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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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

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

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

House of Lords

Tuesday 21 January 2020

11 am

Prayers—read by the Lord Bishop of Birmingham.

Oaths and Affirmations

11.05 am

Several noble Lords took the oath and signed an undertaking to abide by the Code of Conduct.

European Union (Withdrawal Agreement) Bill

Report (2nd Day)

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

11.07 am

Amendment 17

Moved by ***Lord Thomas of Cwmgiedd***

17: After Clause 35, insert the following new Clause—

"Involvement of the devolved administrations

After section 10 of the European Union (Withdrawal) Act 2018 insert—

"10A Involvement of the devolved administrations

The Joint Ministerial Committee (EU Negotiations) is to be a forum that meets regularly—

(a) for discussing—

(i) the United Kingdom's future relationship with the European Union,

(ii) the economic and security impacts of that envisaged future relationship on the constituent parts of the United Kingdom, and

(iii) means of mitigating the impacts mentioned in subparagraph (ii); and

(b) for seeking a consensus on those matters between Her Majesty's Government and the other members of the Joint Ministerial Committee."

Member's explanatory statement

This amendment would place the Joint Ministerial Committee (EU Negotiations) on a statutory footing, requiring the Committee to seek consensus on the way forward in terms of the negotiations with the EU.

Lord Thomas of Cwmgiedd (CB): My Lords, in moving this amendment, we seek to insert a new clause after Clause 35. We are doing this in a much slimmed-down version of the clause that was before the House in Committee as Amendment 29. We do this in furtherance of the objective of strengthening the union, in this instance through the second means to which I referred yesterday, by ensuring proper consultation. We seek to set out the short principle that the Joint Ministerial Committee for EU Negotiations should be a statutory committee with clear purposes. Nowhere does the amendment seek to prescribe how the committee is to work. Neither does it require the making of Statements, or anything else at all that might be thought to impede the proper conduct of the negotiations with the European Union. It is there simply to ensure that the principle is accepted on the statute that this committee has a clear and defined purpose.

I would have hoped that, in the light of the many speeches made in Committee, it is clear that statutory recognition of this committee is required, given the way, as so many described, in which it has operated. If that was not the case in Committee, I would have thought that the debates yesterday in relation to Clause 21 would have demonstrated to Her Majesty's Government how important it is to deal with the position of the devolved Governments and legislatures.

It is a simple fact that our constitution has changed during the period in which we have been in the European Union. We must therefore achieve a workable set of constitutional provisions to make that constitution work with the Governments and legislatures in Wales, Scotland and Northern Ireland, and not simply with this legislature and the Government in London—otherwise the union will be imperilled. This is a small step towards that end.

The conduct of international relations and negotiations is clearly a reserved matter and, as I said yesterday, there are plenty of powers not only in the existing legislation but in the clause carried yesterday to enable Ministers to ensure that in the devolved Administrations the international obligations incurred by Her Majesty's Government are observed. But surely the United Kingdom must recognise that those are powers of last resort, and that the proper approach is to involve the devolved Governments fully in the negotiations by consulting them and trying to reach a consensus.

As this very modest amendment makes clear, it is not in any way intended to impose a veto. It is simply a way of trying to persuade and ensure that the Government will act in such a way that they strengthen the union. It takes into account, and is seen to take into account, the interests of Wales, Scotland and Northern Ireland as expressed through their constitutional institutions. This question of perception is extremely important if the union is to be strengthened.

There is a further consideration. The effect of the arrangements relating to the Northern Ireland protocol is to give the Northern Ireland Government attendance at some of the meetings of the joint committee: that is, the joint committee for the negotiations between Europe and the United Kingdom. This amendment, relating to the Joint Ministerial Committee—it is unfortunate that we have two committees with very similar names—is designed to ensure that the other two nations have, and are seen to have, the opportunity of expressing their interests so that the UK Government can go forward, with everyone knowing that those have been heard. It is a striking fact that countries such as Germany and Canada manage to conduct international relations while respecting the competences of their states and the other institutions that make up their countries. Indeed, the EU itself has conducted its negotiations successfully by taking into account the interests of the 27 other member states.

[Lord Thomas of Cwmgiedd]

I fear, however, that the United Kingdom Government have not caught up with the impact of devolution on our constitution. They really ought to be doing all they can to help those who seek to strengthen the union, by ensuring that devolved Governments are consulted in accordance with not only the spirit of the constitution but its letter. It is surely not too much to ask of the United Kingdom Government, as today the Welsh Government are considering the legislative consent Motion, to think again about doing something to put on the statute book a clear commitment to the Joint Ministerial Committee. This is a critical issue and, if a difference could be made here, it would be far better to see the union go forward to this important stage in the development of our nation with the consent of all the devolved Governments, and not to risk the Welsh legislature taking a different view.

Might I suggest that, if possible, the Government think again now and look at this proposed new clause? It does nothing more than embody what should be clear. I very much hope that, when the Minister comes to deal with this issue, he will give a possible commitment to this clause, but also a clear assurance that this committee is going to work as it should work—given that, as was so ably explained in Committee, it is not working. This is not a lot to ask; it asks to strengthen the union, and it is important that the Government should try to help those who wish to strengthen the union, because there are many who do not. I beg to move.

11.15 am

Lord Howarth of Newport (Lab): My Lords, I fully support the desire expressed by the noble and learned Lord, Lord Thomas, that there should be full consultation between the Government and the devolved Administrations and, indeed, the Assemblies in the devolved countries. I also fully support his plea for mutual courtesy and respect, but I question whether this new clause is appropriate. I doubt whether it is appropriate to lay down in statute the procedures for consultation between the Government and the devolved Administrations—to so formalise, as it were, the agenda that it is placed in a Procrustean bed. That could be too rigid and inflexible. Of course, as he urges, all concerned should seek consensus, which will be extremely important in ensuring that what emerges from the negotiations on the future relationship between the United Kingdom and the EU is viable in each of the devolved territories.

However, the achievement of consensus must be a matter of culture. I do not think that you can legislate for consensus. If you legislate and there is still not the good will and the willingness to give and take, along with the willingness to achieve mutual understanding, it will not work. So, strongly as I support the noble and learned Lord's objectives in this amendment, the means that he proposes to achieve what we all desire may not be the right ones.

Lord Morris of Aberavon (Lab): My Lords, I support the amendment moved by the noble and learned Lord. I do not know from whom I am quoting, but the Joint Ministerial Committee is a "poor thing, but our own." It has not worked very well, because it has not met very frequently. There has been no programme, its membership has varied, and it has not been a particularly effective arrangement so far. Hence, in my view, it is important that it should be put on to a statutory basis, in which case a report would be made to both Houses of Parliament and we would know where we stood. So far, we do not know.

The devolved Administrations never know when the current Joint Ministerial Committee will meet. It is important, for the sake of the union, to achieve a consensus where possible. In our discussion yesterday on another amendment in the name of the noble and learned Lord, it was obvious that there had been no discussion with the Welsh Assembly. I fear that the Minister's reply to our debate was less than persuasive. There is an alternative arrangement that could have been used under Section 109 for an Order in Council that would result in a consensual as opposed to an imposed change. Hence, I very much support the amendment in the hope that there will be a change of heart in Westminster.

I fear that there is still a denial in the Westminster establishment that devolution has taken place at all. It has been there for a long time now and it is part of our establishment. Legislators, particularly those who draft Bills for the Government, should recognise that the devolved Administrations have been set up within the United Kingdom and are there to further the union. I would hope that if this amendment is accepted, it would strengthen the union and put the committee on a proper basis, and then there would be an expectation of regular, frequent meetings with serious and senior representation of the Westminster Government.

Baroness Finlay of Llandaff (CB): My Lords, I am most grateful to the noble and learned Lord, Lord Morris of Aberavon, for his words in support of this amendment, which has my name attached to it. I reiterate the words of my noble and learned friend Lord Thomas of Cwmgiedd, who has made it clear that we are seeking to persuade the Government to think again.

I want to respond to some of the comments made by the noble Lord, Lord Howarth of Newport. Our amendment is not prescriptive; it simply requires that if there is a forum, it should meet regularly, but it does not stipulate how often it should meet. Meeting means face-to-face discussion, and the forum is there to discuss the means of mitigating the impact on the constituent parts of the United Kingdom of the economic and security aspects envisaged in the future relationship. It is to avoid problems arising in the future.

We have already heard that negotiations with the EU are likely to result in agreements that have a very direct impact on many aspects of devolved competence. I would like to highlight just a few of these, some of which are very close to my heart.

The first is the capacity of Welsh universities to access EU research funds and collaborative projects in the future. Over the last 20 years, access to these funds, and to the networks they have generated, has proved critical to boosting the research capacity of Welsh higher education institutions, including medical research. Indeed, a finding from Cardiff University made headlines yesterday about new ways to manage cancers. We have

been reliant on, and have built on, the funds we have accessed. The interaction between projects funded by research and development framework programmes and those funded by structural funds has been particularly important, as the Welsh Government have demonstrated in their publication on research and development after Brexit. Whether and how the UK, and therefore Wales, can access these funds will be determined by the negotiations with the EU.

The second aspect—whether there will be any reciprocal arrangements in future between the EU and the UK to access health services—is again a matter for the negotiations. I would support such arrangements, but it needs to be recognised that if such commitments are made by the UK Government, it is the Welsh NHS that will have to pick up the cost of treatment provided in Wales.

The third issue is procurement rules. Procurement is a devolved matter, and the Welsh Government are certainly interested in strengthening the way in which procurement can support, rather than undermine, local purchasing. But we know that the EU, as part of the insistence on maintaining a level playing field, will start from the position that its approach to procurement must continue even post Brexit. Wales needs to have a voice in the discussion within the UK negotiating team about any trade-off between flexibility on procurement and unfettered access to the EU market.

I could give many more examples: the future of state aid rules governing the assistance which the Welsh Government may give to Welsh businesses; access to European markets for Welsh agri-food products, such as lamb, beef and seafood; and whether or not Welsh students and pupils will have access to the Erasmus+ programme of student exchanges—to name but a few.

The key point is that the Welsh Government and the Senedd will be bound by the outcomes of the negotiations, which will begin in only a few weeks. We have already heard that Ministers of the Crown have the powers to force the devolved institutions to comply if they disagree with these outcomes. In these circumstances, it surely makes sense for the Government to start from the position where the default is to reach agreement with the devolved Administrations in the approach to negotiations. Otherwise, I fear that the result will be bitter and very prolonged conflict between the devolved institutions and the Government, which would seriously threaten the union itself.

Baroness Randerson (LD): My Lords, I support the amendment and respectfully disagree with some of the sentiments expressed by the noble Lord, Lord Howarth. The Government can no longer afford the luxury of an underdeveloped and informal arrangement with the devolved Administrations. The proposed JMC needs to function properly and to meet regularly—ideally, frequently—to deal with the details of EU negotiations and future relationships with the EU.

If the Government want to maintain the union, which I believe they strongly do, they will need to treat the devolved Administrations with the respect that they deserve. Not least it is an issue of common sense. It is often not obvious to civil servants and Ministers here what impact their negotiations will have on the devolved Administrations. Very often it is simply a sin of omission: a failure to understand the full detail and significance of devolved powers and their impact on the countries concerned. That is understandable; after all, no one can be an expert in everything.

I have argued for years that the EU, as the origin of many rules and regulations and a source of funding, has taken the party-political edge off decisions it makes. As they are made on an EU-wide basis, they are not regarded as having party-political significance. Once that ends, I believe that the party politics will become quite vicious if we do not provide for proper channels of negotiation and discussion. The noble Baroness, Lady Finlay, has laid out that issue very ably. She also talked about the impact on many aspects of life in Wales. She referred in some detail to universities. I declare an interest as chancellor of Cardiff University, and I am aware that it looks constantly and in detail at the impact of each negotiation on the life of that university, on research funding and on research partnerships with institutions in Europe.

There is also the impact on Wales of the proposed, and rather confused, arrangements for Northern Ireland. As that agreement works its way through—I point out to noble Lords that the Government seem to have no understanding of what it means—it is bound to have a strong impact on Wales. The Minister will know that I am not given to flights of nationalist fantasy, nor is there any sympathy on these Benches for independence, either in Scotland or in Wales. However, bearing in mind again the words of the noble Baroness, Lady Finlay, I urge the Government to be careful what they wish for. I am well aware that there are many, both at official and at ministerial level, who still regard devolution as a bit of nuisance, yet another hurdle to be overcome and an unnecessary level of complexity, but it is well established and in Scotland nationalist sympathies are very strong. They could grow stronger in Wales if this is not sorted neatly and effectively.

At the very least, officials and Ministers here often do not understand the full implications of the decisions they make. That is what is behind this attempt by the Government to write the devolved Administrations out of the picture. It is easier to ignore them than to pay them particular attention. I say to the Government that if they succeed in ignoring the devolved Administrations, they may well live to regret it.

11.30 am

Lord Hamilton of Epsom (Con): My Lords, the noble Baroness, Lady Finlay, put her finger on the nub of all this when she talked about trade-offs. Any agreement that we reach with the EU will be a series of compromises. If we have individual delegated bodies taking hard stands on one position or another, or indeed one industry doing that, we are never going to get the compromises that we need to get our deal through. That is why the noble Lord, Lord Howarth, is right: we cannot bind the Government's hands on this issue. The noble Baroness, Lady Randerson, acknowledges that the union is very important to this Government; indeed, it is to all of us in this House, I think. Are we really going to sacrifice the union by reaching arbitrary decisions that discriminate against one part of the union or another? No, of course we are not, but we

[Lord Hamilton of Epsom]
need to make compromises and the Government should not have their hands tied by individual bodies or regions of this country taking a hard line on one position or another.

Lord Wigley (PC): My Lords, I have my name to this amendment, but I rise with some trepidation. I will try not to have a flight of nationalist fantasy, as the noble Baroness, Lady Randerson, put it a moment ago. I hesitate to bring a discordant note. We hear a lot about the strengthening of the union. We must ask ourselves exactly what we mean by that. If it is to make the union work more effectively and harmoniously, be more sensitive to the needs outside Westminster and Whitehall and have greater empathy, of course that is highly desirable. However, I wonder whether that is the case. If it is to strengthen the grip of Westminster and Whitehall and impose policies that are not in the best interests of Wales, Scotland and Northern Ireland, that clearly will cause a lot of bitterness. The mechanisms that we are talking about here are to avoid that sort of bitterness arising.

I would have thought that it was patently in the interest of those who want to hold the United Kingdom together in its present form that at least some movement is made to ensure that clashes do not arise from differences of aspiration or even a misunderstanding between the Governments of the various nations of these islands. We need Westminster to be sensitive when there are universally accepted reports on changes in the relationship, such as in Wales in relation to the legal systems. The noble and learned Lord, Lord Thomas, brought up an excellent report, the Silk report, which suggested changes for the police and prisons. When those are universally accepted in Wales and totally ignored year after year here, it is hardly surprising that there is some feeling that the system from the centre fails to work in the interests of every area.

It is very relevant that this issue arises in the context of European legislation. Noble Lords will remember that in 1979, very shortly after we joined the European Union, there was a referendum in Wales in which the vote went 4:1 against having a devolved Government. The noble and learned Lord, Lord Morris, was very much involved in that. Several factors led to the changes between 1979 and 1997 when there was a very small majority, but still a majority, in favour of establishing a national assembly. One of the factors was the advent and development of the European dimension. With this came acceptance of a multilayered system of democracy and that the principle of subsidiarity that runs through the European vision was relevant within these islands. Some things within the strictures that we have are appropriate to be discussed and decided at Westminster, some—until the end of next week—on a European level and some that are more appropriate on a Welsh, Scottish or Northern Irish basis.

It seems there is a possibility now of turning the clock back from the vision that had developed over the last 40 years to what existed before 1979. If that is the case, that is the most likely thing that will drive a change, forced from the periphery, in the structures of these islands. It is the sort of change that many noble Lords have mentioned and are fearful about.

In the context of this specific amendment, all that is being asked for is a provision for a systematic approach that takes into account the needs of the devolved nations. That is not an unreasonable thing to look for. The fact that Northern Ireland yesterday, Scotland before, and probably Wales this afternoon will refuse the orders that are being requested in the context of this Bill is surely an indication that something has been got wrong from the centre.

I urge the Government to look at this amendment in that context and to see it as an opportunity to build a better, more harmonious relationship, rather than just stamp on it and hope that the feelings in Wales, Scotland and Northern Ireland will just go away.

Lord Wallace of Saltaire (LD): My Lords, may I raise a short constitutional question that came up last week and which relates to this? In our debate on Clause 38 last Thursday, the noble and learned Lord, Lord Keen, from the Government Front Bench said that Dicey is the absolute authority on parliamentary sovereignty. Dicey's view on parliamentary sovereignty was that it was indivisible, that it cannot be shared upwards or downwards. His views were strengthened by his bitter opposition to the whole idea of home rule either for Ireland or for Scotland. He believed strongly that the imperial Parliament was therefore the only authority of British imperial law.

That doctrine of parliamentary sovereignty, strongly held, is of course one reason why those who wish us to leave the European Union have objected to the whole principle of European law interfering with the sovereignty of British law as defined by Parliament. It seems to me, therefore, that as part of the process we go through as we leave the European Union, and as we proceed towards some sort of constitutional convention, we will have to redefine the doctrine of parliamentary sovereignty so as to accept that these devolved Assemblies —these devolved nations—have more than the occasional permission of the Westminster Parliament to do as they wish, and that they have certain entrenched rights that are not compatible with the doctrine of parliamentary sovereignty as defined by this rather prejudiced, late-Victorian lawyer.

Lord Griffiths of Burry Port (Lab): My Lords, some of the speeches have painted on a large canvas. I would like to focus on the amendment itself. I am reminded of a discussion here yesterday about the possibility—perhaps fatuous—of moving this Chamber to York in the name of reaching out to the population of this country. I mention that because, 20 years ago, in the name of reaching out to the country at large, the devolved Administrations came into being. The 20 years in between have offered enough evidence of the fact that you do not just bring things into being; you support and sustain them by developing a relationship that enhances partnership between the devolved bodies and the United Kingdom Parliament. I wish that people on other Benches would realise just how disappointed people in the devolved areas are about what has happened over the last 20 years and the way in which—begrudgingly, as it seems to them—some concessions and developments have come into being. I just wish people could feel that.

I have three children. When they were growing up, as teenagers, the most important aspect of parenthood that we had to learn was the moment when you establish trust. You move away from authoritarian modes of existence with your own children, and you trust them, even when sometimes they make mistakes. It seems to me that, in this amendment, we are asking simply to give visibility to a stance that we could describe as trust; that is the heart of it. As the noble and learned Lord, Lord Thomas of Cwmgiedd, said, it does not seek to change the provisions of the Bill; it just says that we should trust each other as we go along.

