government to account as these negotiations progress, but there is no doubt at all in the other place that that will happen. If the Government do not voluntarily come forward after major moments in the negotiating process and offer a Statement, I suspect the Speaker in the other place will grant Urgent Questions; there will be accountability.

The arguments about setting out in detail the negotiating objectives in public and having them approved by Parliament are balanced on either side. There is a case to be made that getting broad-based parliamentary support for certain negotiating positions, beyond just the Government's majority in the other place, may strengthen the hands of Ministers in those negotiations. It is certainly my experience that the Article 50 team on behalf of the European Union often referred to the fact that the European Council had endorsed the negotiating mandate it was pursuing, and that therefore its room for manoeuvre was limited. On the other hand—I think my noble friend Lord Bridges alluded to this—if at the outset both sides set out in detail what their positions are and there is no common ground, there is a danger of driving these negotiations into a bad place. Indeed, in my maiden speech in this

place last week, my one lesson to the European Union from what happened in the first phase of these negotiations was that, while it may feel tempted to repeat the trick —it may feel that it worked well to set out its negotiating position in detail and that it got most of what it wanted —if it repeats that trick this time and in February publishes a detailed negotiating mandate that rules out lots of the options, there is a real danger that any possibility of a compromise will be eliminated.

Baroness Ludford (LD): The noble Lord talked first about the amendment requiring Parliament to approve the negotiating objectives. I think that has changed; it is not in the current version at this stage but was in the Committee stage version.

Secondly, he said it is very clear what the objectives are because the political declaration sets out the level playing field provisions. The problem is that the Chancellor, in a very prominent interview at the weekend, completely threw that aside and said we will not have any level playing field provisions or converge at all; we will completely diverge. So what is the Government's position? Is it what is in the political declaration or what the Chancellor has said? Surely the noble Lord can understand the puzzlement, the bewilderment—I am sure it shared by some on his Benches—as to what the Government's policy is. This is why we want to see the colour of their money. What are the negotiating objectives? Are they what is in the political declaration or what the Chancellor is saying in an interview to the *FT*?

Lord Barwell: It is not for me to speak for the Government, not least because I do not sit on the Government Front Bench. Indeed, noble Lords who have followed the debate closely will know that I do not entirely agree with the position that the Chancellor set out; the previous Government believed that there was a case for aligning with certain EU rules and regulations. But, having said those things, I do not think that the Chancellor of the Exchequer has done what the noble Baroness suggests. If one looks at the slides that the European Commission has published on the level playing field, one will see that, on the vast majority of issues, it is not suggesting that dynamic alignment is required; it is effectively asking for non-regression from existing commitments. There are some areas where there may well be a problem in the negotiation, particularly state aid—I read what it has said as looking for an ongoing commitment to align with EU state aid rules—but I certainly do not think the Chancellor has gone as far as the noble Baroness suggests.

I was interested in remarks that several of your Lordships made: the Chancellor's comments to the *FT* came as no surprise to me at all. That has been the clear policy of this Government from the point at which they were formed.

Lord Liddle (Lab): Has not there been a fundamental change in government policy without any putting of that change to Parliament for discussion? There has been a fundamental change from the policy that the noble Lord, Lord Barwell, pursued with the Prime Minister, which was to secure as close a relationship as possible on trade and, if possible, to make it frictionless. The noble Lord and the then Prime Minister thought it very important to try to protect manufacturing jobs with complex cross-border supply chains. Now, it is quite clear from what the Chancellor has said that the Government have chosen something completely different —that it is worth paying a high economic price to secure sovereignty. That is the choice it appears that Mr Javid is announcing, but he does not have parliamentary approval for it and it has never been properly debated. Is that not scandalous?

Lord Barwell: I do not intend to get into this debate in detail; I wished to speak briefly. All I will say is that that approach has been clear for some time, and the Government got a clear endorsement for it in the general election. I say that as someone who had a different view.