I would be surprised if I am the only one who has had to educate myself, because the new clause proposed by the amendment would, if accepted, go in after clauses that describe the UK-EU joint committee, and it is terribly confusing to talk about the Joint Ministerial Committee in the context of movements that bring that joint UK-EU committee into being. It does not end there, because we are talking about the Joint Ministerial Committee European Union sub-committee. The action we are trying to establish good relations for is what will happen in the discussions with Europe to bring about our ongoing relationship, in the period following the enactment of the Bill. We should therefore remember that we are looking to have these things written into the Bill to apply for a limited period.

My noble friend Lord Howarth is quite right: of course you cannot legislate for the processes of consultation. He went on to say that willingness cannot be legislated for, but unwillingness might necessitate legislation—and there has been unwillingness. There is a lack of empathy. Even the noble Lord opposite spoke about hardness and refusing to accept a position that will create difficulties. That is never in anyone's mind at all.

I go back to discussions in Committee and the intervention made by the noble Lord, Lord Kerr, who said:

> "The best option would be to include representatives of the devolved Administrations in the negotiating teams that go to Brussels when the subject for discussion is going to touch on the competence of the devolved Administrations."—[*Official Report*, 15/1/20; col. 672.]

If they are going to discuss the competence of the devolved Administrations, is it not fair and proper that those from the devolved Administrations most affected might be there to add their voice to the discussions? Is that not reasonable? Are we not talking about common sense?

We are looking at this in a binary way, thinking that everybody who has a different view is somehow invested with animosity towards the Government. We are talking about bringing out of all this something that stands up and appeals to people on the basis of common decency and fair play. I am happy to rest my case there.

Baroness Hayter of Kentish Town (Lab): My Lords, we strongly support Amendment 17, without which the whole nation of Wales could be excluded from preparing for input into the UK-EU negotiations. As the noble and learned Lord, Lord Thomas, said, and as the letter of 16 January from the noble Lord, Lord Duncan, to your Lordships sets out—I hope people have now got it—the Government have promised that representatives of the Northern Ireland Executive will be invited to be part of the UK delegation and to take part in any meetings of the joint committee discussing Northern Ireland where the Irish Government are involved.

That guarantee is welcome; I do not undermine that at all. But where is the equivalent recognition that, where the specific issues of other constituent parts of the UK are discussed, they too can be at the table, or at the very least be assured that the JMC on EU Negotiations has been briefed and will feed into Her Majesty's Government's negotiating position with the EU? The Government are seen as giving scant regard to the devolved authorities' interests and legitimate role in the negotiation, which is why a statutory role is needed. As my noble and learned friend Lord Morris of Aberavon said, the voluntary way has not worked sufficiently well.

11.45 am

If the Government were to disagree with the view that the Joint Ministerial Committee should be statutory, and if they share the view of my noble friend Lord Howarth, there is still a non-statutory alternative available: for the next meeting of the JMC to adopt a process whereby the devolved Administrations had meaningful engagement with the negotiations, including an expectation that UK Ministers would normally agree with the devolved authorities on the negotiating position in relation to issues within devolved competencies. The sorts of issues we have heard about include Erasmus, Horizon, reciprocal healthcare and citizens' rights in local and devolved elections.

Both for the Assembly and for this Parliament, and indeed for the people in the devolved authorities, agreement on this process should be made, and made public—not the details of the negotiations, but the assurance that the devolved voices are being heard. We would also welcome the creation of a quadrilateral fora, building on what is already there at ministerial level, to handle some of the detailed negotiation.

None of this detracts from the timing of the talks, or from the ability of the UK Government to take full account of the whole of the UK. It does not add a veto, and it would still allow for the sorts of compromises that would be needed, which the noble Lord, Lord Hamilton, spoke about. But it would add some of the trust that my noble friend Lord Griffiths said was needed, and ensure that the special interests and competencies of the devolved Administrations, including in relation to implementation, were fully factored into the negotiations, and thus part of developing a working and successful partnership with the EU, as the noble Baronesses, Lady Finlay and Lady Randerson, spoke about.

Earl Howe (Con): My Lords, I am grateful to the noble and learned Lord, Lord Thomas, and indeed all noble Lords who have spoken on the amendment. I feel that it is appropriate for me to start by saying something with a degree of emphasis about the Joint Ministerial Committee, which, I have to say, has received an undeservedly negative press from some noble Lords, both in Committee and today.

The Government have a high regard for the Joint Ministerial Committee structure and have engaged with the devolved Administrations through it, and indeed through numerous other means, throughout

[Earl Howe]
the EU exit process. The Joint Ministerial Committee on EU Negotiations, which I will call the JMC (EN), was established in the months following the UK's decision to leave the EU, and it has met 21 times since November 2016. From the Government's point of view—and, I hope, from everyone's—it has proved an invaluable forum for the exchange of information and views between the UK and the devolved Administrations.

Proposals for intergovernmental engagement on the next stage of negotiations formed a large part of the most recent meeting of the Joint Ministerial Committee on EU Negotiations earlier this month, and are due to be discussed again at the next meeting of the JMC (EN) next week—chaired, if my memory serves me right, by the Welsh Government.

I hope that I can give a sense of how effective a forum the JMC (EN) has been for discussions on the Bill. The Bill was first discussed at the JMC (EN) in the summer of 2018, when we gave the devolved Administrations the opportunity to feed into the White Paper. We then used the forum to share our thinking on policy development through the autumn and winter of 2018, sharing iterative drafting on the Bill. It was through these discussions that we made changes to the Bill to address the concerns of the devolved Administrations. This included providing them with an important role in appointments to the board of the IMA, both in the Bill itself and through ministerial commitments.

I therefore do not accept that the JMC (EN) has been either inactive or ineffectual. On the contrary, it has contributed significantly to both ministerial and official engagement between the UK Government and the devolved Administrations, and that is exactly the way we mean to continue.

The amendment seeks essentially to set the joint ministerial arrangements in concrete. It remains the Government's firm view that it is not in the interests of the UK Government or the devolved Administrations to place the terms of reference of the JMC (EN), or the memorandum of understanding on devolution, on a statutory footing. The noble Lord, Lord Howarth, and my noble friend Lord Hamilton of Epsom were absolutely right in what they said.

Lord Howarth of Newport: The noble Lord has heard serious warnings about the potentially dangerous consequences of a failure by the Government to consult adequately and work closely with the devolved Administrations. He will know that, in Wales, his rather upbeat assessment of the achievements and benefits of the Joint Ministerial Committee is not widely shared. If he will commit the Government, on their honour, to consult and work closely with the devolved institutions, along the lines laid out in this amendment, that would do a very great deal to improve trust and confidence and ensure good, practical outcomes. Will he do that?

Earl Howe: My Lords, I say again that it is our absolute wish and intention to engage constructively with the devolved Administrations over the negotiations ahead of us.

Intergovernmental relations have always operated by the agreement of the UK Government and the devolved Administrations. We wish that pattern to continue. The existing terms of reference of the JMC (EN) were agreed jointly in October 2016. In my view, and indeed in others', those terms of reference have served us well, but to set the terms of reference in legislation would inhibit this joint process. Apart from anything else, to legislate for this would anticipate the outcome of the review of intergovernmental relations, due to be discussed with the devolved Administrations next week at the JMC (EN). Putting the terms of reference of the JMC (EN) in legislation would pre-empt those conversations and restrict the ability of the various Administrations to develop future intergovernmental structures, such as the JMC (EN), to reflect the constitutional relationship between the UK Government and the devolved Administrations once the UK leaves the EU.

I hope noble Lords will appreciate how important it is for the JMC (EN) to have flexibility in its role to develop and adapt as the negotiations progress. Indeed, the terms of reference proposed in this amendment seem to be narrower than the existing agreed terms of reference, which refer to

"issues stemming from the negotiation process which may impact upon or have consequences for the UK Government, the Scottish Government, the Welsh Government or the Northern Ireland Executive."

This amendment would restrict the focus to economic and security matters. In fact, I believe that, if one reads the current terms of reference in full, one will find that they are miles better than those suggested in the amendment.

The essential point remains that a fixed statutory basis would not support the flexibility required to ensure that the JMC (EN) can operate as effectively as possible, which is what we want it to do. I hope I have provided noble Lords with assurances of the Government's commitment to work collaboratively with the devolved Administrations to discuss their requirements of the future relationship with the EU. In the light of those assurances, I respectfully ask the noble and learned Lord to withdraw his amendment.

Lord Thomas of Cwmgiedd: My Lords, I am grateful for what the Minister has said, but I fear that we have to address the issues of devolution and our changed constitution, and the sooner we do that the better. Looking to put matters on the statute book seems to me inevitable. However, in the light of what has been said, disappointed though I am that the noble Earl, Lord Howe, would not give the commitment that I asked for, I beg leave to withdraw the amendment.

Amendment 17 withdrawn.

Clause 37: Arrangements with EU about unaccompanied children seeking asylum

Amendment 18

Moved by ***Lord Dubs***

18: Clause 37, leave out Clause 37

Member's explanatory statement

Omitting Clause 37 would ensure the continuation of the refugee children and family reunification provisions of the European Union (Withdrawal) Act 2018.

Lord Dubs (Lab): My Lords, I have had a chance to read again the detailed debate in Committee on this issue. What I have to say is influenced by what I heard then and what I have read. I repeat my gratitude to the Ministers for the time they have given me on these three occasions, once on the phone and twice in meetings, to give me their point of view on the issue. I am also grateful for the support I received from many parts of the House, including from Members on the Conservative side. No names, of course, but I appreciate those words of encouragement.

I refer to the Salisbury convention, which came up last time. The Minister justified the position by quoting from the Conservative manifesto:

"We will continue to grant asylum and support to refugees fleeing persecution".

I do not believe that that is an argument against this amendment. This amendment is very specific indeed. It is about family reunion, and much too specific to be covered by this blanket provision in the Conservative manifesto. I believe that we have an entirely new issue, which could not have been foreseen when the Conservative manifesto was published or during the election campaign.

May I remind your Lordships of the history behind this amendment. In 2018, I moved an amendment, to a previous Bill, to provide that the existing provisions of the Dublin treaty, of which we are members as an EU country, for family reunion should be carried through in the negotiations for when we leave the EU. We have an arrangement whereby a child in one EU country who has a relative in another can apply to join those relatives.

It is a very simple and basic matter of family reunion. We want to be sure that this will be part of the negotiation and that the provision would be retained even after leaving the EU. Through a large majority in this House, that became part of the Bill, was then endorsed by the Government and became part of the 2018 Act, although there was no vote in the Commons. It is that provision which the Government are seeking to delete in this Bill, and my wish is to retain the 2018 Act as it stood. It is a very simple point: I would have thought that family reunion is one of the basic things that we all have to believe in.

If there are young people who have worked their way half way across the world, sometimes in hazardous conditions, from war and conflict in Syria or Afghanistan, and their incentive is that they have family here, surely it is right that we take note of that and not close the door on them. We all know how awful the conditions are for refugees in northern France and on the Greek islands. I have been there a few times, as have other Members of this House. It is shocking that young people, and others of course, are sleeping under tarpaulins near Calais or on the Greek islands in dangerous conditions where the children are liable to be sexually assaulted at night because there is not enough security. All these things are simply dreadful.

It is not surprising that those who have reached northern France seek to come across illegally, in dinghies or often in the back of lorries. The traffickers take full advantage of that. That is why, by giving young people legal routes to safety, we are thwarting the traffickers as well as being humane in giving them an opportunity to join family members here. Unfortunately, the sort of debate that we have had sends a dangerous signal to young people, particularly in Calais and on the Greek islands if they can get away from there, and they will seek to do what we would all do, which is to say, "Well, if we can't join our relatives legally, we'll find another way of doing it if we can afford to pay the trafficker." Surely that is not a resort that we wish to impose on young people. Family reunion is one of the safe legal routes.

Noon

The Minister today will of course talk about the number of refugees and child refugees whom this country has taken. That is good, but of course a large number of them have come illegally. They have arrived in Dover or often somewhere else on the south coast and we have taken them in; they have claimed asylum. That does not justify the Government saying, "Well, we're doing this anyway. We don't need to do any more."

I have been thinking hard about what Ministers have said to me about why they do not like this amendment. I am bound to say that I do not fully understand the argument, and a lot of people to whom I have spoken do not either, but I may have missed something. The Government first told me that the provision in the 2018 Act was in the wrong Act. I do not think they said that when they accepted the amendment, but they said that it should not be in the Bill at all. Furthermore, Ministers have said to me, "Actually, if you want it in a Bill at all, it should be in the immigration Bill, which is coming along, so wait for that"; "Actually, you don't need it in an immigration Bill. You should have it in immigration rules. You don't need any legislation at all. Can't you take our word for it?"

The Immigration Rules do not work in respect of international arrangements, so I do not think it a good enough argument. As for the immigration Bill, that is some time in the future. I am told that it will come this year, but we do not know what will be in scope. The Government Benches may look at opposition parties and say, "Well, you've got something as an Act. Accept that it is being removed and maybe another Act will come along and you can do it then," but that is not how opposition works, and it is not how scrutiny of the Government works. Surely when we can take the initiative, that is what we will do.

It is interesting that the Government approached the EU some time ago on this issue. I understand that there has been no reply yet, which we can perhaps accept for the moment, but I do not know what persuaded the Government to do it were it not that it was in the 2018 Act. Why did the Government seek to write to the EU about a provision that would have died after we left the EU unless they wanted to continue it? I am not totally clear what the point of that letter was.

I am also slightly puzzled as to whether the Government have been writing other letters to the EU that we do not know about yet in anticipation of the negotiations that will start at the end of this month, but that is perhaps too wide a question for this debate.

I want to say the following as calmly as possible. Ministers have also said to me, "This is a matter of trust." Well, yes, I trust individual Ministers when they look me in the eye and say that that is what they believe—of course I do—but I look also at the behaviour

[Lord Dubs]
of the Government as a whole, either before the election or now. I remind the House that when we had the 2016 Bill before us, I moved an amendment to help children who did not have family here. That was strongly opposed by the Government; in fact, the then Home Secretary, the right honourable Theresa May, urged me to withdraw the amendment and we had to vote it through. Eventually, after it went backwards and forwards once or twice, the Government accepted the amendment —Theresa May asked me to go and see her and said that the Government proposed to accept it. But it took a bit of argument; it would not have happened automatically.

Similarly, we had to vote on the 2018 measure that I have just referred to. The Government did not say that it was okay. They did not say that we did not need it; they just opposed it. So it is difficult to be faced with a question of trust. Of course I trust individual Ministers, but I do not trust the Government as a whole, if I can draw that distinction.

In Committee I quoted from a letter that the noble Baroness, Lady Williams, wrote on 13 January. I am still puzzled by it and still not fully clear what it meant, as I do not think my question was answered. With the tolerance of the House I will quote it again:

"It is right that the statutory obligation to negotiate previously contained in section 17 of the Withdrawal Act is removed and not retained by this amendment, so that the traditional division between Government and Parliament be restored, and the negotiations ahead can be carried out with full flexibility and in an appropriate manner across all policy areas."

I am still puzzled by one or two things. One is the

"traditional division between Government and Parliament."

I think that debates about Brexit and all the challenging issues coming from Brexit have challenged some of the traditional divisions between Government and Parliament anyway. We are no longer where we were and we need to accept that. I am also puzzled that

"negotiations … can be carried out with full flexibility and in an appropriate manner across all policy areas."

The Minister assured me that we were no longer going to consider refugee children's family reunion rights as a bargaining chip, so "negotiations" must mean something else. On a more positive note, it might mean that we are going to negotiate as the 2018 Act said. Maybe we are going to negotiate to continue the provisions of the Dublin treaty. If that is what was meant, okay—but that is not what the Government have been saying. I am trying to help the Minister by saying that that is perhaps a more charitable interpretation.

I will draw my remarks to a close. Of course, not all public opinion agrees with this, but I have a sense that public opinion has been broadly supportive of child refugees and of our humanitarian obligations as a country. If the argument is put to the British public, they tend to respond positively. I am not arguing about immigration as a whole but about child refugees.

Lord Alton of Liverpool (CB): My Lords, just before the noble Lord concludes his very persuasive remarks, can he put into context for the House the numbers of unaccompanied children we are talking about? In the context of World Refugee Day last year, with 70.8 million displaced people or refugees in the world and a further 37,000 becoming displaced every day, the modesty of what was incorporated by your Lordships' House and put into law should speak for itself. Will the noble Lord remind the House of the small numbers of the most vulnerable people of all that the amendment deals with?

Lord Dubs: I am grateful to the noble Lord. I am not sure that I have every figure at my fingertips, but let me do my best. Section 67 of the 2016 Act covered children being able to come to Britain without having family here. The Government capped the total at 480. I understand that we are quite well short of that, even today. The Government said the number of 480 was limited by the ability of local authorities to find foster families. That is not the case with children joining their relatives here, where clearly local authorities do not have to find foster places. I think, to date, several hundred children—the Minister may correct the figure—have come under the family reunion provisions in the Dublin treaty. We might be talking about 800. Without having the exact figures, we are probably talking about 1,000 or 1,000-plus in the Greek islands and in northern France. In the context of the international situation, that is very few.

The Minister said that we have taken a certain percentage of the EU total. Yes, we have, but probably only in relation to the size of our country. I do not dispute the figure from the Minister. However, refugees in a wider sense are going to be the most challenging issue to the whole world, and certainly to Europe and ourselves, over many years. But what we are talking about here is a very small number of children, who will be positively affected by this measure. That is why I am pretty keen on it. We had a small demo in Parliament Square yesterday, with a lot of people supporting it. We have had more than 200,000 signatures on a petition supporting the provision. I believe that we are essentially on the side of public opinion. I believe that we are essentially on the side of humanity. I beg to move.

Lord Kerr of Kinlochard (CB): My Lords, I supported the noble Lord, Lord Dubs, in Committee and I support him now. I need to declare an interest as a trustee of the Refugee Council. I also need to declare total bafflement; I have absolutely no idea why Clause 37 is in this Bill. I do not understand what the Government are planning to do. I took part in Committee and, after speaking on this, I listened to the Minister at Second Reading and am still none the wiser as to why it is here.

What is on the statute book now in the 2018 Act is a commitment that the Government will seek to negotiate a reciprocal arrangement for these poor children. This clause repeals that requirement and replaces it with a commitment, in almost exactly the same terms, to make a statement to Parliament, which is not a very strong commitment. Why do the Government want to repeal the 2018 Act in this respect? We have heard three possible explanations: first, that it is unnecessary to keep this on the statute book because the Government intend to negotiate on this matter, and the Minister told us that a letter had been written; secondly, that it was always inappropriate to the 2018 Act; thirdly, that it is important not to tie the Government's hands.

I do not find the first explanation very easy to understand. If the Government are seeking to negotiate and have written a letter designed to open negotiations on this matter, why should they want to repeal the commitment to negotiate? It does not make any obvious sense. On the second argument, regarding inappropriate positioning in the 2018 Act, they say it is much better to put it in the new immigration Bill. But there is no new immigration Bill as yet, and these negotiations are about to start. Also, the Government are not removing from the statute book any reference to this issue; they are replacing it with the language we see in Clause 37. If the 2018 provision was inappropriately placed, the 2020 provision that the Government seek is inappropriately placed. I do not understand that one.

Moreover, it is not a matter appropriate to an immigration Act, because what we have in the 2018 Act and in this Bill is a reciprocal requirement. The idea is that the Government would negotiate to ensure that the 27 would be willing to take poor children in this country who are in this plight and enable them to join their family elsewhere in the 27. The provision for the emigration of small children would be highly inappropriate to an immigration Act or immigration regulations. I believe it follows that the argument about it being inappropriately placed falls.

The third argument is still more difficult and slightly awkward. I am sorry not to see him in his place, but at Second Reading the noble and learned Lord, Lord Keen, said:

"It is vital that the Government are not legally constrained in those discussions."—[*Official Report,* 13/1/20; col. 554.]

The noble Baroness, Lady Williams, said that the Government do not wish to see their hands tied. However, nothing in the 2018 Act would tie their hands; they must seek to negotiate. We are not saying that they cannot conclude a deal unless they have successfully negotiated. For myself, I do not think it likely that the negotiation on this point would fail, but we are not saying that if it did, everything would be off. We are simply saying that the Government should have a go. I do not see how that would tie anyone's hands.

12.15 pm

This is where it gets awkward. Having tried to understand all three of the arguments advanced by the Government, one is left a little suspicious. The noble Lord, Lord Dubs, has reminded us that his 2016 action on unaccompanied children was hotly resisted by the Government. We also recall, as he said, that when we were promised at the Dispatch Box that 3,500 of those children would be let into this country—we were not allowed to put that in the Bill, because it would have made it a money Bill or something—we were given a promise, but only 480 children have actually been looked after.

When one remembers that the 2018 provision was hotly opposed by the Government, one is left slightly suspicious that they do not intend to negotiate very hard on this. Perhaps they envisage it as a concession: a pawn that can be given away in negotiations to secure something more important. I do not think that that is what the country thinks. Wearing my Refugee Council hat, I agree with the noble Lord, Lord Dubs, that there is a lot of evidence that the country is taking this very seriously and that of all the issues we are discussing on the Bill, some of them important constitutionally and some politically important, this is probably the one which has the most public resonance. These unfortunate children should be looked after, so why the Government should want to take off the statute book a commitment to do so is something that the public will not understand. I strongly urge the Government to withdraw this clause, and if they do not, I hope that the noble Lord, Lord Dubs, will seek to press his amendment.

The Lord Bishop of Durham: My Lords, I speak once more from these Benches, recognising that the argument has been made again and again. I am honoured to follow the noble Lord, Lord Kerr, and to concur with all that he said. As my right reverend friend the Bishop of Worcester reminded the House last week—he kindly spoke for me because I could not be present in Committee—this debate resonates with the nativity story, the story of a child fleeing persecution. The voices of these children are too often drowned out by conflict and violence, by traffickers and by political leaders. Let this House speak on their behalf by voting for the amendment.

I shall try to explain again why the Government's change is proving to be so difficult for those who work with migrant children to accept, and thus why many in this House find it difficult too. As the noble Lord, Lord Dubs, reminded the Committee and then the House just now, the Government opposed his amendments on previous occasions. The law as it stands was hard fought for; it was not easily won. Thus, the proposed removal appears to be the Government saying, "Well, we never really wanted the Dubs amendments, so now here is a chance to remove them." I note that in the Conservative Party manifesto there is a reference to welcoming refugees, but the lack of a specific reference to child refugees and family reunion simply adds to public concern.

I fully accept the Minister's personal commitment to migrant children. I also accept that there is every intention to offer a welcome and maintain family reunion, but what the Government's proposals have conveyed is quite the opposite. I wrote to the Minister with a suggested compromise, accepting in my letter that it might not work as a proposal, but I am struggling to understand why the Government cannot see that the message they are conveying at present is a negative one, whatever their good intent.

From these Benches, my right reverend colleagues and I view this issue as a moral bell-wether for the future of our country. We want to be known as a country that is welcoming, compassionate and committed to playing our full part in responding to the deep issues that arise from the reality of refugees around the world. I believe that the Minister and the Government want to act with compassion; it is simply that what is proposed does not convey this.

The noble Lord, Lord Dubs, mentioned that, for some, this is cast as an issue of trust. Do we trust that the Government will deliver their promises to vulnerable children without legislative assurance in the EU withdrawal Bill? However, to my mind, this is a matter not simply of trust but of priority. Where do the Government's priorities lie? It is important that they can negotiate a

[The Lord Bishop of Durham]
good deal for this country with our European neighbours, but we cannot set this against our responsibility to protect vulnerable children. That is what Clause 37 suggests: that the Government's priorities necessarily mean that we cannot give legislative assurance that we, as a nation, will provide for vulnerable children to be reunited with their families in safety. I am sure that that is not the Government's intention, but our actions testify to our values. The action of including Clause 37, removing the family reunion obligation from primary legislation, speaks louder and will be heard further beyond this place than promises of other legislation yet to be enacted.

Ensuring that there are safe, legal, effective and managed routes for child refugees to be reunited with their families in this country must remain an imperative. Schemes such as community sponsorship—here I declare my interest as a trustee of Reset—are an international gold standard for how to welcome refugees and provide new opportunities for those who have lost so much. We can hold our heads high because of the Government's work in recent years to support refugee resettlement here. Now is not the time to contradict this good work with the consequences of Clause 37. Will we be open, sharing our prosperity and opportunity with children who deserve so much more than the precarious life of a refugee and have so much more to offer, or will we be closed to them, shut off from the world and our responsibilities as a global power? I believe the choice is clear, which is why I have added my name to this amendment. I urge others to support it and the Government to accept it.

Baroness Hamwee (LD): My Lords, I too have added my name to this amendment, as I did at the previous stage. Like others, I thank the noble Lord, Lord Dubs, who is in danger of becoming a noun. I have been wondering whether and actually hoping that Clause 37 might be the result of the attentions of—if I can put it this way—an overly diligent draftsman who has failed to see the wider picture of how this looks; in modern parlance one would say the optics. We were told that a statutory negotiating objective is neither necessary nor the constitutional norm. It might not be necessary but it is not unnecessary either, and is the constitutional norm such a straitjacket of a convention that we cannot say what we mean in legislation?

As ever, the noble and learned Lord, Lord Mackay, put the constitutional point very clearly at the previous stage. He said that Clause 17 of the 2018 Act is

"an instruction to the Executive to open negotiations in a certain way",—[*Official Report*, 15/1/20; col. 760.]

and that it is not up to Parliament to give instructions; I hope I have represented him properly. But as noble Lords will recognise, and as the noble Lord, Lord Kerr, has said, Section 17 is only about opening the negotiations and seeking to negotiate. Without even getting into the relationship between Parliament and the Executive, where is the harm? Even if it is not how it is normally done and even if it is not terribly elegant, it makes Parliament's view clear and it was accepted by the Executive in 2018.

I am on the same page as the noble Lord, Lord Kerr. I am puzzled and a bit suspicious, because when there is a rather technical point or amendment—we are being told that this is a technical point—on a sensitive issue, my antennae naturally twitch. The more the Government tell us that they are not making any real changes, although they have changed the words, the more my antennae wave around, trying to catch hold of what this is all about. I am not surprised that the phrase in the Minister's letter about carrying out negotiations

"with full flexibility and in an appropriate manner across all policy areas"

was much referred to. Section 17 does not restrict that, although it does not mention reciprocity, as the Government did—but I do not think that that is material.

I raised a point last week about the differences in the wording for the child's "best interests." Under the existing provision, the child's best interests are referred to in the context of coming to the UK. Clause 37 applies the best interests to joining a relative. I think that both of those are important. The Government assured us that there was no significance in that, but I do not want to let something that might be important go unchallenged. The Minister referred me to the term "equivalent circumstances"—she is nodding at that—but it is not in the same part of the clause. It is in subsection 1(b) rather than 1(a), so I do not think that that answers my "best interests" question. I also asked the Minister last week if she could make available a copy of the letter sent last October to the Commission which she said should reassure noble Lords, but she was not sure whether she could. As she has not been able to pursue that, I assume that it is not available, but perhaps she could confirm that.

I come back to the proposed change. It must mean something. It does not make the very modest objective of Section 17 any more achievable—certainly not to most noble Lords who have spoken. Noble Lords will understand that given the subject matter of the clause and the relatively few individuals subject to it, there is a strong feeling that Parliament should not reduce our commitment to these children to safe and legal routes or–this was a point made by the right reverend Prelate—to be thought to be doing so.

Lord Hamilton of Epsom: My Lords, as the noble Lord, Lord Dubs, made clear in his opening remarks, this is a question of trust. He seemed to suggest that he trusted my noble friend the Minister but did not trust the Government. I am not sure how happy my noble friend is about being described as a sort of semi-detached member of the Government—but let us ignore that. Actions speak louder than words. The Government have a very credible record in allowing child refugees into this country. I think we run third among EU countries that have allowed in child refugees. Given that, the only basis on which this amendment can be supported is the belief that, if it is defeated, the Government will then stop taking in any further child refugees. I think that that defies all credibility; I do not think that there is any possible basis to support that thesis and I take the view that we have done very well on the question of child refugees and that if it's not broke, don't mend it.

12.30 pm

Baroness Butler-Sloss (CB): My Lords, in listening with interest to what the noble Lord has just said, I entirely accept that the Government have done some

very good work. We heard of it from the Minister last week and we ought not to undervalue the extent to which the Government have brought children to this country, but we are talking about a very small group. The noble Lord, Lord Alton, asked the noble Lord, Lord Dubs, about this and it might be 1,000. Among the children about whom we are speaking, this is a small group who have rights only under Dubs III.

I may have unintentionally misled the House last week, for which I apologise, by making a comment when I felt so strongly about this matter that I got carried away. I did not read my notes and led the House to believe that there was some English law providing a right for children. I was wrong and was rightly corrected by the noble and learned Lord, Lord Mackay, who kindly did not refer to me when he set out the existing position, which is that Dubs III—I am sorry, it is Dublin III, although one really ought to call it Dubs III—comes to an end in January 2021. Of course I trust the Minister and have huge respect for her genuine commitment to children, but what I am concerned about is urgency.

Given everything else that goes along with Brexit, it would be very easy for this Government, intentionally or unintentionally, not to have a priority regarding these children, a point made by the right reverend Prelate. What we need is to retain the sense of urgency. We do not find that in Clause 37, but we have it to a greater extent in Section 17 of the 2018 Act. It does not take us all the way, but it includes the requirement for things to happen. I am not happy, with everything that has been said today and everything that I fear may be thought behind the scenes, that this will be dealt with having a proper regard for urgency. From January next year these children, who have a right to come to this country and are among the most deprived and vulnerable children in the world, will lose the right to do so unless a degree of realism and urgency is injected into the Government.

Lord Roberts of Llandudno (LD): My Lords, I agree entirely about the lack of urgency. I also feel that there is a lack of enthusiasm for any sort of legislation that would mean more possibilities for people to come to the United Kingdom for sanctuary.

I remember with great sadness the day some years ago when we voted on the amendment of the noble Lord, Lord Dubs, and I saw the Tory Benches trooping through the Not-Content Lobby. I really felt so sad then. In the years since, I have been quite assiduous in dealing with these matters and the Minister must be tired of my contributions. But in 12 years, the only change I have managed to make is that the Azure card has been changed for the Aspen card. It is just a card giving £35 in one way or another. Asylum seekers still have no right to work until 12 months are up, and even then only from a restricted list. We still have indeterminate detention. In 2005, 17% of Home Office decisions were overturned on appeal, while last year and in the previous years it was about 40%. We still see a tremendous reluctance on the part of the Government to move, which is why I am totally opposed to removing any sort of legislation in the European agreements to protect child asylum seekers.

I will not speak for long because I have talked about this a great deal over the years, but I will make a plea to the Government. There are so many decent people on their Benches and yet, when we had the previous vote on the amendment of the noble Lord, Lord Dubs, some years ago, they voted against the rights of children. There is now an opportunity to strike a new chord: to offer hospitality rather than hostility to arrivals seeking sanctuary in the United Kingdom.

Lord Taylor of Holbeach (Con): My Lords, I share an admiration for the noble Lord, Lord Dubs, with almost every Member of this House. He has been determined and dogged on this issue. Perhaps I speak more as a former Home Office Minister in this House than as a former Chief Whip when I say I understand the arguments. I can see where the noble Lord, Lord Dubs, is coming from, but this Bill is about providing a framework under which the Government can enter negotiations and withdraw from the European Union on the 31st of this month.

We know what the Government have said all through the period of negotiations: Dublin III will apply. We will be doing what has already put into action. The figures show that since the start of 2010, 41,000 children have found homes in this country. There is a category that the amendment of the noble Lord, Lord Dubs, is particularly concerned with: maintaining the rights of unaccompanied children. There too, the numbers have been shared by this Government. I was a Home Office Minister in the coalition Government where noble Lords sitting on the Lib Dem Benches were my partners in maintaining this policy throughout that period. It is important to understand that within this House there is some unanimity of purpose about this Act.

What is worrying to me as former member of this Government, and sitting on these Benches, is the lack of trust that noble Lords have shown in the commitments made by my successor in the Home Office, my noble friend Lady Williams of Trafford. Nobody has worked harder to convince people of the intentions of this Government. Nobody has spoken with greater authority on the subject than her. As my noble friend Lord Hamilton of Epsom said, it is distressing that this House is not prepared to believe what is said on behalf of the Government by a Minister on this issue. This is a problem that this House is going to have to come to terms with. I went to the briefing meeting in room 10A last week, as did an awful lot of people. I think that the truth of the matter is that the room was convinced of the intentions of my noble friend, and by the responses she was able to give.

This withdrawal agreement Bill is not about providing specific negotiating instructions to the Government. It is about providing the Government the authority to enter negotiations. The Government made a manifesto commitment on this matter. It may not be as specific as the noble Lord, Lord Dubs, would have liked, but its general application applies. The Government will be not be negotiating in bad faith and trying not to find a long-term solution. We all know that this area of joint activity with our European colleagues needs agreement. It needs to be understood how we are all going to deal with these difficult cases of individual children and migrant refugees in general. The noble

[Lord Taylor of Holbeach]
Lord, Lord Dubs, may well be making a point but is he being effective in helping the Government achieve that objective by seeking to promote his amendment? I think not and that is why I will oppose his amendment and I urge other noble Lords to do the same.

Lord Woolf (CB): Will the noble Lord be good enough to explain to me—who has just been listening to what has been said in this debate—why the Government put this in the Bill if it has nothing to do with what the Government should be doing in the negotiations?

Lord Taylor of Holbeach: My Lords, the Government are not seeking to put in this Bill instructions as to the sort of negotiations they will undertake. That is not the purpose of this Bill. The agreement that the noble Lord, Lord Dubs, forced on the Government created that situation.

Lord Scriven (LD): My Lords, the reason why the House is so nervous is not that we in any way do not trust the word of the Minister, but because the Prime Minister has a habit of saying one thing on Europe and then doing another. It is not the Minister but the person at the top of the Government who the trust may not emanate from. Let us be clear and go through what this is about logically, as some noble Lords have done.

The first issue, following what the noble Lord, Lord Taylor, has said, is that Section 17 of the 2018 Act is an instruction to negotiate. It gives absolutely no conditions for those negotiations. It is same as Clause 37 before us now. The difference is that Clause 37 gives a two-month period before a new policy will be laid before Parliament. We have no idea what is going to be in that policy. There could be changes so that it may not be as clear, watertight and concise as what the noble Lord, Lord Dubs, sought to do with his previous amendments and what he is trying to do in this clause.

Noble Lords—particularly on the Government Benches and some on the Cross Benches—have said the Government have a good track record on this. Let us be clear. The Government have a track record of trying to stop amendments on this from the noble Lord, Lord Dubs, in 2016 and 2018. The only reason that the British Government have a good record is because the noble Lord has forced both Houses to make sure that we carry out the obligations that we are now carrying out. As the noble Lord, Lord Dubs, has said, on many occasions, Home Secretaries have pulled him in and asked him to withdraw the very obligations that the Government are now trying to claim credit for. That is why trust is not great on this issue as well. Logically, no one's hands are going to be tied behind their backs if we take the Minister at her word. On 15 January, on day two of Committee, she said:

"Our policy on this has not changed".—[*Official Report*, 15/1/20; col. 764.]

Therefore, the policy can be laid before the House now. Why the two-month wait? Is the Minister giving an absolute guarantee that not one word in the policy will change? If it has not changed, those whom we are negotiating with in Europe will have already been told exactly what the policy of the Government will be, in more detail than what the noble Lord, Lord Dubs, is trying to achieve by making sure that Clause 37 does not go through.

The real issue here is that if Section 17 of the 2018 Act was not in place the only difference is that the Government would negotiate—which the Minister has said they are going to do because they have sent a letter—but there would not be the two-month wait while policy was laid before this House, during which things could change and the guarantees in the policy could be watered down, leaving the most vulnerable children of all more vulnerable than they are now. Those of us who support the noble Lord, Lord Dubs, are doing so because of the potential for watering down the policy during the two-month delay. As I say, the trust issue is not with the Minister, but the Prime Minister says one thing about leaving the European Union to gain favour, and then when he has the chance, he changes his view.

12.45 pm

Baroness Blower (Lab): My Lords, I will be brief but I am moved to speak on this issue, particularly as the speeches have piled up. First, though, I commend the right reverend Prelate on talking about this as a moral bell-wether. In my earlier speech on this matter, I also said that this is as much a moral and ethical issue as it is a political and legal one. I genuinely believe that. The issue of trust that we are now getting into is difficult for us, but it is not just about trust; as the noble and learned Baroness opposite and the right reverend Prelate said, it is a matter of priority and of urgency. Why do we need a two-month delay, as the noble Lord who has just spoken asked, if there is a commitment from the Government to maintain the position?

In the manifesto on which this newly elected Government went to the country, there were commitments on refugees but not specifically on child refugees, and not beyond what was set out in the 2018 Act. It seems to a number of us on these Benches, both those who have spoken and many who have not, that this is not only a moral issue but an extremely urgent one that must have priority. Those who heard the remarks made in this debate by the noble Baroness, Lady Hamwee, where she read the words of a child in a classroom in this country, will know that it is important to understand the profound sense among British people that we must do our utmost to deal properly with child refugees. I believe that there is a profound commitment to make sure that these children, who have come through some of the most difficult circumstances that can possibly be imagined and have the prospect of being reunited with members of their families—that is the group of children we are dealing with in this amendment—can look forward to a much better life. It seems to those of us on these Benches, along with the Cross Benches and I am sure among some Members opposite, that we cannot let go of this lightly. I therefore urge us all to vote for the amendment.

Baroness Ludford (LD): My Lords, to sum up briefly, the Minister will have heard the strength of feeling in this House and the state of perplexity and bewilderment at the legislative record on this: the section is in the

2018 Act and there was no provision in the first version of this Bill to delete it. Therefore, in terms of continuity, the position would point to the Government accepting the amendment from the noble Lord, Lord Dubs, which would surely be the graceful and gracious thing for the Government to do. The strength of feeling no doubt indicates to the Government that they might otherwise have to deal with a vote in this House. There is a way out for them, and I very much hope that the Minister will be able to take it.