I conclude my remarks by simply saying this. There is a case in some circumstances for the Government seeking approval for particular positions; it may strengthen their hand in negotiations. But there is also a real danger, as my noble friend said, that if both sides set out their positions in detail at the outset, you rule out possible negotiating solutions.

Lord Callanan: My Lords, Amendment 15 would introduce a new clause that would require the Government to publish their negotiation objectives and provide regular reports on the progress of negotiations. As a number of noble Lords observed, this is a different amendment from that which your Lordships considered in Committee, as it no longer contains any formal role for Parliament in approving objectives before negotiations begin. I personally am pleased that the Opposition have accepted that the negotiation of international trade agreements is rightly a function of the Executive. However, this amendment still seeks to impose statutory reporting requirements which, in our view, are simply unnecessary.

The noble Baroness set out what those requirements are, but for the benefit of the House, the amendment would require publication of the negotiation objectives and two-monthly reports on the progress of negotiations, beginning no later than 15 June. The interest in the objectives is somewhat surprising, as the Government's vision for the future relationship with the EU is already set out in detail in the political declaration; and this is the answer to the point made by the noble Lord, Lord Liddle, in his intervention on my noble friend Lord Barwell. The House has already had ample time to consider this document. It was laid before each House on 19 October last year, and many committees of your Lordships' House have already opined on it.

As to the two-monthly reporting requirements, beginning no later than 15 June, this could mean a maximum of four reports before 31 December this year. I remind the House that the Prime Minister has already committed that

"Parliament will be kept fully informed of the progress of these negotiations."—[*Official Report*, Commons, 20/12/19; col. 150.]

I agree with the point made by the noble Lord, Lord Howarth, that the setting out of reporting requirements in statute, as proposed by this amendment, would be a mistake. The Government will of course, as always, support Parliament in fulfilling its important

[Lord Callanan]
role in scrutinising the actions of the UK Government in the negotiations, in line with the PM's commitment. As my noble friend Lord Bridges pointed out, both Houses will have all the usual tools of scrutiny at their disposal.

I listened with interest to the numbers quoted by my noble friend Lord Bridges; he somewhat pre-empted me. I hope he will forgive me, but my numbers are slightly different from his. I pointed out in Committee that Ministers have spent over 760 hours to date addressing these issues in the House. I personally have spent over 230 hours—sometimes it feels a little longer—answering questions and responding to debates in your Lordships' House. Officials tell me that I am one overnight sitting away from clocking 250 hours by 31 January, which I hope will make me eligible for a medal. Over its lifetime, DExEU has made over 100 individual Written Statements to each House and responded to 23 Select Committee reports, two of them just yesterday. By my calculation, that is an average of one publication every 10 days, not one every two months, and all without any statutory reporting requirements. That, of course, is without counting the various position papers and other publications also made by the department.

I have no doubt that the situation would be the same in the House of Commons. The Speaker heard very clearly the Prime Minister's commitment to provide information. He has the powers at his disposal to ensure that Parliament can hold the Government to their commitments. Select Committees will continue to question Ministers. They also have the right to request papers. Opposition day debates and the Backbench Business Committee will continue to provide many opportunities for both Houses to consider all these issues.

I remind the House, as I did in Committee, of the risks in creating fixed points to report before knowing anything of the negotiating schedule. At worst, this could mean that Ministers would be required to provide public commentary at a critical point where confidentiality is paramount, thus potentially undermining the UK's negotiating position. Alternatively, the reporting deadline might fall when there is nothing to say, since progress would already have been reported by other means, in line with the Prime Minister's commitment. I pointed out in Committee that I saw this just two weeks ago, where a reporting date set in advance by the Benn Act resulted in a grand attendance of three Members—me and the noble Baronesses, Lady Hayter and Lady Ludford—speaking in that particular debate, which we had to hold by virtue of the Benn Act that you were all so enthusiastic to pass.