Lord Griffiths of Burry Port: My Lords, the debate has been eloquent and emotion has played its part. I must begin by paying yet another tribute, for the second time today, to the noble Lord, Lord Kerr, who has proved to have an expertise in the area of bafflement as much as anything else. The clever way in which he unpicked the strands from the balls of wool that had got tangled up and pulled them out for us to look at just left us totally bewildered, so that when it all settled back again we understood as little as we did before he began.

I have listened to the arguments, and the noble Lord, Lord Taylor of Holbeach, for whom I have nothing but respect, will need to listen a little harder on the nature of the lack of trust, which is dependent not on political, adverserial positions but on a genuine feeling that we are at a moment in our parliamentary history where we have lost the art of building consensus and taking an argument forward with the respect and even affection we have for each other when we are outside the debating Chamber. It seems to me that in this debate we have reached that sort of point.

It is a source of great wonderment to me that something put in an Act just 18 months ago is now not in it and that arguments are being put forward to justify taking it out. I certainly do not understand it, but it is a long time since I took my bachelor of arts degree and perhaps I am getting addled in my old age. But it is for a small group of children—children with relatives, which limits the number even further—on the part of a Government who have already done so well in the area looking after the interests of children. It is not an instruction to the Government to do this or that which we are seeking to put into this amendment. It is not about outcomes. It is to start or keep alive a process of negotiation on this issue.

The right reverend Prelate is quite right that this has a moral dimension. We must never forget that. The noble and learned Baroness, Lady Butler-Sloss, mentioning "urgency", "two months" and all the rest of it reminds us that we have a chance here to put this into the Bill in a way that gets things started at once, for an objective which I cannot believe a single person in this House would refuse to want and desire. I do not know. I am new to this game of politics. I try my best, I really do.

The noble Baroness, Lady Hamwee, quoting the noble and learned Lord, Lord Mackay of Clashfern, emphasised that point; nobody is seeking to tell the Government what to do or what point to reach in what they do. There is a difference between outcomes and process. All we want in the Bill is that a process be entered into. Outcomes will depend on the negotiations. That is the desire here. Other people have spoken eloquently. I hope that, in a spirit of generosity, there will be no riding of high horses because "We've won an election". As the noble Lord, Lord Dubs, said, it is in the school of humanity that we will be judged, not on our party, partisan positions.

The noble Baroness, Lady Williams, is another person to whom I have listened with enormous respect in the short time that I have been doing this work, and I hold her in that respect now. Yesterday, an agreement was forged via the usual channels on a stance on an issue that would arise later in the evening. During the afternoon, that stance was totally modified, and we had to take our people through the Lobbies in an entirely different way. If that can happen in an afternoon, perhaps there is some justification for trust needing to be earned.

So, the matter is before us. I am quite sure that we will be asked to vote on it, but it is a terribly serious issue about the body politic in this country. This is an admirable debate where we can learn the art of constructive engagement and putting together a better tomorrow.

Lord Ashton of Hyde (Con): My Lords, this is an important stage in the debate. With the agreement of the usual channels, we are going to put off the rest of the debate until after lunch to allow noble Lords to think about this. The Minister will wind up after lunch.

12.56 pm

Sitting suspended.

Defence: Type 45 Destroyers

Question

2.30 pm

Asked by ***Lord West of Spithead***

To ask Her Majesty's Government what is their programme for resolving the power generation problems affecting Type 45 destroyers; what is the anticipated timetable for fixing all six ships; and what will be the total cost of this work.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, the first Type 45 destroyer will begin receiving power improvement project upgrades in spring 2020 and will return to sea trials in 2021. Our £160 million investment in the power improvement project will provide increases in both power-generation capacity and reliability for the rest of the service life of the Type 45 destroyers. It is planned that all six Type 45 ships will have received this upgrade by the mid-2020s.

Lord West of Spithead (Lab): My Lords, I thank the Minister for her Answer. Let us be clear exactly what this means. We have six anti-air warfare ships. Eight years ago we knew they had a problem: sometimes a total lack of power would suddenly happen unexpectedly. If that happened, she had no ability whatever to defend herself, to use her weapons or missile systems. We knew how to rectify that four years ago. Three years ago I stood up in this House and said we must do this as quickly as possible, because with only six we are likely

[Lord West of Spithead]
to end up fighting someone and, as I know from my experience in the Falklands, if your system does not work, you get sunk, you have lost a ship and you have dead sailors. Quick as a flash, nothing happened. We are now getting something happening this year. I believe that the reason for this is that we have insufficient ships—only six of these—so the First Sea Lord cannot shuffle them around. They need to be used, so we have been using them even though they have this problem. There is also insufficient money.

One of these ships, HMS "Defender", is in the Gulf. Two weeks ago something could have kicked off there and, under an attack, her system could have failed. This is an appalling state of affairs. I ask the Minister to push the Secretary of State for Defence and the Government to ensure that there is sufficient funding to increase the number of ships being built, so that we have enough to shuffle around and to do the necessary repair work. Part of the problem is that the Type 23s are very old and are having to be repaired as well. That is no good whatever. The Prime Minister has said that a strong Navy and a Bill are important. We must push this.

Baroness Goldie: I thank the noble Lord, who has made a number of points. I rebut the gloomy and pessimistic picture he paints. In fact, the Type 45 destroyers are hugely capable ships, as he knows. They have been deployed successfully on a whole range of operations worldwide. They continue to make an enormous contribution to the defence of the UK and to our international partners, and the Royal Navy continues to meet its operational commitments. As the noble Lord is well aware, the origins of the problems with the Type 45s actually go way back to the early 2000s, when apparently there was a dilemma about which type of engine to choose and a new type was chosen rather than a type with a proven track record. All that is history. The point is that the Government have systematically analysed the problem from 2011 onwards under the Napier project and have provided money for the improvement work. That work will now go ahead, and these destroyers will be returned to full operating capacity.

On the noble Lord's broader point, I point out that the Royal Navy has attracted significant investment. Not only will our fleet grow for the first time since World War II; its high-end technological capabilities will allow it to make a better contribution and to retain a first-class Navy up to 2040 and beyond. That is something we should be very proud of.

Lord Boyce (CB): My Lords, as the noble Lord, Lord West, implied and as we have heard in this House on numerous occasions, the number of our destroyers and frigates is anorexic. This is exacerbated by the Type 45 problem. We embarked on an eight-ship, Type 26 frigate-building programme in 2017, but the first ship, "Glasgow", will not be commissioned until 2027. Thereafter, a ship will appear every two years. Does the Minister agree that a 10-year build programme for a frigate—it took only nine years to build our carrier—and of some 24 years for all eight ships is completely unacceptable? This is a black mark against the Government and our shipbuilding industry.

Baroness Goldie: I am afraid I do not agree with the noble and gallant Lord. I refer him to the national ship-building strategy, which made some pivotal recommendations upon which the Government have been acting. For example, the state-of-the-art, new Type 31 frigates will all be ready by 2028. This is an exciting development. Three of the Type 26 frigates are already being built on the Clyde. That is a huge addition to the frigate programme. As I pointed out to the noble Lord, Lord West, the Navy is expanding for the first time since World War II.

Lord Howell of Guildford (Con): My Lords, has my noble friend noticed that the United States Navy is planning to build a whole generation of unmanned drone technology-type frigates and destroyers to police the Atlantic, as well as unmanned drone-driven submarines? In the light of this new technology, which is coming along very fast, will any of our ships of the kind we are now discussing still be in date?

Baroness Goldie: The answer is yes. The innovation of unmanned equipment is important. My noble friend will be aware that we deploy both unarmed and armed aerial equipment, and these operate according to very strict protocols. As to the evolving face of defence and the tasks which lie ahead, we shall always be imaginative and responsive to what we see as the challenges. We shall do everything we can to respond to these challenges and to defend the interests of the United Kingdom.

Baroness Smith of Newnham (LD): My Lords, the Minister talked about the Type 31 coming on stream in 2028 as an exciting development, but the defence of the realm matters not in 2028 but in 2020. Can she tell us how many of the Type 45s are operational at present? Do we have sufficient ships to defend our aircraft carrier? Is she satisfied that the number of ships planned will meet British needs, particularly if Mr Dominic Cummings is involved in the next security and defence review?

Baroness Goldie: Put simply, the Royal Navy continues to meet its operational commitments.

Lord Campbell-Savours (Lab): Can the Minister tell us if Rolls-Royce is responsible for paying for the cost of these repairs?

Baroness Goldie: All these problems are of long standing, and the noble Lord is correct about that. In fact, there is a mixture of circumstances. First, the period within which the contractor might have had a responsibility has long since elapsed. Secondly, decisions taken in the early stages by the MoD partly account for the difficulties we have experienced, so it is not the responsibility of the original contractor.

UK: System of Government

Question

2.38 pm

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

To ask Her Majesty's Government what consideration they have given to exploring how (1) a federal, or (2) a confederal, system of government could be implemented in the United Kingdom.

Baroness Chisholm of Owlpen (Con): My Lords, the UK Government believe strongly in upholding the constitutional integrity of the United Kingdom. The United Kingdom is the most successful political and economic union in history. Together, we are safer, stronger and more prosperous.

Lord Foulkes of Cumnock (Lab Co-op): I agree with the Minister, but would she and the Government consider turning the commission that was included in the Conservative Party manifesto into a UK constitutional convention to look at the federal and other options and to address the English democratic deficit? With the growing clamour for Scottish independence and Irish unification, the Government could otherwise end up not just with us leaving the European Union but with the break-up of the United Kingdom.

Baroness Chisholm of Owlpen: I thank the noble Lord very much for chatting to me last week about this Question. Apart from the obvious practical difficulties, there is no guarantee that moving to a federal system would ensure that the union remained intact. We believe that our focus should be on working for the whole of our great country, to open up opportunities for people across our union and to unleash the productive power of every corner of the United Kingdom. I think my noble friend Lord Howe said everything that was to be said about the commission, but I am sure, as happened last week, that the department will listen to what is said in this Chamber, including what the noble Lord, Lord Foulkes, has said.

Lord Soley (Lab): Does the Minister accept that my noble friend has a very good point about the need to examine this in detail? There is a case for looking at federalism and confederalism, but the problem within England is the size of the south-east: 20 million people live in that corner—one-third of the total UK population—of whom, incidentally, about 400,000 to 500,000 are Scots, who might want to vote if there was to be another referendum in Scotland. Will she look very carefully at the work of the commission to see whether it can be as wide and detailed as possible?

Baroness Chisholm of Owlpen: Obviously, the commission will need to command public confidence through its membership and the way it operates. The Government are wholly mindful of that.

Lord Young of Cookham (Con): My Lords, further to the reply my noble friend has just given about the commission, is it the Government's position that there should be no legislation on constitutional matters before the commission has met in order to get a coherent view, or is it proposed that there should be some individual measures of constitutional reform in advance of the commission considering them?

Baroness Chisholm of Owlpen: I thank my noble friend for that question. He is slightly jumping the gun, because we have a couple of reviews ongoing. We have the Dunlop review, which is looking into these matters, and the devolution White Paper. They are both due to report this year, so we will know more then.

Lord Wallace of Tankerness (LD): My Lords, given that the goal of a federal United Kingdom has been the policy of the Liberal Party and the Liberal Democrats for longer than any Member of your Lordships' House has been alive, I am somewhat disappointed that the Minister does not want to embrace it. However, given that in the Conservative manifesto there is also a commitment to look at the role of the House of Lords, is she prepared to look at the constitution of a second Chamber—preferably elected—that would give a weighted representation to the nations and regions of the United Kingdom? Doing so would not only be a building block for federalism but might well strengthen the bonds of the United Kingdom, which she and I obviously value so very much.

Baroness Chisholm of Owlpen: I thank the noble and learned Lord for his question. The Government have no plans to go down the federal route at the moment. We are working to strengthen the union to ensure that the institutions and powers of the UK are used in a way that benefits people in every part of the country. I think we are showing that in the way we are investing in all four of our nations equally to make sure that everybody has the same opportunities.

Lord Kilclooney (CB): My Lords, is the Minister aware that in the recent general election, the political party that suffered the greatest loss of votes and percentage of votes in Northern Ireland was Sinn Féin, and that it is incorrect to say that there is a growing demand for a united Ireland in Northern Ireland?

Baroness Chisholm of Owlpen: Under the "new decade, new approach" agreement, the UK will provide the restored Northern Ireland Executive with a £2 billion financial package that delivers for the citizens of Northern Ireland. That is how we are showing our determination to ensure that Northern Ireland is not left behind, and our awareness of its problems.

Lord Grocott (Lab): My Lords, can the Minister reassure the House that whatever plans the Government might have for any changes, modernisation or refreshment of our constitution, there will be no place whatever for the continuation of the absurd system of the election of hereditary Peers?

Baroness Chisholm of Owlpen: I am so glad that the noble Lord got that in. It is difficult for me to answer, because of who is behind me. I think that the noble Lord knows that I do not have an answer at the moment.

Lord Cormack (Con): My Lords, does my noble friend agree that simple measures could be taken in the short term which would do a great deal to enhance the reputation of Parliament? Committees of both Houses could meet around the country on a regular basis. That has been done in the past and should be developed.

Baroness Chisholm of Owlpen: I agree with my noble friend; that is a good idea. After we leave the European Union, the shared prosperity fund is going

[Baroness Chisholm of Owlpen]
to bind together the whole United Kingdom, tackling inequality and deprivation in each of our four nations. As we know from the devolution White Paper, ideas will be coming forward and we are going to do more in the regions.

Health: Alcohol Abuse

Question

2.46 pm

Asked by ***Lord Brooke of Alverthorpe***

To ask Her Majesty's Government what plans they have to produce an effective strategy for dealing with alcohol abuse in 2020.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, we are working to reduce alcohol-related harms with the NHS long-term plan, the prevention Green Paper, support for children of alcohol-dependent parents and action to tackle alcohol-related violent crime. Together, this work constitutes an effective package to address alcohol abuse. We are not planning a stand-alone strategy.

Lord Brooke of Alverthorpe (Lab): My Lords, I am grateful for the reply but not its content. It is very disappointing. Last year the Government were moved to produce a strategy on drugs, which hopefully will be effective. However, the problems with drugs are minimal compared to the problems with alcohol. Does the Minister recall that in 2011, the coalition Government produced a widely welcomed strategy on alcohol? It fell apart in 2015, primarily because the Government could not carry the drinks industry with them. We had a responsible deal which proved to be irresponsible. Are we not going to face the same problems again? Unless the Government bring the threads together to produce a strategy with real teeth, nothing will change.

Baroness Williams of Trafford: We now have in place a wide-ranging approach that negates the need for a separate, stand-alone alcohol strategy. We have announced a new addictions strategy and will roll out the electronic monitoring of alcohol abstinence requirements for those whose offending is fuelled by alcohol.

Baroness Hollins (CB): My Lords, research conducted by the University of Sheffield estimated that reintroducing the alcohol duty escalator, which increases alcohol duty annually by 2% above inflation, would save 4,710 lives and prevent more than 260,000 crimes in England by 2032. Would the Minister consider discussing the wider impacts of alcohol duty with the Chancellor before the March Budget?

Baroness Williams of Trafford: Public Health England is monitoring how minimum-unit pricing has worked in Scotland and considering the impact of such a policy, which is similar to what the noble Baroness is talking about.

Baroness Jenkin of Kennington (Con): My Lords, all the evidence shows that when people have the right information, they make better choices. Most people are not aware, for example, that a slice of cake has the same number of calories as a glass of wine. All food and drink products except alcohol must have nutritional information on the packaging. Given that these are empty calories, and given the rise in obesity and related diseases, do the Government have any proposals to change this?

Baroness Williams of Trafford: Under EU regulations, companies do not have to put the calorie content on any drinks with an alcohol volume above 1.2%. I utterly agree with my noble friend that, if people knew how many calories they were consuming in just a glass of wine, they might think twice about how many glasses of wine or other drinks to have. A fact for today is that some canned cocktails contain the equivalent of six Krispy Kreme doughnuts' worth of calories.

Lord Rosser (Lab): My Lords, 20 people a day die as a direct result of alcohol and 24,000 a year die where alcohol was a factor. Does the fact that the Home Office is responding to this Question about an effective strategy for dealing with alcohol abuse mean that the Government regard this as a matter for which the Home Office is the lead department, rather than it being a health issue for which the Department of Health and Social Care should take the lead? Why is the Home Office responding to this Question, rather than the Department of Health?

Baroness Williams of Trafford: The noble Lord makes a valid point. Alcohol harm has a cross-government response, involving departments such as health, education and the Home Office. If we do not work together, we will diminish our responsibilities as a Government. In the troubled families programme, which is led by MHCLG, alcohol and substance abuse contribute to an awful lot of the problems in some of the families it deals with.

Lord Paddick (LD): My Lords, I was going to ask almost exactly the same question. Misuse of alcohol and drugs is often the result of suffering and hurt in people's lives, which is an issue of health and welfare, not of Home Office enforcement. What are the Government doing to improve people's well-being, tackle poverty and discrimination, and address the causes of substance misuse, rather than simply the symptoms?

Baroness Williams of Trafford: I will try to answer the question differently. The noble Lord points to the wide variety of harms that alcohol causes—the economic cost is something like £21 billion a year. We can see the involvement of alcohol abuse when looking at domestic violence—later this year, we will be considering the domestic abuse Bill—and the effect it has on children. The children of alcoholic parents must suffer terribly, and of course poverty is one of the effects of alcohol.

Lord Hogan-Howe (CB): My Lords, I am pleased that the sobriety scheme is being rolled out, but it would help to hear a timeline for it. People may be aware of one benefit of the sobriety scheme. It came

from South Dakota in America, where district attorneys, sick of seeing people die on the roads, introduced compulsory testing every day for a year. It led to a huge reduction in the number of people killed on the roads, but also the amount of domestic violence because, when the drunk drivers got home, they had been assaulting their partners. We experimented with this in the Met and it worked well, but I am concerned that the certainty of outcome is not as clear in our scheme because, should someone fail the test, we move them to the courts rather than insist on one day's imprisonment. Will the Minister update us on the scheme and say whether we are prepared to look again at the penalty imposed at the conclusion of a positive test?

Baroness Williams of Trafford: I am afraid that I do not have an update on the scheme for the noble Lord, but I concur with everything he said. I will write to him with an update and place a copy of the letter in the Library.

NHS: A&E Waiting Time Target

Question

2.54 pm

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government what plans they have, if any, to change the four hour accident and emergency waiting time target.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Blackwood of North Oxford) (Con): My Lords, the existing standard is still in place. NHS England and NHS Improvement are reviewing access standards in four key areas, including urgent and emergency care. The Government will respond to recommendations from the review once it is concluded.

Lord Hunt of Kings Heath (Lab): My Lords, in December, for 68.6% of patients the four-hour target was met, against the actual target of 95%. That is the worst month ever. The Government's response, behind the warm words of the Minister today, is that they want to get rid of the target, yet research published last week by Cornell and the IFS shows that the current target saves at least 15,000 lives a year. The Royal College of Emergency Medicine has said that there is no viable alternative to the current target. The college says that the Government should get on with getting this target back on track. Will the Government do that?

Baroness Blackwood of North Oxford: The noble Lord always asks astute questions. Winter is a challenging time. Over 2 million people attended A&E last month, and we have to pay tribute to the dedicated NHS staff for seeing over 70,000 people every day—the highest number in December ever. Although we have more NHS beds open this winter than last, our A&Es have had to treat more people. The A&E waiting standard is being looked at by clinicians, who are considering whether it is appropriate, given the changes that have occurred in clinical standards. The five key reasons considered for moving away from the standard include: the standard does not measure total waiting times; the standard does not differentiate between the severity of conditions; the current standard measures a single point in an often very complex patient pathway; and there is evidence that processes, rather than clinical judgment, are resulting in admission or discharge in the period immediately before a patient breaches the standard, which is a perverse incentive. The Government will not do anything without public consultation and clinical recommendation. We will wait to see that, and no decision will be made until that comes forward.

Baroness Fall (Con): My Lords, let us not get distracted from the key issue here, which is that our A&Es are under enormous pressure. One reason is that people find it very difficult to see a GP, and that is why I think we can all welcome the announcement that we will see some more GPs. When might we see some progress on the ground?

Baroness Blackwood of North Oxford: My noble friend is absolutely right. We need to improve access to community care to make sure that people are diverted away from inappropriate visits to A&E. We have said that we will recruit over 6,000 doctors in GP practice, and we are working on that as we speak. We are also increasing the number of GP practices within A&E so that people can be diverted into appropriate care when they go to A&E inappropriately. The evidence is that already around 10% of those attending A&E are streamed into those GP practices, and we are currently trying to increase that provision.

Baroness Finlay of Llandaff (CB): My Lords, I declare my interest in relation to the Royal College of Emergency Medicine. Do the Government recognise the data from the weekly monitoring of 50 EDs that report to the Royal College of Emergency Medicine that shows that, in the first two weeks of January this year, an average of almost 6,500 people waited more than 12 hours in emergency departments, the figure having risen from just over 3,800 in October? These long waits represent risks to the health, and indeed to the very lives, of these patients. The president of the college, Dr Katherine Henderson, has urged:

"Rather than focus on ways around the target, we need to get back to the business of delivering on it."

Baroness Blackwood of North Oxford: I emphasise that the review of clinical waiting times has been ongoing since 2018. The issues this winter are being addressed with urgent action in this winter. That includes: increasing the provision of same-day emergency care, so that patients can be seen as quickly as possible and are not admitted overnight, if that is inappropriate; reducing the number of patients who have unnecessarily lengthy stays, so that beds are available for those who need to be admitted; continuing to increase the number of urgent treatment centres, with a standardised level of care, so that those who do not need it can be diverted away from A&E—there are now over 140 urgent treatment centres, which can be booked from NHS 111 in most places—increasing the number of GPs in A&E, so that patients can be streamed to appropriate care; and enhancing NHS 111, so that patients can be booked into GPs locally or diverted to pharmacists.

Lord Clark of Windermere (Lab): My Lords, regarding the increase in the number of GPs, bearing in mind that the coalition Government cut the training of doctors by thousands upon thousands and that the Government have announced that they are going to increase the number of GPs by 6,000, will the Government produce a timeline of when they are going to meet that target of 6,000 extra doctors?

Baroness Blackwood of North Oxford: My Lords, I know that the timetables are going to come forward in the people plan, so I cannot give you that in detail today. What I can tell you is that we have announced that we are investing an extra £4.5 billion in primary and community care by 2024 to fund a good amount of this. The five-year GP contract was agreed between NHS England and the BMA last January, which makes the job much more attractive. In addition, salaried GPs will receive at least a 2% increase and there are incentives to attract them into rural areas, which are struggling the most with recruitment. We have also announced that we want to recruit staff into support services around GPs so that GPs are not focusing on administrative tasks, which has been a disincentive to recruitment over the last period.

Baroness Brinton (LD): My Lords, in addition to the importance of having more GPs to help relieve pressure on the service, there is still the continuing problem of social care, where many people are ending up in A&E or being returned to hospital after a brief stay back at home, or in a home. When will the Government publish their review on social care? We need to make sure that social care is absolutely understood and refunded properly in the future.

Baroness Blackwood of North Oxford: The noble Baroness, Lady Brinton, is right to hold the Government's feet to the fire on this issue. I know the strength of feeling in the House on this matter. She will know that we have provided councils with an additional £1.5 billion to make sure there is short-term funding to address the challenges. Also, of course, the better care fund has provided some winter funding to address some of the challenges. But she is right that there needs to be sustainable funding for the long term. We look forward to the SR for that. Regarding the long-term solution, the Prime Minister has been clear that he wants to bring that forward within this year.

Sentencing (Pre-consolidation Amendments) Bill [HL]

First Reading

3.01 pm

A Bill to give effect to Law Commission recommendations relating to commencement of enactments relating to sentencing law and to make provision for pre-consolidation amendments of sentencing law.

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

Anonymity (Arrested Persons) Bill [HL]

First Reading

3.02 pm

A Bill to prohibit the publication of certain information regarding persons who have been arrested until they have been charged with an offence; to set out the circumstances where such information can be published without committing an offence; and for connected purposes.

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

Small Business Commissioner and Late Payments etc Bill [HL]

First Reading

3.02 pm

A Bill to make provision to amend the statutory limits for payment of invoices; make provision for a statutory time limit for resolving payment disputes; amend interest for late payments and penalties for persistent late payments and non-compliance; prohibit specified payment practices, on-boarding and pay-to-stay; require payments becoming due under public sector construction projects to be held in project bank accounts; amend the remit, role and powers of the Small Business Commissioner in regard to late payments; provide for a duty on auditors to publish late payment data; and for connected purposes.

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

Certificate of Loss Bill [HL]

First Reading

3.03 pm

A Bill to make provision for a certificate to be issued to mothers in respect of miscarried and still-born children not eligible for registration under the Births and Deaths Registration Act 1953; to establish a database for archiving the certificate and recording information about the miscarriage or still-birth; and for connected purposes.

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

Digital Economy Act 2017 (Commencement of Part 3) Bill [HL]

First Reading

3.04 pm

A Bill to bring into force the remaining sections of Part 3 of the Digital Economy Act 2017.

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

Armed Forces (Posthumous Pardons) Bill [HL]

First Reading

3.05 pm

A Bill to make provision to provide posthumous pardons to armed forces personnel convicted of, or cautioned for, certain abolished offences.

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

European Union (Withdrawal Agreement) Bill

Report (2nd Day) (Continued)

Debate on Amendment 18 resumed.

3.05 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank all noble Lords who spoke before lunch. As the noble Lord, Lord Dubs, and my noble friend Lord Taylor of Holbeach have said, the British public rightly support our need to help the vulnerable children who most require our refuge. Parliament and Government feel this too. No one group or party has a monopoly on humanitarianism.

I must first correct some statements that noble Lords made this morning. The first was by the noble Lord, Lord Scriven, who said that if it were not for the noble Lord, Lord Dubs, the Government would not have done anything. I will outline why that is not the case—without, of course, diminishing the efforts of the noble Lord, Lord Dubs, over the years. As my noble friend Lord Hamilton of Epsom pointed out this morning, our record over the last 10 years clearly demonstrates that the Government are committed to protecting vulnerable children.

I reiterate our proud record, much of which goes back before the 2018 Act. More than 41,000 children have been granted protection in the UK since 2010, most of them under obligations through the refugee convention and wider commitment to resettlement, rather than through EU structures. More than 5,000 unaccompanied children are being cared for in England alone—a 146% increase since 2014—and we received more than 3,000 asylum claims from unaccompanied children in 2018. That, as my noble friend Lord Hamilton also pointed out, was the third-highest intake of any EU member state, and accounts for 15% of all asylum claims from unaccompanied children across the EU. There is also our commitment to resettle 5,000 people from the wider region in the next year alone.

Our refugee family reunion Immigration Rules provide an existing route for children to join refugee family members granted protection in the UK, with more than 27,000 family reunion visas issued over the last five years. Three thousand were issued to children, enabling them to reunite with family members under this route, in the last year alone.

The second point I must correct is what was said by the noble Lord, Lord Kerr—that in the end we agreed to "let in" only 480 children, rather than 3,500, as demanded by the noble Lord, Lord Dubs, in his previous amendment. I think the noble Lord, Lord Kerr, might be confusing our obligations under Section 67 with the clause that the amendment before us would delete, which considers only unaccompanied asylum-seeking children family reunion, on which I hope that I have demonstrated our commitment over the years. I reiterate that that policy, in relation to UASC family reunion, has not changed.

This Government were elected on a manifesto which includes a commitment to

"continue to grant asylum and support to refugees fleeing persecution".

I think the noble Lord, Lord Dubs, might be dancing on the head of a pin—

Noble Lords: Oh!

Baroness Williams of Trafford: If noble Lords will hear me through—when he says that it excludes children. I suggest that if that were challenged in court, the court might come to a different view.

Furthermore, the UK will continue to be bound by the Dublin regulation during the implementation period, which means that unaccompanied children in the EU and the UK will continue to be able to reunite with family members during 2020. We will continue to process family reunion cases referred before the end of the implementation period.

Our record reflects the unique importance of protecting unaccompanied children and preserving the principle of family reunion, and that policy has not changed. My noble and learned friend Lord Mackay provided some clarity on the effect of both Clause 37 and Section 17 of the European Union (Withdrawal) Act 2018. Section 17 does not grant family reunion rights to unaccompanied children but concerns only negotiations on this matter, although I noted that the noble Lord, Lord Kerr, expressed disgust at the notion of negotiating. As per the amendment by the noble Lord, Lord Dubs, which became Section 17, the Government remain committed to seeking a reciprocal agreement for the family reunion of unaccompanied children seeking international protection in either the EU or the UK—that is, to ensure that these vulnerable children can reunite with family members in the UK or the EU.

Clause 37 concerns only the removal of the statutory duty to negotiate an agreement on family reunion for unaccompanied children who have applied for international protection in an EU member state and who have family in the UK, and vice versa. This debate is not on wider issues relating to refugees, asylum or family unity. Indeed, the Home Secretary wrote to the European Commission on 22 October, as I outlined in Committee, to commence negotiations on this issue, seeking to negotiate, as Section 17 set out. I assure noble Lords that the Government are intent on pursuing an agreement no less than that which we would have pursued under the original Section 17, as the noble Baroness, Lady Hamwee, posited earlier, although I confirm that I am unable to share the letter.

However, a statutory negotiating objective in primary legislation is not necessary nor the constitutional norm. We are restoring the traditional division of competences between Parliament and Government when it comes to negotiations, and similar changes have been made

[Baroness Williams of Trafford]
to negotiating obligations across the Bill. Furthermore, rather than removing Section 17, we have gone beyond the original amendment by the noble Lord, Lord Dubs, and provided a statutory guarantee that the Government will provide a statement of policy within two months of the withdrawal agreement Bill's passage into law. This demonstrates our commitment to report in a timely manner and guarantees Parliament the opportunity to provide scrutiny. As I have said, we have already commenced negotiations. We will continue to deliver this negotiating commitment while removing an unnecessary statutory negotiating obligation, restoring those traditional divisions of competencies and going above and beyond to provide Parliament with an additional opportunity for scrutiny with Clause 37.

The noble Baroness, Lady Hamwee, raised the point about best interests. There is no intended or actual legal difference between the phrasing about how and when the best interests of the child should be considered for child family reunion transfers from the UK to the EU and vice versa. Both in the original Section 17 and in Section 17 as amended by Clause 37, there will be a consideration of whether it is in the best interests of the child to transfer from the EU to the UK in order to reunite with a family member, and vice versa. Neither Section 17 nor Clause 37 ever intended to consider whether it was in the child's best interests to transfer to or from the UK separately from the consideration of whether it was in their best interests to join a family member. In addition to that, our existing statutory obligation in Section 55—

Lord Kerr of Kinlochard (CB): The noble Baroness makes a characteristically careful and conscientious speech—I learned a lot and for that I am very grateful. Could she just tell us why Clause 37 is in this Bill?

Baroness Williams of Trafford: As I explained in Committee, Clause 37 is in this Bill because the Government wished to reiterate their commitment. It is similar in almost every way to Section 17, except that it does not instruct the Government to do something—it merely states the Government's intention to do something.

Lord Kerr of Kinlochard: With respect, it waters down that commitment by making a completely different commitment to make a Statement to the House rather than seek to negotiate a deal in Brussels.

Baroness Williams of Trafford: That is correct. If the noble Lord has finished his intervention, I ask noble Lords to reconsider their intention to divide the House because I hope that I have provided the clarity necessary.

Lord Dubs (Lab): My Lords, I am grateful to the Minister for at least having stated, again, the Government's position, but I still do not understand it. The noble Lord, Lord Kerr, explains why it was difficult to follow. For all the time we spent on it, it is not clear to me or many noble Lords, including on the Government Benches, why the Government are doing what they are doing. Part of the Minister's speech could have ended up with her saying yes, and that she supported the amendment—part of it led to that conclusion. Somehow, she changed course and said no. She talked about an unnecessary statutory obligation. By that, I believe she means the provision in the 2018 Act—an obligation accepted by the Government in the Commons after we passed it in this House. I do not know why it was okay then but unnecessary today; that has not been explained.

Above all, it seems to me that there is a very clear proposition on family reunion: unaccompanied child refugees should be able to join family members here. All we ask is for the Government to take that and negotiate on that basis with the EU. We cannot predict the outcome; it could not be more modest. All we are saying is, "Please do it". But the converse, by the Government saying, "We are not going to do it", sends a very difficult signal. Some people have called the Government mean and nasty. If the Government want to disprove that accusation, surely they should accept this amendment. It is very simple: we do that and then we are in line with what we decided in 2016.

Lord Hamilton of Epsom (Con): Does the Government's track record on admitting child refugees completely rule out the idea that they have been mean and nasty?

Lord Dubs: I do not think so, partly because the majority of the 41,000 children that the Minister referred to came to this country by illegal means because there were no legal means for them. We estimate that about 90% of them came on the back of lorries, in dinghies and so on. Surely that is the very thing we wish to discourage, so I am not convinced by that. I welcome what the Government have done for refugees of course, but we are talking about what we will do in the future. I regret that the signal the Government are sending by this is a very negative one. It is not a humanitarian signal and there is no downside for the Government if they accept the amendment; I do not understand what the problem is. Nobody has yet explained why the world will come to an end or something. It seems fairly straightforward: the House decided in 2018 on a simple humanitarian proposition. The Government have tried to find a way of arguing against that. I am sorry, but it has not persuaded me and I hope it has not persuaded the House. I would like to test the opinion of the House.

3.18 pm

Division on Amendment 18

Contents 300; Not-Contents 220.

Amendment 18 agreed.

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3.33 pm

Amendment 19

Moved by ***Lord Goldsmith***

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

"Non-regression of EU-derived rights and protections

After section 16 (maintenance of environmental principles etc.) of the European Union (Withdrawal) Act 2018 insert—

16A Non-regression in relation to protected matters

(1) Any action taken by or on behalf of a Minister of the Crown under—

(a) this Act, or

(b) any other enactment, for the purposes of or in connection with the withdrawal of the United Kingdom from the EU,

is unlawful if it is intended to have, or in practice is reasonably likely to have, a regressive effect in relation to the protected matters.

(2) A public authority exercising a function in respect of a protected matter must not exercise that function in a way that is intended to have, or is reasonably likely to have, a regressive effect.

(3) Regulations may not be made under this Act if they are intended to have, or are reasonably likely to have, a regressive effect.

(4) The protected matters are—

(a) animal welfare,

(b) biodiversity and the environment,

(c) chemical safety,

(d) data protection,

(e) disability access,

(f) employment and social rights,

(g) food safety,

(h) public health, and

(i) transport safety.

(5) For the purposes of this section an effect shall be considered regressive if it—

(a) reduces a minimum technical standard or level of protection provided for in retained EU law, or

(b) weakens governance processes associated with that standard or protection.""

Member's explanatory statement

This amendment prevents Ministers from using powers relating to EU withdrawal to diminish standards or protections in retained EU law relating to a series of 'protected matters'.

Lord Goldsmith (Lab): My Lords, Amendment 19 is in the name of my noble friend Lady Hayter of Kentish Town. One of the key issues in our debates has been the extent to which the United Kingdom will continue to safeguard the protections of certain rights that derive from EU law. The previous Bill, and assurances by the Government, indicated that protections would remain. The Government have repeatedly stated that, while they do not intend to undercut EU regulations, they want to retain the option of divergence and will therefore now refuse to sign up to level playing field provisions in a free trade agreement. It is time to know, if we can, what that actually means and just what the Government intend.

Just last Friday, the Chancellor, Sajid Javid, told the *Financial Times* that Britain would never accept ongoing regulatory alignment with Brussels. Ministers are arguing that it is not necessary to sign up to minimum standards, because in most cases the UK already exceeds what is required by EU directives or regulations, but we all know that that is not true in all areas.

The Government are telling us to trust them, even though they stripped out their previous commitments on workers' rights and parliamentary oversight. As we saw in Committee, they cannot yet define the future relationship they want with a range of the EU's executive agencies. We have, of course, been promised a ground-breaking new employment Bill, but Ministers will not tell us what its contents will be or set the timescales. We are not certain what engagement has taken place with trade unions and, while there is a need to regulate the gig economy, we need to be certain that this will not water down protections for other workers.

Yesterday, the European Commission briefed EU 27 diplomats on its preparations for the next round of Brexit negotiations. The presentation suggested that the EU will continue to advocate level playing field measures, with future co-operation to be underpinned by a single set of strong enforcement rules. It has been suggested that if the UK breaches any of its commitments under the future trade agreement, it could be fined or lose its preferential access to certain sectors. In response to the comments made by Mr Javid last week, one EU diplomat is quoted as saying:

"In the end it is all rather simple: If Britain wants to diverge from EU rules, it will diverge. Such an approach would obviously lead to new trade hurdles between Britain and the EU and in consequence less trade, less investment, less jobs."

The Government need to be clear about their intentions. If they want a Canada-style deal, they should be honest with the public about the limitations of that approach. If they want Canada-plus-plus-plus or similar, and the economic and security benefits that a closer relationship would bring, Ministers need to be honest with the public that this will require a greater degree of alignment.

As we know, time is tight. The EU has been clear that it will not even adopt its negotiating mandate until the UK has departed at the end of this month. There needs to be sufficient time left for the ratification of any agreements by national and regional parliaments across the continent. My party has always been clear that it wants a close economic relationship with the EU and that regulatory alignment is not only a price worth paying but would bring benefits to UK citizens. The Government might disagree but, having won the election by promising to get Brexit done, they must now get on with the job of telling people what post-Brexit Britain will actually look like. The purpose of this amendment is to set out the protections that we believe ought to be continued. I look forward to hearing what the Minister has to say about the extent to which assurance will be given on those protections. For those reasons, I beg to move.