These reports are at the mercy of events and they can very often end up being completely worthless, failing to assist Parliament in holding the Government to account. The long-standing mechanisms of both Houses to hold the Government to account will work well because they are flexible and can respond to events, unlike statutorily set out reporting requirements. This House is rightly keen to ensure that it will be kept up-to-date on negotiations, but legislating for it in this way is a very blunt and inflexible approach. During our exit negotiations, Parliament has demonstrated clearly that, where a majority feels that it is receiving unsatisfactory information or is concerned by the direction of travel, it has the tools and the will to secure this information. Nothing has changed on that front as we look to the future negotiations. This Parliament already has a lot of power and this amendment adds nothing to it. I therefore hope that the noble Baroness will feel able to withdraw it.

Baroness Hayter of Kentish Town: I am quite surprised by the Minister's response. I thought he really enjoyed discussions with just the noble Baroness, Lady Ludford, and me late at night, that his 230 hours here were just the foothills and he was looking forward to more.

We have had an interesting discussion, including my noble friends Lord Howarth and Lord Liddle, and the noble Lords, Lord Wallace, Lord Bowness and Lord Barwell. I apologise, I did not mean to include the noble Lord, Lord Barwell, in that, because the interesting thing is that in addition to those noble Lords we have our experienced negotiators. The noble Lord, Lord Hannay, has probably put more than 230 hours into negotiating. The noble Lord, Lord Bridges, before he took off—he is back three rows from where he was—negotiated on this, and obviously the noble Lord, Lord Barwell, did too. The lessons that they have pulled from this are different. Of course, two of them were part of the Executive, so it is no wonder that they do not want this extra parliamentary scrutiny.

8.30 pm

That is really what we are saying: these take-note debates have no grip over the Government. As we saw, it was very hard to change the Government of whom the noble Lords, Lord Bridges and Lord Barwell, were a part. We failed. We might have kept your Lordships and the noble Lord, Lord Callanan, here late at night, but I do not think that we changed his mind at all. As we saw with the earlier two amendments, even when this House really feels something, the Government do not want to listen. It is that lack of listening to these crucial issues about our future trade relationships and whether they will be able to keep to what they signed up to in the political declaration that makes us want to try to nail it down. I fear I will not be able to get that nail into this particular coffin. Therefore, I beg leave to withdraw the amendment.

Amendment 15 withdrawn.

Amendment 16

Moved by ***Lord Storey***

16: After Clause 30, insert the following new Clause—

"Parliamentary oversight: Erasmus

After section 13B of the European Union (Withdrawal) Act 2018 (certain dispute procedures under withdrawal agreement), insert—

"13D Parliamentary oversight: Erasmus

Any arrangements for Parliamentary oversight of progress in negotiations on the future relationship must include negotiations on UK participation in Erasmus 2021–27.""

Lord Storey (LD): My Lords, this amendment would ensure that there is parliamentary oversight of the UK's participation in the next Erasmus programme. In Committee, I was taken with the strength of feeling from Members across the House about this jewel in

our education system. I think the noble Earl, Lord Clancarty, made the point that it is really important to young people from disadvantaged backgrounds, but it is also important for volunteering, studying, apprentices and so forth.

There was concern that there seemed to be mixed messages coming from the Government. On the one hand, we had a comment I think in *Schools Week* from the Secretary of State for Education, Gavin Williamson; on the other, we heard from our Prime Minister that there was no threat to the Erasmus programme. The Minister himself, in the wind-up to the debate, played a very straight bat in that he acknowledged the importance of this programme. He reminded us that those students who are engaged spent some time abroad as part of this programme; they are more likely to achieve better degree outcomes, to enhance their language skills and to improve their employment prospects. That is not something to throw away lightly.

The Minister also made the point that while we are committed to the current Erasmus programme, the next Erasmus programme will be part of negotiations. He reminded me recently that we are net contributors to the programme and so have some leverage in this. We understand that there are going to be discussions, that the Government support this programme and that they want to get the best possible deal for young people. We also understand that there are other programmes involving not just European countries but countries throughout the world. However, it would be helpful if the Minister indicated that your Lordships would give some sort of oversight to the work that goes on in securing the successor to the Erasmus programme. I beg to move.