Lord Fox (LD): My Lords, I support this amendment and associate myself fully with the words of the noble and learned Lord, Lord Goldsmith. As such, I can be brief.

Until last weekend, the Government had resolutely maintained a twin-track narrative. Yes, they said, we will have an independent trading policy; yes, they said, we will have frictionless trading with the European Union. Many of us in Committee tried to point out that these would, in effect, be mutually exclusive, and at the heart of this were regulatory standards. Many of us tried to explain that for frictionless trade to take place, a level playing field with the EU 27 means just that: a level playing field with no divergence. The Minister, at his obdurate best, shrugged off those Committee-stage comments.

As the noble and learned Lord, Lord Goldsmith, outlined, the Chancellor, Sajid Javid, broke cover in his interview with the *Financial Times* at the weekend. He quashed any prospect of the Treasury lending its support to our country's leading manufacturing sectors. He was very clear, saying:

"There will not be alignment"

and he urged companies to adjust to the new reality, for our automotive, aerospace, pharmaceutical, chemical and food and drink industries, all of which have been clear on the vital need for alignment with EU regulations. Mr Javid added

"we will do this by the end of the year"

which is not long to wait.

Therefore, at least one member of the Government has told the truth and told us where the Government are headed. However, it is simply amazing that any Administration, never mind a Conservative one, should turn their back on these important providers of jobs and prosperity. This amendment would prevent Ministers using regulation-making powers under the Bill to diminish standards or protections related to a series of protected matters. That sounds very dry and cold, but those protected matters, specified in the amendment, affect everyone. They include the environment, employment, social rights, animal welfare and public health—really important aspects of the everyday lives of people in this country.

[Lord Fox]

The amendment, so ably moved by the noble and learned Lord, Lord Goldsmith, in essence sets out in writing the aspirations that the political agreement purported to set out. We now know that those aspirations have come to naught. Will the Minister tell us where the Government are headed and what will happen to standards?

Lord Hannay of Chiswick (CB): My Lords, I lend my support to the amendment, to which I have put my name, and I will add a couple of points which have not previously been made. We are of course going over ground which we pretty thoroughly discussed yesterday with regard to Amendment 15. The ground is a bit different but the issue is the same: a level playing field, maintenance of EU standards and so on.

First—I hope the Minister will reply to this—this is not an onerous obligation because, as I think he will find if he looks at the record, we voted for every single one of these EU measures, which we will not regress from if this amendment is adopted. Therefore, if we voted for them, why do we now want to diverge from them?

Another important point is that anyone who knows anything about Brussels knows that this will be an absolutely crucial factor in the political declaration implementation—the whole level playing field issue, and so on. I would honestly wager that, if we accept this amendment, we will get a much better deal than the one we will get if we insist on diverging. It is worth remembering that the cost to this country's trade of insisting on the right to diverge will hit us long before we diverge. It will affect the terms we get in the deal we do, and the way in which inward investors and traders assess the chances of trade between the UK and the 27 not becoming more frictional. Therefore, the costs will be up front; they will not be somewhere down the road and perhaps avoidable if we never diverge. I would not be a bit surprised if, having beaten the tom-toms in this way in favour of divergence, the Government found that diverging was not as brilliant as all that.

Thirdly, noble Lords have probably not paid a huge amount of attention to what has been going on in the internal deliberations in Brussels. One of the Commission's main proposals in the context of its green deal, which I am sure it will follow up, is to put tariffs on goods coming from countries which do not observe the same environmental conditions as those observed in the European Union. That could be us if we diverged, as the Government, in the form of the Chancellor of the Exchequer, suggested we would. Noble Lords may or may not think that the Commission's proposal is a good idea; I do not, on the grounds of world trade policy. What noble Lords cannot disagree with, however, is that we are not going to influence greatly what the EU 27 decide to do: they will decide on the basis of their own inward dynamic, and strong forces are pushing for that.

3.45 pm

We may find ourselves, therefore, confronted in the not very distant future by a European Union that is putting tariffs on imports from countries that do not follow the same environmental rules as it does. That will come on top of anything we negotiate this year, because you can bet your bottom dollar that any deal we negotiate will have an escape clause that enables the European Union to adjust its treatment of trade with third countries—of which we will be one—on the basis of movement in their own policies.

There are, therefore, very serious issues at stake here. In fact, if the Government accepted this amendment it would cost nothing. I hope that they will do so—but that is a hope that may take some time to blossom.

Baroness McIntosh of Pickering (Con): My Lords, I support in principle, as I did in previous European Union withdrawal Bill debates, the sentiments that underlie this amendment. I ask the Minister to clarify in his summing up a point about animal welfare. Does he recall when we diverged from the rest of the European Union—I think it was in the early 1990s—by introducing a unilateral sow stall and tether ban, which we believed would pander to the animal welfare lobby and ensure overnight that the Conservatives appealed to a group that was not in the habit of voting Conservative? The outcome at that time was not what we had hoped: it was to push many of our pig producers out of business and to encourage more imports from countries such as Denmark and Poland. That was because the consumers tended to buy their meat not from local butchers but from supermarkets, on the basis of price. While it may therefore be appealing to introduce food into this country from countries that do not meet our high standards, it is highly undesirable for a number of reasons.

In this regard, will the Minister clarify the Government's position on the introduction of a standards commission? Great progress was made in the last Parliament between the National Farmers' Union, other farm organisations and the Department for Environment, Food and Rural Affairs. It was generally understood that a standards commission would be introduced to ensure that our home-produced foods and farm products would not meet unfair competition. The usual examples, with which we are all too familiar, are hormone-produced beef and chlorinated chicken, but there is also poultry and other products from Brazil, Argentina and other countries. Will my noble friend confirm that the Government are minded to introduce such a standards commission before the end of December?

I do not see it on today's list, but I understand that potential problems are looming with the Audiovisual Media Services Directive, which I am not familiar with, but, having attended a conference this morning, I am more familiar with than I was yesterday. The Commission is due to introduce guidelines that we will be obliged to follow, although it has not yet done so. We will not have a regulator in place immediately, although I understand that the Government are going to announce an interim regulator imminently. Will the Minister confirm what the status of this directive will be as part of retained EU law, as it has already been adopted but not yet implemented? It would be very helpful if he could outline to the House today what that will be.

The noble and learned Lord, Lord Goldsmith, who so eloquently introduced this amendment, referred among other things to chemical safety, biodiversity, the environment, animal welfare and food safety. What is

the situation regarding new chemicals that will be introduced in this country and that we would hope to export to the European market in the run-up to December this year, given that we will have an office for environmental protection fully in place only by 1 January 2021?

Lord Hendy (Lab): My Lords, I am no thespian, and my abilities as a scriptwriter are minimal. However, I have prepared a 60-second play to entertain your Lordships this afternoon.

Imagine the scene: a chance encounter between the Prime Minister and one of those voters from the "red wall" constituencies who lent his or her vote to the Conservatives on the basis that they would "Get Brexit done". I thought we might stage it in the National Railway Museum in York. I have to tell noble Lords that this play is not a comedy. I am going to call my protagonist "Billy" for the sake of argument:

"Billy: The Withdrawal Bill before the election had protections for my EU workers' rights, but those protections have been removed from the current Withdrawal Bill. Why?

The Prime Minister: No problem. The protections will be in an Employment Bill later this year.

Billy: Ah yes, I saw you stated in the Queen's Speech briefing that the Employment Bill would 'Enhance and protect workers' rights – as the UK leaves the EU … making Britain the best place in the world to work', and I noted that your manifesto said that you will 'Raise standards in areas like workers' rights'.

The Prime Minister: There you are then.

Billy: But Ministers have said that there will be no dynamic alignment, and yesterday the Chancellor of the Exchequer said no regulatory alignment either.

The Prime Minister: Correct.

Billy: But that means you could cut my rights: you could reduce my EU right to paid holiday from four weeks to two.

The Prime Minister: That's not our intention, but you must understand that we can't have our hands tied in negotiations with the EU.

Billy: Ah! Now I understand. The EU might want to cut the rights of British workers, and you want the freedom to defend them.

The Prime Minister: Not quite. The EU will be seeking to defend your rights. It's the British Government who might need to threaten to reduce them.

Billy: But I thought, when I voted to take back control, that the British Government would stand up for British workers' rights.

The Prime Minister: Not quite.

[*Dramatic pause*.]

Billy: I've been conned. You've done me up like a—[*expletive deleted*]—kipper.

THE END."

Will the Government give an assurance that they will not permit workers in the United Kingdom to have fewer rights now or in the future than those of their counterparts in the EU, the US or any other country with which a free trade agreement is sought? If that assurance is given, this amendment will be unnecessary. If that assurance is not given, the Minister should not mince words and should state clearly that in these negotiations the British Government will not defend the rights of British workers.

Lord Howell of Guildford (Con): My Lords, after that rather enjoyable contribution, and despite the very distinguished movers of this amendment, I find the whole thing a little bit puzzling. First, surely it is obvious that we are a responsible trading nation seeking the highest gold standards of regulation, standards and welfare and that, if we want to trade with and to expand our trade in the great markets of Asia, Africa and America as well as in our neighbours in Europe, we must rigorously observe the best international standards. That is a must. Even if we had a choice in the matter, which we do not, we would have to pursue that course.

Secondly, is it not obvious that in exporting, as we must, not only to the great European market but to all the countries of the Americas, Asia—where all the major growth in consumer markets will be over the next 10 years—Africa and Latin America, we will have to conform strictly to their standards as customers? If we are measuring the design and thickness of windscreens in motor cars, the windscreen provisions laid down in the European Common Market will have to be observed or we will not sell cars into the European Union. The same goes for America, India and China, each with its own quite different standards. We will have to be very flexible in all our patterns of standards and regulations governing health and safety, conditions, durability and all the other conformities required in these new markets. That will happen anyway.

Thirdly, the EU standards in some areas are excellent, and no doubt we will parallel and continue with them as we have before, but some are a little out of date. We are now moving into a world in which the predominant pattern of our European economies is services; we are a service economy. Frankly, job security is not what it was for anybody, so we need to redesign rights, benefits and support for millions of workers in a world where the old guarantees of a job for life and so on—the security that the great trade unions battled for in the past—will no longer be there. A totally new pattern of work has emerged, in which businesses will be operated in completely different ways. This requires a completely fresh approach to the pattern of benefits, security, protection and support; we must pioneer it in this country.

With all the variety of the markets, standards and regulations that we will have to meet—to be a successful exporter into China and so on—why we should want to be tied solely to, and aligned solely with, the pattern of our neighbours in the remains of the European Union is, frankly, a puzzle. I see the motive and concern behind it, the worry that there may be a sliding away of standards, but the reality is that we have no choice but to maintain very high standards indeed. Varied export markets demand standards of a whole variety, and there is no choice in this matter at all.

A great deal of this level playing field stuff is not driven by those concerns—of protecting workers in the new environment and new working conditions of

[Lord Howell of Guildford]
the digital age—as it should be. I think it is driven by something else. I say to the very noble and distinguished movers of this amendment that that is something worth considering before they press it, because I do not think it fits into the modern world into which we are moving.

Lord Judd (Lab): My Lords, the importance of this amendment cannot be overstated. At a time when the Government like to tell us repeatedly how well they are doing on employment in this country, this always overlooks the growing anxiety in the country about the conditions in which many people are working and the exploitation, sometimes quite ruthless, that goes on. There is a real anticipated anxiety that there is a driving force, wherever it is coming from—within No. 10 or wherever—behind so much of this legislation and that its real objective is about reaching a situation in which we can have a deregulated society and a free-for-all. That is the belief, the conviction, that many people believe is behind it all. That is why what is said about employment and social rights is so important in this protections list.

I care about the whole protections list but, if I were to pick one other item on it, it is that we are living in an acute and immediate crisis with the environment and biodiversity. Unless we take this seriously, the kinds of problems that will overtake our society in future could dwarf any of the preoccupations which take up so much of our time in Parliament at the moment. It is imperative to ensure that we do not just have good intentions and great aspirations but that we have the means to deliver what we are aspiring to in this context. We must insist on the standards which have so far been achieved—not as an end in themselves but as a platform from which we can move forward to still stronger, more imaginative action. I cannot say how much I welcome this amendment.

4 pm

Baroness Bennett of Manor Castle (GP): My Lords, I offer the Green group's support for this amendment. Noble Lords will have noticed that your Lordships' House is not quite as crowded as it was when we were debating the amendment in the name of the noble Lord, Lord Dubs. I invite your Lordships to consider all the people who are not here—the people in our supermarkets, streets, workplaces and wilderness areas. We have been talking about EU standards, but I would call them the people's standards. These standards were won by campaigns and struggles—by people in the UK and across the EU who stood up against the lobbyists and corporate interests. They stood up against those who had so much power in deciding what kinds of standards there should be in places such as the United States of America. They stood up for something better.

The Government keep saying that they want to have higher standards than the people's standards that we have had to fight so hard to get. I entirely accept the need for much higher standards. In this hugely nature-depleted country, each year we are collectively consuming the resources of our share of three planets—although we have only one. We are pumping out so much greenhouse gas. As the noble Lord, Lord Hendy, so eloquently outlined, we have people in really desperate workplace situations. We need better standards, but these people's standards are a foundation.

I am sure that we will hear from the Benches opposite about the UK's crucial place in the UN climate talks as part of COP 26 this year. If the Government do not incorporate this amendment into the withdrawal agreement Bill, what kind of message will this send about us as the chair of COP 26?

Lord Howarth of Newport (Lab): My Lords, this amendment proposes that we should not regress from the existing EU-derived rights and practices in relation to the protected matters specified in the amendment. I see no difficulty in principle about that. There may be much merit in it in terms of continuity of public policy and of reassuring the public that we will maintain the standards that have so far been established by the EU and continue to conform with them.

But it is surely essential that we retain the right to diverge. The noble Lord, Lord Howell, gave some very important reasons for this. The world is changing, and our country and economy need to be alert to all the changes that will provide opportunity for us in the future, as we seek our fortune in a wider world. The eurozone economy is a relatively inert and sluggish region of the global economy. While much has been achieved and very important protections have been established for workers' rights and environmental issues, as the noble Baroness has just mentioned, and we do not want to lose that acquis—those achievements and benefits—we have got to be flexible and be able to be innovative.

The essential principle of Brexit is that we take back control of our laws. It is an entirely reasonable proposition that this Parliament should legislate to perpetuate our conformance with certain particular laws that have already been enacted. It is a very different proposition that we should commit ourselves to the proverbial level playing field and the principle of non-divergence following the end of the implementation period. That is not what is envisaged in the amendment, but it seems to have been contemplated by a number of noble Lords in their speeches. If taking back control of our laws means anything, it means that we must reserve the right to diverge. Indeed, we will need to have the right to diverge even from what has already been established and achieved when it proves in some sense obsolescent, as new reasons and new horizons emerge for the kind of changes and developments that we would seek to achieve in our economy.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): I thank all noble Lords who took part in this debate. I thank the noble and learned Lord, Lord Goldsmith, for so eloquently introducing the subject. The amendment is very much like proposed new Clause 31, tabled by the noble Baroness, Lady Jones of Whitchurch, in Committee. I am grateful to the noble Baroness and the other noble Lords who took part in the debate on that amendment as well. Noble Lords will be completely unsurprised to discover that the Government's position on this matter remains unchanged.

The amendment fundamentally mistakes the nature of the Bill before us. The amendment is about our domestic policy post exit in a number of extremely important areas. However, by contrast, the Bill is about implementing the withdrawal agreement into domestic law. It is not about our post-exit domestic policy, important though that is. Therefore, we believe that the amendment is wholly inappropriate for this Bill. However, since the amendment has drawn us into a debate, even though it is beyond the scope and purpose of the Bill, it might be useful for me to reiterate how we will take decisions about issues such as environmental standards and other matters once we have left the EU.

As I set out in Committee, these matters were debated extensively during the passage of the 2018 EU withdrawal Act. I remember replying to that debate; I think that many of the same noble Lords who contributed today took part in that debate as well. Noble Lords will remember that, back then, the concern raised was that the Section 8 power in that Act would be used to regress from EU standards. I reiterate that the Section 8 power can be used only for the purposes of correcting deficiencies that arise as a consequence of the UK's withdrawal. That is what we said then, and I think that our record has proven that to be the case.

The 2018 Act does not provide a power to change laws simply because the Government did not like them before exit, and the Government cannot use the powers for the purposes of rolling back standards and protections merely because we wish to do so. Instead, where we seek to depart substantively from retained EU law, separate legislation will be brought forward, as indeed it already has been in certain areas. At that point, Parliament will, as normal, have its opportunity to scrutinise the Government's actions. This would allow for tailored and intense scrutiny. I have no doubt whatever that this House and the other place will fulfil their duties in this regard with great vigour. Once again, I reiterate our view that these debates are for that future legislation.

In any case, I can reassure noble Lords that the Government have no plans to introduce legislation that would have a regressive effect. We will not weaken protections in these areas when we leave the European Union; rather, we will maintain and enhance our already high standards.

We spoke at length in Committee about the Government's record on the environment, chemicals, food standards and animal welfare. For the sake of clarity, I will again set out some of our commitments. First, the UK has a long and proud history with regard to the environment and it is of the utmost importance that this is maintained when we leave the EU. There are areas where we are already planning to go further than EU legislation permits, such as single-use plastics. The Government will shortly be introducing the environment Bill, which we promised during the 2018 debates. It will strengthen environmental protections and enshrine environmental principles in law.

I will take this opportunity to reply to the point made by my noble friend Lady McIntosh on the subject of sow stalls, a debate which I remember well from my time in the European Parliament. That is an example of the UK going beyond EU rules in the full knowledge of the likely consequences. We chose to go further. We may decide—I am not committing us—to go further on live animal exports and in other areas, enhancing what protections are currently provided under EU law. If we do, we should consider the consequences. However, as the noble Lord, Lord Howarth, correctly pointed out, the whole point of Brexit is to take back control. These are decisions which we can make for ourselves in this Parliament in future. We do not need an external power dictating what we do in these regards.

On employment rights, I reassure the noble and learned Lord, Lord Goldsmith, that we are committed to ensuring that workers' rights are protected as the UK leaves the EU. We are legislating in areas where the EU is only just starting to catch up. It is the UK that has been shaping the agenda on tackling abuses in the gig economy, a point well made by my noble friend Lord Howell of Guildford. As we announced in the Queen's Speech, we will be bringing forward legislation to continue delivering and building on the *Good Work Plan*. This will give workers in the UK the protections they need in a changing world of work. Much as I greatly enjoyed the entertaining vignette from the noble Lord, Lord Hendy, I remind him that in a number of these areas—including holiday pay and maternity pay—the UK already goes much further than EU minimum standards permit. That is something that we should be proud of, and it is something that we are going to build on.

I have set out the Government's view that this amendment is not appropriate for this Bill. I have also, I hope, provided some reassurance about the Government's intentions regarding some of the issues raised by the amendment. I will close by noting that the effect of the amendment is unclear. The proposed new clause before us makes government action with a "regressive effect" unlawful, but it leaves many of the key terms unworkably vague. It is somewhat surprising that the noble and learned Lord, Lord Goldsmith, does not appreciate the poor wording of the amendment. First, the failure to define "protected matters" makes the scope of the amendment unclear. Secondly, the uncertainties in the definition of a "regressive effect" would create a great deal of legal uncertainty. Perhaps he is hoping for some legal uncertainties, as they would provide more work for lawyers. That was a joke, by the way. "Regressive effect" is defined as an effect that

> "reduces a minimum technical standard … or … weakens governance processes associated with that standard or protection."

The meaning of a reduction or a weakening, in this context, is not at all straightforward. Making this regressive effect unlawful without a clear definition carries significant legal risks, and may restrict policy with a progressive design, as the Government may avoid making policy changes for fear of acting unlawfully. This could impede delivery of post-Brexit government policy intended to deliver improvements in these areas.

To give an example, the waste framework directive sets targets for preparing for reuse and recycling of waste to achieve the EU's ambition to move to a circular economy. I think that we would all support that. The targets are set on weight, so the directive obliges member states to ensure that a minimum of

[Lord Callanan]
55% by weight of municipal waste is reused and recycled by 2025, 60% by 2030 and 65% by 2035. However, weight-based targets may not lead to the optimal environmental outcome. If the UK were to remove this target and replace it with a target set on a different metric—on carbon, for example—while the UK could have improved standards, we could still be held to have regressed on environmental protections, were this amendment to become law. This kind of legal uncertainty has been decried in other debates.

This Bill is the vehicle to implement the withdrawal agreement in domestic law; it is not to legislate for our post-exit domestic policy in these areas. That is for separate debates in separate fora. We will no doubt have them with great vigour, as we do in all these policy areas. The amendment is neither necessary nor appropriate for the Bill. The Bill will ensure that we move forward and focus on our domestic priorities. Noble Lords can already scrutinise any changes that regulations might make to retained EU law under the Section 8 power. As I said earlier, and say again for the benefit of clarity, the Government are committed to maintaining and enhancing our already high standards, including through legislation where appropriate. I hope, given the reassurances I have provided, that the noble and learned Lord is able to withdraw his amendment.

4.15 pm

Baroness McIntosh of Pickering: I followed my noble friend's arguments closely and understood him to say that Section 8 can be used only to correct deficiencies following the EU withdrawal Bill. His summing up was comprehensive, but he did not respond to the potential obvious deficiencies in the audio-visual media services directive. This may not be the only directive that falls into this category, but it is a category that I banged on about ad nauseam during the first EU withdrawal Bill and it has still not been resolved. If my noble friend is not able to answer today, could he write and tell me, and everyone else who has spoken in this debate, what the legal position is? We have not implemented the directive, but we are now leaving the European Union and it becomes part of retained law, I would argue, in a very deficient way.

Lord Callanan: If it becomes part of retained EU law before the end of the implementation period, it will be transferred into British law by snapshotting the procedure. I do not know the details of that directive, so I undertake to write to the noble Baroness about it.

Lord Goldsmith: I thank the Minister for his reply and thank all noble Lords who have taken part in this debate, particularly those—and it is the majority—who supported this amendment. I will just clear one or two matters out the way, from what the Minister said. The first is on the scope of the Bill. There was no problem including protections of this sort in the Bill before the election. It has been revised now, but I do not follow that point.

Secondly, he sees imperfections in the Bill. I have been in government too, and we always have the ability to improve amendments that have been tabled, the substance of which we agree with, to cure that problem. That is not the reason the Government are resisting this amendment. We all know that. The Government are resisting this amendment because they do not want, despite what has been said before, to be committed to non-regression. The point is about non-regression; the clue is in the title. It is about standards being lowered. Of course, they can be improved or changed, as long as, under this amendment, they are not reduced. That is the concern. For some reason—it appears to be ideological purity—the Government are not prepared to give that guarantee.

I was taken by the vignette—the play—of my noble friend Lord Hendy. I have heard him in court before, but it was the first time I have heard him in Parliament. He was as persuasive here as he is in court. But ideological purity risks damaging this country and the people in it. The point made by the noble Lord, Lord Hannay, is that the Government's insistence on this divergence has caused damage already. We have given the Government the opportunity to give assurances about this. Everyone will read what the noble Lord said in *Hansard* very closely. We have given them the opportunity to give stronger assurances to the outside world and the workers in it, and the invitation was not accepted. If, as many think, the result will be damage to the country and the people within it, and the rights that people believed were going to be protected, we know at whose door the fault will lie.

I will not press the amendment because there is no point in doing so with the position that the Government are in in the other place. It is clear that they will not accept this proposal or anything like it, but we will continue to hold them to their warm words and will carefully define and interpret them to see how far they go. I beg leave to withdraw the amendment.

Amendment 19 withdrawn.

Clause 38: Parliamentary sovereignty

Amendment 20

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

20: Clause 38, page 37, line 27, after "Kingdom" insert ", acting in accordance with the conventions relating to devolved power set out in—

(a) section 28(8) of the Scotland Act 1998, and

(b) section 107(6) of the Government of Wales Act 2006,"

Member's explanatory statement

This amendment alters the statement on parliamentary sovereignty to take note of the Sewel Convention, as enshrined in the Scotland Act 1998 and Government of Wales Act 2006.

Baroness Hayter of Kentish Town (Lab): The intention behind this amendment is to provide a key reassurance to Scotland and Wales. As we know, Clause 38 as it stands is pretty meaningless. As we said in Committee, it was added basically as a sop to the European Reform Group. However, as the Explanatory Notes make clear, the clause makes no material difference to the scope of Parliament's powers.

The problem with it is more what it does not say in that it fails to refer to the Sewel convention—the convention that the UK Parliament will not normally use its powers to legislate on devolved matters without the agreement of the National Assembly and the Scottish Parliament. Therefore, this stand-alone restatement of what I would call the bleeding obvious in regard to Parliament, without even a nod to the conventions, appears to backtrack on the devolution settlements.

The Welsh Government will therefore wish the Sewel convention to be restated. The noble and learned Lord the Minister said last week that that was not necessary because the settlements are already written into law. Perhaps they are but, for the same reason, there is also no need to restate parliamentary sovereignty. The problem is that doing one without the other gives the impression that the convention is being downplayed, and that is not helpful. I think I am right in saying that the Welsh Assembly, even at this moment, is debating legislative consent, and the rejection of this amendment will not be taken well by that gathering. For all sorts of reasons, it would be a poor precedent for this Bill to be the first to be passed without legislative consent from the Welsh Assembly.

The Government could decide to do what the noble Lord, Lord Newby, urged in Committee and take out Clause 38 altogether. That certainly would not detract from the Bill. They could still do that or they could accept this amendment. Either move would offer comfort to each of the devolved authorities that our departure from the EU was not being used to take back any powers or activities from their purview. Such reassurance, I know, would be welcome. The clock in Wales is ticking. I hope that the Minister can accept the amendment. I beg to move.

Lord Bruce of Bennachie (LD): My Lords, I have added my name to the amendment and shall explain why. The noble Baroness, Lady Hayter, has made it clear that in a sense this clause is superfluous, but it is superfluous in a slightly sinister way. It asserts the sovereignty of Parliament and effectively says, "Therefore, this Parliament can always overrule the devolved legislatures." We know that to be sovereign law but putting it in a Bill rubs salt into open wounds. Scotland and Northern Ireland have already refused consent and it is expected that Wales will vote today to do the same.

Over the last 20 years we have developed what is described as a quasi-federal constitution, but it is not federal; it is unitary, and Parliament, or Westminster, is sovereign. That is a fact. However, the whole point of the Sewel convention was to try to give comfort and reassurance to the devolved legislatures that they have a standing and a status that Westminster will take into account and acknowledge, and in all circumstances do its best to accommodate. It is a convention, not a law. That is obviously the argument as to why we should maybe move towards a federal constitution, which would effectively confer these conventions into law. I welcome the fact that the Labour Party is now engaged in serious consideration of federalism, which has been a long-standing policy aspiration of the Liberal Democrats. Quite genuinely, we should work together on a cross-party basis to develop the thinking behind this.

The Minister's words may matter—not just the terms of the legislation. There should be a sense of concern that, as powers come back from Brussels to the UK, those powers that do not return directly to the devolved legislatures and Administrations will come to the central UK Government and effectively weaken the existing devolution settlement, unless there is a genuine spirit of co-operation where the devolved Administration's views are properly weighed and taken into account. If the Government simply say, "We brought back control to a sovereign Parliament. Whether you like it or not, this Parliament can do what it likes and we intend to do so", that is not a good way to take the UK forward.

I do not necessarily subscribe to the view that Brexit makes the break-up of the United Kingdom more or less likely. The pain and disruption of Brexit might well discourage people in Scotland and Ireland from wanting to add other disruptions to it; I do not think it is as clear and simple as that. It behoves the Government to show a genuine engagement with the devolved Administrations; not just to use sweet words but to look for practical solutions that will ensure that the devolved Administrations are taken into account.

If the Government turn around and say, "We hear how you voted but we are carrying on regardless", that will not provide comfort and confidence that devolution is here for real and will develop. It requires the Government to show a lot more accommodation. I agree with the noble Baroness, Lady Hayter, that there are two ways to resolve this. The Government could simply repeal the clause and leave the Bill vacant on this, or they could accept the amendment. To do neither of those things would leave people in all the devolved areas very suspicious of the Government's intentions.

Baroness Bryan of Partick (Lab): My Lords, I think it is fair to say that, had we not been in the EU when devolution occurred, we would most certainly have moved towards a more federal arrangement in this country. The fact that our regulations were shared across the UK, even in devolved areas, covered the need for a federal arrangement where the different Assemblies and Parliaments could come together. Now that we will be out of the EU, there is a fair degree of urgency to address this. How are we going to devise regulations in the future? If we start that process by not including the Sewel convention, we start from a point where levels of disagreement are such that it will be hard to have that debate in a calm, careful way. We should accept this amendment, but also go on to explore the ways in which, where devolved matters intersect, we will work together in future across territorial areas. I hope that we can accept this amendment.

Lord Thomas of Cwmgiedd (CB): My Lords, I rise briefly in support of this amendment, to which I have added my name. I explained earlier today, and yesterday, why it is vital for this Government to recognise the importance of devolution as we go forward. This is a purely symbolic clause which does not make any difference. It could be left out. But, if it is to go in, can it please acknowledge that we live in a United Kingdom that has changed and where we must recognise the devolved legislatures? Conventions are of the utmost importance in this respect and should be recognised in the Bill.

The Duke of Montrose (Con): My Lords, I try to follow all the arguments that are put forward about devolution and where it all stands. The puzzle to me is that the logic of the people supporting this amendment seems to be that the Parliament here at Westminster is not entirely sovereign. That may be an issue that we wish to take up at some point in the future, but it is not something that we should be dealing with in the withdrawal Bill. I am not a lawyer, but the way the amendment is phrased seems to make justiciable anything that comes up between the devolved Administrations and Westminster. At this point, I think I would oppose the amendment on the ground that it would detract from the sovereignty of Westminster without all the implications having been thought through.

4.30 pm

Lord Griffiths of Burry Port (Lab): My Lords, I cannot really think that that is how things will play out. Yesterday I heard that an agreement had been made, meaning that there would be no vote that evening. On the strength of that, I arranged to take my wife out for dinner at last. Then everything changed, and there was to be a vote— indeed, there were to be two votes. I slipped out before any of that happened to phone my wife and say, "Dinner's off." I simply make the plea that we distinguish between what is in the marriage contract and the conventions that we create for ourselves that help marriages, and other relationships, to flourish.

This is a convention; it is not a law. But in granting this convention and incorporating it in the Bill, we will improve the relationship between us and the people in the devolved Administrations. It is so simple. We have heard arguments about things being set in stone, and about the thin end of the wedge. Who remembers reading FM Cornford's *Microcosmographia Academica*? One or two—these are the educated people. It was an argument about what happens in academic circles, where there is always a body of people who are resistant to change. They resist change on the grounds that it may be the thin end of the wedge, or set things in concrete, and all the other things I have been hearing in these wretched debates. Please let us realise that the softer acknowledgements of relationships, as well as the hard ones, help the debate, and the relationships, forward.

Baroness Butler-Sloss (CB): My Lords, I had not intended to speak, but over the last week I have listened to the various representatives of the devolved Administrations in this union of ours. Speaking as a totally English person, without any relationships in any of the three devolved areas—other than being married to an Ulsterman—I think that we English ought to be very careful and listen to what the devolved areas are saying to us. It was said earlier that the Government, and indeed many English people, might not really appreciate what devolution has meant. Perhaps it is time we did.

Lord Morris of Aberavon (Lab): My Lords, I support the amendment, which would put in statutory form what has grown into an important convention. I would like clarification, which I failed to get in yesterday's debate, regarding the breadth of the convention. I asked a specific question:

"will the Minister clarify and emphasise that legislative consent would normally be required for any regulation that would be brought in under this Act?"—[*Official Report*, 20/1/20; col. 958.]

I was referring in particular to Clause 21.

As I did not get satisfaction from the Minister's reply, I repeated my question later, saying:

"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."

A Section 109 order would be a consensual matter, as opposed to one imposed from Westminster. The Minister replied:

"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."—[*Official Report*, 20/1/20; col. 964.]

Perhaps now, after some more thought, the Front Bench can give the clarification that I required on how, from the viewpoint of Her Majesty's Government, the convention would be implemented.

Baroness Finlay of Llandaff (CB): My Lords, like others who have spoken about devolution, I have made many points and will not repeat them. However, it is important that the Government do not misinterpret the vote to leave the EU on the back of the slogan of "taking back control" as a vote for yet more concentration of power in the hands of people who work within a mile or so of this building. People want a sense of direct influence over their lives and things that really matter to them.

The amendment simply supports the status quo of the Sewel convention. It respects the relationship between Westminster, the Scottish Parliament and the Senedd. I urge the Government to recognise that it does nothing to constrain their agility in negotiating or their ability to negotiate. If the culture change that the noble Lord, Lord Howarth, spoke about so eloquently today is to happen, surely we must recognise that there are Governments other than the one in this Chamber and at the other end of this building.

Lord Hope of Craighead (CB): My Lords, I should like to reply to the point made by the noble Duke, the Duke of Montrose. I think he suggested that the inclusion of this amendment in the Bill would render the convention justiciable, and that there was something about it that would attract the attention of the judiciary. I have lived with the Sewel convention for a very long time, particularly with the amendment to the Scotland Act, now enshrined in Section 28(8). One of the points made by the Smith commission was that it wanted the Sewel convention to be given statutory effect. I am afraid that that battle was lost because, as Section 28(8) of the Scotland Act puts it, it remains a convention. Indeed, it was made perfectly clear by the Supreme Court when it considered the matter that it is not justiciable; it is simply a convention.

For my part—having, as I say, lived with the convention repeatedly through the 1918 Act—I relied on assurances by Ministers that they would respect the convention.

It was not actually written into the Act, as I recall. So, for my part, I shall listen very carefully to what the Minister has to say, because in the past this has been handled by Ministers giving assurances that the House has respected. I am not certain that it is necessary to write it in in this way, but if I do not get that kind of assurance, I might go with the amendment. The words that the Minister uses will be extremely important to me in deciding what to do.

Lord Morgan (Lab): My Lords, points have been admirably made by many other distinguished speakers. I will just make one: this whole issue unfortunately shows the frailty of devolution as a basis for keeping our partnership of nations together. Devolution had weaknesses built into it, admirable change though it was. As many of us said, the regulatory relationships between the nations were left extremely unregulated, if you like, and in a very imperfect condition, depending, as the noble and learned Lord, Lord Thomas, said, on the power of the word "convention", which hovers over the English constitution in a very dangerous way.

The other thing to be said about devolution as a frail basis for a settlement is that it is deliberately asymmetrical, and an asymmetrical devolution means unequal distribution. Wales has always been treated as a poorer relation in the partnership. When there are possibilities of strain, as we see in the case of the Bill, the thing is liable to crumble. The whole basic weakness of the settlement is, alas, likely to continue and to weaken the United Kingdom. It is perhaps appropriate that these aspects are implications of the work of King Henry VIII, who, despite his background, was the master voice of English nationalism. He adopted a colonial attitude to Wales and that is reflected in our current difficulties.

Baroness Humphreys (LD): My Lords, I have not added my name to this amendment but would like to register my support for it. Twelve months ago, to this week, Vaughan Gething, the Welsh Cabinet Secretary for Health and Social Services was asked: if the Senedd refused to grant consent to an Act of Parliament, could it be overruled by Westminster? His reply was interesting. He said that the ability of the UK Parliament to override a measure made in any part of the UK is one of the mischiefs in the UK's constitution that needs fixing. I do not for a moment suggest that we begin the fixing process today, but I cite his words merely as a fairly accurate summing up of the situation in which we find ourselves today.

The exclusion of a reference to the status of the devolved Administrations from Clause 38 appears deliberate. It seems designed to ensure that the devolved Administrations have no role to play in the UK's withdrawal from the EU. It enshrines, by this omission, the inequality of the power between the nations of the UK. The inclusion of Amendment 20 in Clause 38 would go some way to redress the balance and ensure that the devolved Administrations could represent the views of their respective nations in this massively important process.

I am a passionate advocate for the Senedd. I strongly believe in the principles of devolution, as do my colleagues on these Benches. The Senedd has given Wales a voice and a feeling of nationhood. The exclusion of this amendment could lead to the perception of both being taken away. Accepting this amendment would go some way to preventing those losses.

Baroness Hayter of Kentish Town: I know it is not normal for me to speak at this moment, but I thought the Minister might want to reflect on this: having heard and followed this debate, the Welsh parliament has just voted not to give consent to the Bill.

Lord Callanan: I thank all noble Lords who have contributed to this debate. It is obvious that I have spent so long debating across this Chamber with the noble Baroness, Lady Hayter, that she is now able to predict my replies to these questions, because the Government do feel that this amendment is an unnecessary restatement of the Sewel principles, which are already enshrined in statute. However, I accept the points made both by the noble Baroness and by the noble Lord, Lord Murphy, in Committee last week that it is not the justiciability of the Sewel convention that matters most in these cases. What matters is that the Government continue to uphold the Sewel convention and make sure that the interests of the devolved Administrations and of the people in Scotland, Wales and Northern Ireland are fully taken account of as we leave the European Union. I am happy to make that commitment and demonstrate that we have done so in the passage of this Bill as well. I can reassure the noble Lord, Lord Bruce, and the noble Baroness, Lady Bryan, that the Government have engaged constructively with the devolved Administrations—and the Northern Ireland Civil Service when there was no Executive—throughout the development of this Bill. I am sure noble Lords will join me in welcoming the restoration of the institutions in Northern Ireland—we will now have an Assembly to engage with as well.