Baroness Coussins (CB): My Lords, this is a very slimmed down amendment compared to what we debated in Committee last week. Nevertheless, it provides some degree of certainty that Erasmus would at least be a prominent and visible issue on the Government's agenda as we negotiate the details of our departure from the EU over the next year. That should provide some comfort, especially to universities and all the young people aspiring and hoping to become students or apprentices over the next few years.

In Committee, the Minister put forward a couple of specific reasons for his caution about signing up as full members to the next stage of Erasmus+. One was that not enough information was yet available about what the next phase of Erasmus+ would look like, between 2021 and 2027. However, in my contribution to that debate I set out detailed information about exactly what the budget for the next phase would be. There is already an agreed budget with minute details of exactly how much would be allocated to specific areas of education and training, and to vocational activities. This is good enough for the 27 EU member states and for the six other countries that have signed up as non-EU members of Erasmus+, so I am still rather puzzled as to why it is not good enough for us, when we know that Erasmus has been so beneficial up to now.

The second reason advanced by the Minister was that the Government want to expand their mindset from being just Europe-focused to being more global. Absolutely right, but again, as I said in Committee, Erasmus+ does precisely that. The "plus" refers to the fact that the programme now enables students and other young people to take up placements, activities and projects across the world, not just within the EU. Erasmus+ is already completely in line with the policies and statements of Her Majesty's Government as expressed in the last week by the Department for Education and the Prime Minister. Conversely, without Erasmus, we will do measurable and serious damage to education, trade, diplomacy, defence and security over the longer term. These are all areas where language skills are increasingly vital.

Erasmus+ and this amendment do absolutely nothing to frustrate this Bill or our departure from the European Union. Again, I ask the Government to be consistent with their own statements, and to be magnanimous and adopt this very modest amendment.

Lord Wigley: My Lords, I will not repeat what I said in Committee, but I support the amendment. More than that, I want to ask the Minister whether he can give a firm assurance that if a reasonable deal can be reached in the negotiations—I realise that no Government can give the ultimate commitment until the ink is dry—it would be the Government's ambition to make the maximum possible part of Erasmus+ available to young people in the United Kingdom and to welcome young people from other parts of Europe and the rest of the world to the United Kingdom under the auspices of Erasmus+. It would reassure the House if a fairly firm indicator could be given tonight, and it would give us some comfort as we move ahead.

Lord Smith of Finsbury (Non-Afl): My Lords, I declare my interest as Master of Pembroke College, Cambridge. I support the amendment for the principal reason that parliamentary oversight will be a constant reminder to the Government of the importance of participation in the Erasmus programme. Over its 30 years, Erasmus has helped some 3 million students across Europe in all. It is enormously valuable. For our students who have the opportunity to take part in exchanges across Europe, it enriches their education and fulfils their desire to have the best possible experience of life and the world.

One of the things that distresses me most about the Brexit process we have embarked upon is that it fundamentally undermines what I thought our country was all about: having an international spirit and opening our arms to the rest of the world. We are abandoning that. If our politics abandon it, please do not remove that spirit from our students—who are, after all, the hope for a better future than the one we are currently imposing on them.

The Earl of Clancarty (CB): My Lords, I want to address a few of the things said by the Minister, the noble Lord, Lord Agnew, in his reply to last week's debate on Erasmus in Committee.

First, he spent some time talking about the UK's global programme. Great; let us have more such partnerships. But those partnerships are irrelevant to this debate for the simple reason that Erasmus does not affect those independent programmes in any way.

[The Earl of Clancarty]
Erasmus does not stop us having such partnerships, so I hope that the Minister does not go down that route again in his reply.

Secondly, perhaps the most worrying thing that the Minister said was that

"it is not realistic for the Government to commit ahead to participation in a programme yet to be defined."

I agree with what my noble friend Lady Coussins and the noble Lord, Lord Smith, said: just on the basis of its proven record over 33 years, we can be 100% sure that the next iteration of Erasmus will also provide immense opportunities for British students. So why the doubt? Perhaps the Minister can tell us. He said:

"We do not need just an EU university scheme but a much wider one."—[*Official Report*, 16/1/20; col. 872.]

That is fine, but does the Minister not believe that that is what we already have—and, indeed, that it can continue to expand on a global basis without losing Erasmus? Erasmus should be part of that global network.

Lastly, I stress again that it is the misconception of some that Erasmus is for richer students. As I said in the debate last week, former participants in the programme testify to how important Erasmus was for them as students from poorer backgrounds. It is clearly a great privilege to be an Erasmus student, but you do not have to be from a privileged background to be one.

In last week's debate, the noble Duke, the Duke of Somerset, summed up perfectly what the loss of the programme would mean, saying that it would be a

"kick in the teeth for so many aspiring young people."—[*Official Report*, 16/1/20; col. 870.]

I hope that the Minister can assure us that negotiations on Erasmus will be backed on our part by a serious intent to stay a member of a programme that opens up horizons for so many of our young people.

8.45 pm

Lord Bassam of Brighton (Lab): My Lords, in Committee my noble friend Lord McNicol joined in the general support for the amendment moved by the noble Lord, Lord Storey. That support remains today from these Benches.

I shall not repeat the arguments that noble Lords have more ably made in this short debate, but I read the debate on the amendment carefully. The Minister probably feels he went as far as he could in trying to reassure the Committee that the Government were not about to pull the plug on support for Erasmus+. I am not sure that he has. First, the Prime Minister made a commitment that:

"UK students will continue to be able to enjoy the benefits of exchanges."—[*Official Report*, Commons, 15/1/20; col. 1021.]

However, that commitment seems qualified by the comments made by the Secretary of State for Education, who has talked of developing

"our own alternative arrangements should they be needed."—[*Official Report*, Commons, 14/1/20; col. 912.]

That rather suggests that our participation is still very much in flux, a point that the Minister underlined when he said that participation would be

"subject to our negotiations on the future UK-EU relationship."—[*Official Report*, 16/1/20; col. 871.]

The Minister also repeatedly reminded us that the outline of Erasmus+ for 2021 to 2027 has yet to be finalised, so that there is not yet a programme to sign up to, but we know that the programme is set to double its expansiveness and cost over that period. In Committee, the Minister set out the Government's ambition that by 2030 the UK would be hosting 600,000 international students and that the value of educational exports would by that point reach £35 billion a year.

Exactly how does the Minister expect to achieve those objectives and that ambition if we are not participants in the Erasmus+ programme? The start date for the next programme is 2021. We are now less than 12 months away from it kicking off. This is precisely when institutions make programme commitments and students begin to plan their study schedules. Both my daughters began to plan well in advance of their university exchange schemes. I hasten to add that they were not Erasmus+, but were programmes involving US universities. I know from experience that these things take time to set up and carry through and that the last thing that participants, whether they are institutions or students, want is uncertainty. It is the same with business: business wants certainty.

I think the Minister could this evening give a firmer commitment without compromising the Government's negotiating position, not least because we are net beneficiaries from the scheme overall. Can he at least advise the House whether the Government have made financial provision for the next Erasmus programme and, if not, whether it will be included in the upcoming Budget? Can he at least give the House an outline of the Erasmus negotiation timetable so that universities and students have some idea of when these issues will be resolved?

Finally I take this opportunity to tweak the Minister on a point which my noble friend Lord McNicol raised in the previous debate about the Horizon 2020 research programme. To my way of looking at things, it is in a similar state of limbo with a fast- approaching cliff edge. Can we please have some news on progress on that programme? It is in many ways part of Erasmus+, because research and study travel are very much linked. I think the House deserves to know exactly where we are heading with both those policies.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, I am pleased to respond to the amendment moved by the noble Lord, Lord Storey. Amendment 16 seeks to introduce parliamentary oversight requirements that the Government feel are unnecessary. I will try not to go over all the points we discussed last week in Committee.

I reassure the noble Lord, Lord Bassam, that the Prime Minister has already given a strong commitment at Second Reading in the Commons on 20 December. He said:

"Parliament will be kept fully informed of progress of these negotiations."—[*Official Report*, Commons, 20/12/19; col. 150.]

That is extremely important.

I shall address the concerns of the noble Lord, Lord Smith, about oversight. In the past few years both Houses have demonstrated that they have a wide

range of tools at their disposal to scrutinise the Government, including through Ministerial Questions and debates. Indeed, as I am relatively new to these procedures, I asked my office to tell me how many tools were available for the oversight of a Government by Parliament and I was given a list of over 20. They might not all be applicable here but we heard some useful statistics on Amendment 15 from my noble friend Lord Bridges, and the noble Lord, Lord Howarth, made a similar comment—that there is a tremendous ability for oversight. I am sure that both Houses will continue to use these scrutiny tools to hold our Government to account and will pay close attention to the negotiation process, not least as the Government's vision for the future relationship with the EU is already set out in the political declaration. There is therefore no need to set out in this Bill bespoke oversight requirements specifically for Erasmus+.

The Government have already been clear about their position on Erasmus+ and have stated that they remain open to future participation in the next programme. However, there are a number of important uncertainties that prevent them making firm commitments at this stage—not least that, until we see the final substance and text of the Erasmus+ programme and the regulations that are still under discussion in Brussels, we cannot be sure what the next stage of the programme will look like.

I am afraid that I cannot give the noble Lord, Lord Bassam, a timetable because the cake is still in the oven—there is still a lot of uncertainty. Several noble Lords mentioned the sum of money involved. I was briefed that the amount could be anywhere between double and treble, and that is in the context that some €14.5 billion has been spent on the current scheme in the last seven years. Therefore, these are colossal sums of money.

I fully recognise that the UK's potential participation in the next programme is of particular interest and importance to noble Lords. I assure the House that its voice and views are being, and will continue to be, heard. I reiterate our reassurance that this Government strongly value international exchange and collaboration in education as part of our vision for global Britain. We believe that the UK and European countries should continue to give young people and students opportunities to benefit from each other's world-leading universities. I mentioned last week the increase in the number of foreign students coming here over the last three years. However, as mentioned, we are waiting to see the full details of the new arrangements.

On a personal level, my son attends a foreign university and is looking at his own exchange arrangements as we speak. We discussed last week the power of these exchange programmes for young people. I do not think that we are arguing about very much. The difference in the debate is that noble Lords are seeking stronger commitments to bind the Government than we believe we can agree to.

I trust that that explanation and our wider reassurance demonstrate why the amendment is not necessary at this time. I therefore ask the noble Lord, Lord Storey, to withdraw it.

Lord Bassam of Brighton: Can the noble Lord address my budget question? Is money in the current Budget committed to the future Erasmus+ programme, and is this something that the Chancellor will address in the upcoming Budget?

Lord Agnew of Oulton: I am sure that noble Lords will not be surprised to hear me say that that is a matter for the spending review, which will take place in the summer. However, I would be very surprised if there were not a commitment to that kind of expenditure.

Lord Bassam of Brighton: In that case, perhaps the noble Lord would care to write to me on the budget that is currently set aside for Erasmus+ in the next financial year.

Lord Agnew of Oulton: I am certainly very happy to share with the noble Lord any information that I get on the spending review when it is available, but I suspect that I will not be privy to that any sooner that he will be.

Lord Storey: My Lords, as Universities UK, or UK universities, have said, it would be impossible for a replacement for Erasmus to match the reputation, brand awareness and sheer scale of the current programme. Therefore, we lose Erasmus at our peril. I hear what the Minister says and understand that his hands are tied to some extent, but I do not think that young people in particular will forgive us if we lose Erasmus. I was interested to hear about the oversight tools and scrutiny, and the Minister can rest assured that your Lordships will use them to the full. I hope that he can keep us up to date and informed of progress. I beg leave to withdraw the amendment.

Amendment 16 withdrawn.

Consideration on Report adjourned.

House adjourned at 8.55 pm.

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