We have been discussing this Bill with the Scottish and Welsh Governments, as well as the Northern Ireland Civil Service, since July 2018 and we have incorporated suggestions from those Administrations into the White Paper. We discussed its contents with them in the following months. Following those discussions, the UK Government made significant changes to the Bill, including ensuring that devolved Ministers will have a clear role in the functioning of the independent monitoring authority that will monitor the citizens' rights provisions in the Bill, restricting the powers in Clauses 18 and 19 from amending the devolution statutes and strictly limiting the number of provisions protected from modification by the devolved institutions to those of a constitutional nature.

4.45 pm

We strongly believe that the changes we have made and the process we have followed have respected the devolution settlement. In line with the Sewel convention and the usual practices and procedures, we sought consent and I can reassure the noble Lord, Lord Griffiths, that we have worked extensively with the devolved Administrations to reach agreement in the hope that we would be able to achieve consent for this Bill. It is worth noting that the Scottish Government have publicly stated that they would refuse consent for any

[Lord Callanan]
EU exit Bill. We took all reasonable steps to secure consent while respecting the constitutional fabric of the United Kingdom. This is not affecting our work with the devolved Administrations on other EU-exit-related legislation. Earlier this month, the UK Government introduced the Direct Payments to Farmers (Legislative Continuity) Bill into Parliament. The Government sought consent for the relevant parts of that Bill and the Scottish Parliament voted to provide it earlier this month. This will ensure that the UK Government and devolved Administrations have the necessary powers to provide direct payments to farmers after we leave the EU on 31 January.

As the noble Baroness, Lady Hayter, informed us, we have just discovered that the National Assembly of Wales has voted not to consent to those parts of the Bill on which we sought consent. We are of course disappointed that the devolved legislatures have withheld consent and we recognise the significance of proceeding without it. Nevertheless, these are exceptional circumstances and the Bill must proceed so that we can deliver on the referendum result and leave the EU by the end of this month.

Lord Wallace of Saltaire (LD): My Lords, as unamended, the clause we are debating restates the principle of parliamentary sovereignty. Many of us considered that the devolution settlement had modified the Victorian concept of unitary sovereignty. In Committee, the noble and learned Lord, Lord Keen, went out of his way to reassert that AV Dicey's views on parliamentary sovereignty—that the imperial Parliament is supreme and cannot share legislative power with other Assemblies—is what this clause means. Does the Minister not therefore recognise that the inclusion of this clause as it stands undermines the conventions established by the devolution settlement?

Lord Callanan: I am not sure I want to get into an arcane legal debate with the noble Lord, my noble and learned friend Lord Keen and others. I do not accept what the noble Lord says; I do not think this undermines the settlement.

We will of course continue to seek legislative consent. We will continue to take on board views and will work with the devolved Administrations on future legislation, whether related to EU exit or otherwise, just as we always have.

Lord Kerr of Kinlochard: There was much wisdom from the noble Lord, Lord Griffiths of Burry Port. It would help the atmospherics a great deal if the Minister could reassure the Scots and the Welsh—I think the Northern Irish are reassured already—that they will be included in the United Kingdom team negotiating in the joint committee. I say that because I think it is right to try to improve the atmosphere and because, after all these years, the Lady Griffiths is entitled to a dinner out.

Lord Callanan: She is indeed. I hope that at some stage in the future the noble Lord, Lord Griffiths, will repeat the endeavour which failed last night. The noble Lord, Lord Kerr, made a good point. We have already started discussions with Scottish and Welsh Ministers, and I hope that those with Northern Ireland Ministers are to come. I was present at some of the discussions in London a couple of weeks ago. A frame- work was put in place for joint ministerial committees; one on EU negotiations and one on ongoing EU business, which I chair. We will develop those consultations as we go into the next phase, and we are working on proposals to involve them in future negotiations. We will, of course, take that point on board.

We understand the importance of preserving both the spirit and the letter of the devolution settlements and the principles of the Sewel convention as the UK exits the EU. In response to the noble and learned Lord, Lord Morris, I say that international relations are indeed a reserved matter. However, the devolved Administrations do have an important role in implementing these agreements. Any devolved provisions made under the Act will normally be made only with the agreement of the devolved Administrations and we will engage with them on this, as we have always done in the past. The Government are committed to upholding these principles, but this is not changed by restating them in the Bill. Given what I have said, and the reassurances that I have been able to give, I hope that the noble Baroness will feel able to withdraw her amendment.

Baroness Hayter of Kentish Town: I thank the Minister, though I am obviously saddened by his response. My noble friend Lord Griffiths clearly abides by the conventions laid down by Lady Griffiths and we would do well to listen to the noble and learned Baroness, Lady Butler-Sloss, who said that we need to listen to what devolved areas are saying. The Government are not doing this: the devolved regions have come to us and said that they are not getting enough of a hearing. I will not repeat what all noble Lords said, but the comments are general. We need to give respect; we need to respect the convention which offers, as the noble Lord, Lord Bruce, said, "comfort and reassurance" and, in the words of my noble friend Lady Bryan, "confidence". This is all about recognising the convention as part and parcel of our parliamentary system. It does not override parliamentary sovereignty; it is a part of the way we are. It is a terrible shame that the Government cannot see that this detracts nothing from the Bill, but I seek to add it to the Bill. I therefore beg leave to test the opinion of the House.

4.52 pm

Division on Amendment 20

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Amendment 20 agreed.

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Northbrook, L.
Norton of Louth, L.
O'Cathain, B.
O'Shaughnessy, L.
Pannick, L.
Parkinson of Whitley Bay , L.
Patel, L.
Patten, L.
Penn, B.
Pickles, L.
Pidding, B.
Popat, L.
Porter of Spalding, L.
Rana, L.
Ranger, L.
Ravensdale, L.
Rawlings, B.
Reay, L.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ribeiro, L.
Ridley, V.
Risby, L.
Robathan, L.
Rock, B.
Rotherwick, L.
Ryder of Wensum, L.
Saatchi, L.
Sanderson of Welton, B.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
St John of Bletso, L.
Stedman-Scott, B.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Sugg, B.
Taylor of Holbeach, L.
Thurlow, L.
Trees, L.
Trefgarne, L.
Trenchard, V.
Trimble, L.
True, L.
Tugendhat, L.
Tyrie, L.
Ullswater, V.
Vaux of Harrowden, L.
Vere of Norbiton, B.
Verma, B.
Vinson, L.
Wakeham, L.
Walker of Aldringham, L.
Warsi, B.
Wasserman, L.
Wei, L.
Whitby, L.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Wolfson of Aspley Guise, L.
Wyld, B.
Young of Cookham, L.
Young of Graffham, L.
Younger of Leckie, V.

5.09 pm

Clause 41: Consequential and transitional provision etc.

Amendment 21

Moved by ***Baroness Jolly***

21: Clause 41, page 40, line 5, at end insert—

"( ) Subsection (2) does not apply to the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019, nor to any regulations made under that Act."

Baroness Jolly (LD): My Lords, I will be brief. Clause 41 allows Ministers to make regulations that could alter any primary legislation that has been passed prior to the Bill. Such regulations will be made by the negative procedure, effectively giving Ministers carte blanche to do what they will to legislation that is already in statute. Many of us in the health community in your Lordships' House were recently involved with the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019, which, noble Lords will remember, started life as the Healthcare (International Arrangements) Bill. A number of significant changes were made to that Bill by this House and then approved by the Commons. However, this clause could allow Ministers to revert the Bill to the original, thereby thwarting the will of Parliament, or they could at any time change any component of it, or any other Bill, with the minimum amount of scrutiny. When you think about it, its scope is really quite breathtaking.

In Committee, my noble friend Lady Brinton asked the Minister about a letter that she had left with the Government Whips' Office and which the Minister had not seen and so was unable to answer in as much detail as usual. Since then the Minister has sent noble Lords a letter outlining the situation, for which we were all very grateful. As well as responding to the amendment, I am sure that other noble Lords will want to press the Minister on the detail of the letter, so that the Government's intentions are on the record about any proposed changes to legislation relating to healthcare and the EU. I do not intend to press this amendment. I beg to move.

Baroness Brinton (LD): My Lords, the European Union Committee report on Brexit, referring to the revised withdrawal agreement and political agreement, notes the lack of any mention of reciprocal health arrangements and says, in a section on mobility on pages 56 and 57, in paragraphs 252 to 257, that clarity was needed on how this would work. This is one of the reasons that I questioned the Minister in Committee. I am sorry, on both our parts, that the message with that question did not get through, and I thank her for the letter that she sent over the weekend. This is important because the European Union Committee says:

"There is no reference in this section of the Declaration to reciprocal healthcare, including the European Health Insurance Card (EHIC), as a means of facilitating mobility."

It was that "means of facilitating mobility" that was absolutely critical for the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019. With your Lordships' permission I will shorten that to "healthcare arrangements Act" rather than repeating the whole thing every time. Can the Minister explain why there was no mention of this reciprocal healthcare, and say explicitly to the House that these arrangements will stand?

Parts of the Minister's letter were very helpful on specific points relating to those EU citizens living and working in the UK at the moment and UK citizens living and working in the EU. But that is not as broad as the provisions of the healthcare arrangements Act. That is why the committee raised its concerns, specifically using the phrase "means of facilitating mobility".

The Minister's letter made a rather odd assertion: that healthcare arrangements are protected by Clause 13 of the European Union (Withdrawal Agreement) Bill, which covers social security systems. Nowhere in Clause 13 is there any reference to healthcare, nor is there any such reference in the healthcare arrangements Act. More worryingly, if she is right and I am wrong, the decision to change arrangements under Clause 13 is at complete odds with the decision arrangements in the healthcare arrangements Act. Clause 13 reinserts the Henry VIII powers that were in the original healthcare arrangements Bill, and both your Lordships' House and then the Government decided that this was inappropriate. That is why that Bill was changed. It became an Act in April.

Sections 6 and 7 of the healthcare arrangements Act set out clear routes for changes via statutory instruments and reports to Parliament. That Act is transparent and accountable, unlike Clause 13, where responsibility for such decisions is given to the Minister of the Crown and/or a devolved authority. Can the Minister confirm that any arrangements relating to healthcare would fall under Sections 6 and 7 of the healthcare arrangements Act given that they do not relate to social security? This amendment tries to make sure that we have that protection for reciprocal healthcare. I beg to move.

5.15 pm

Baroness Kramer (LD): My Lords, I had not expected to speak to this amendment, and I will be exceedingly brief. I do not want to take attention away from the healthcare issues that have been raised by my colleagues.

In this House we all know that when legislation is passed it is later used as a precedent. We have here a clause that effectively permits the Government by negative statutory instrument to change a huge raft of primary legislation passed by both Houses of this Parliament. If I had described that to a neutral person without mentioning that it was a move by the UK Government I think they would have assumed that it was being moved by Putin, Erdoğan or someone else who sees a democratic structure as a mechanism that they can reshape to assert government control over the general democratic process.

I am extremely concerned by this precedent and its extraordinary scope. It fits in with a pattern of a government approach to this Parliament that is diminishing the other House even more than this House. I think we can see in this, in the attitude towards negotiations, in the Government's position on devolved assemblies, which we just heard, and in their attitude towards future trade negotiations that they are in a sense patterning themselves after local government, where an executive cabinet can make all the rules, the assembly can scrutinise—scrutiny only: that is its role, and I refer to the other House as well—and raise issues, but the executive can simply ignore it. I think this is an exceedingly dangerous road. This legislation and this cause advance that process, and everyone in this House, regardless of the party to which they are affiliated and which they support, needs to take on board that pattern which is being developed and which Clause 41 underpins. It requires a very serious rethink before we lose what we have had and it is too late to regret it.

Lord Warner (CB): My Lords, I have added my name to this amendment for a reason which keeps coming up in our debates: they are all about trust and whether we can trust the Government to behave in a reasonable way. A lot of the amendments that have been put down have been about trying to ensure that—if I may put it as crudely as this—the Government behave well in carrying out these negotiations. We have seen a kind of emotional blindness, if I may put it that way, in the discussions we have had on immigration systems and physical documents that people who have a right to live here can use. This seems to be another piece of work in which we have to table an amendment to try to ensure that the Government behave properly and well in these negotiations.

It is quite extraordinary. Having agreed these reciprocal healthcare arrangements with the EU countries and Switzerland so recently, I cannot understand why we should not just be able to use this amendment to ensure that there are no rapid changes. The Government almost seem to forget the huge number of people who in their daily living move for holidays between the other 27 EU countries and Switzerland, as though that does not matter. This is an important part of people's lives. They book their holidays assuming the system will not change. Particularly after this recent piece of legislation, no one has told them there is a risk that something may change.

The Government are bringing on themselves a mood in which people will be suspicious of what they are up to. They will raise a lot of anxieties totally unnecessarily. In my experience of government, if you allow rumours to be fostered they spread around quite quickly. What we are trying to do with this amendment is to remove the temptation. The Government would be wise to listen, unless the Minister can give a level of assurance that will remove any suspicion that somehow, because of the way they behave, the Government are up to something.

Baroness Thornton (Lab): I thank the noble Baronesses, Lady Jolly and Lady Brinton, for introducing this. As they said, we are basically picking up where we left off in Committee. I was not satisfied with the answer the Minister gave about reciprocal healthcare. As noble

[Baroness Thornton]
Lords have now said, nobody really understands why, when we already have legislation that we considered and passed last March, that does not form part of the negotiation that will take place. I read the letter that the Minister sent to the noble Baroness, Lady Brinton, and it is very confusing.

I will take a more cynical view of this. A year ago, when we had in front of us the Healthcare (International Arrangements) Bill, it had in it five or six Henry VIII powers. It gave the Secretary of State the power to make a deal about healthcare with anybody in the world they might choose, without any recourse to this Parliament or any accountability. This House wisely changed that into the Bill we passed, now the Act, which does what the Government had said they would do. They said they would not add to the policy arrangements in any area. They would take up the European Union policy and translate it into a way that worked post Brexit. That Bill we had before us a year ago did not do that; it extended the powers incredibly.

I fear that we are seeing a repeat of what the Government tried to do a year ago, so I really need to know from the Minister what powers the Government may take—not what will happen between now and December, but what will happen in a year. What will it look like? Will there be any reciprocal healthcare arrangements? Will there be 27 agreements, which is what the Minister was talking to us about a year ago when we were discussing international healthcare and looking at crashing out of the European Union? What has happened to those 27 agreements? Where have they gone?

As my previous noble friend Lord Warner said—he is still my friend—it is only a matter of time until people become very anxious about this, because not only are people working all the way across Europe, but they are going on holiday all the way across Europe. At the moment, the Department of Health and Social Care's website is really opaque. It does not give us any clarity at all about what might happen.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Blackwood of North Oxford) (Con): My Lords, it is always a pleasure to speak to the really important issue of reciprocal healthcare, which touches on a lot of UK and EU citizens' lives. This House has rightly tested this issue robustly and it is right that we consider it today.

The withdrawal agreement Bill guarantees that reciprocal healthcare arrangements, including for pensioners, workers, students, tourists and other temporary EEA or Swiss visitors, will not be affected during the implementation period. During this time, there will be no change to reciprocal healthcare schemes, such as S1 and EHIC, nor to the S2 route which enables planned treatment. Importantly, I can provide assurance that the European Union (Withdrawal Agreement) Bill also guarantees lifelong, reciprocal healthcare entitlements for people so long as they remain within the scope of the citizens' rights agreements. This includes UK nationals who will have moved to the EU before 31 December 2020, as well as EU citizens who will have become resident in the UK before this time. I hope that that explanation is clearer than my letter.

Last year, as has been mentioned, this House spent a considerable amount of time holding informed and important debates scrutinising the provisions of the then Healthcare (European Economic Area and Switzerland Arrangements) Bill. With the permission of the noble Baroness, Lady Brinton, I will call it HESA. We agreed that this was a key piece of legislation, providing the UK with options to implement any future reciprocal healthcare arrangements, subject to negotiation with the EEA states or with Switzerland after the UK leaves the EU. I understand the desire to know the outcome of these negotiations but, as they are obviously in the future, I am not able to give exact details, other than to say we want to ensure the best possible outcomes.

Following that scrutiny and the assent of Parliament—

Baroness Altmann (Con): I thank my noble friend for giving way. A number of us on these Benches are deeply uncomfortable with what we are being told, as she well knows. We are willing to give the Government the benefit of the doubt and we hope that this trust will be repaid. We are talking about people's health and lives: there really is nothing much more important. Will my noble friend take this back to the department, or can she assure us that there will be full information available to all citizens so that they know about this risk at the end of 2020 and can make the appropriate decisions? None of us knows what is going to happen after the end of this year.

Baroness Blackwood of North Oxford: My noble friend Lady Altmann makes a very important point. We have tried to ensure that the information is available and communicated. I am happy to review the clarity of this information and to do everything we can to improve it. My noble friend is absolutely right. We need anxiety to be at the lowest level and for people to be as prepared as possible. I can assure the House that we are doing everything we can to work in the best interests of UK citizens. We understand that there are many in European countries, as well as in the UK, who are looking at this issue with great concern.

I want to get back to the process of scrutinising HESA. As the noble Baroness, Lady Brinton, said, this established a legal basis for the Secretary of State for Health and Social Care to fund and give effect to future reciprocal healthcare schemes through its provisions for data sharing and making regulations. It is important to cast our minds back to that debate. This is an implementation Bill; it does not concern the status of the arrangements. In addition, the Government are committed to the effective implementation of the citizens' rights agreement and the healthcare protections that it provides.

Questions have arisen as a result of my letter, including those raised by the noble Baroness, Lady Brinton, last week. I have been asked why there is no mention of reciprocal healthcare in the Bill. This is because individuals within the scope of the withdrawal agreement are entitled to reciprocal healthcare cover from their competent country for as long as they remain so. The rights of EU citizens, EEA, EFTA and Swiss nationals and their family members who reside in the UK before the implementation period, are brought into UK law through Clauses 5 and 6 of the Bill.

I was also asked about Clause 30. This is limited to implementing parts of the agreement on social security co-ordination and to including reciprocal healthcare and EHIC, so it cannot operate in the way in which the noble Baroness was concerned that it might.

Finally, I was asked whether the consequential powers could be used to revert HESA to the original form—with global scope—that it came to this House in. It cannot. The consequential power does not allow for substantive changes to legislation. It will allow the Government to make only smaller, technical amendments for good housekeeping to ensure that legislation is consistent and functions well. It could not be used in the underhand manner that I think the noble Baroness, Lady Thornton, thinks we intend. This would be much too substantial a use of the power; it would not be considered an appropriate use of it.

5.30 pm

I assure the House that the Government have carefully considered the legislation that has been put before this House. We have taken all possible steps to ensure that we have the necessary powers for reciprocal healthcare, but also that they link in with the withdrawal agreement and the withdrawal agreement Bill to ensure that we have the robust protections they provide for the rights of UK nationals and EU citizens living in the EU and the UK respectively. We have no intention to repeal HESA as a consequence of the withdrawal agreement Bill. Critically, the Act allows the UK to implement the agreements, responding to a range of outcomes in the negotiations with the EU on any future reciprocal healthcare agreements, which we know are likely to come forward.

I know that the noble Baroness tabled the amendment with some of these concerns in mind. I hope that I have answered the questions that have come forward, but this is a routine power to make regulations that are appropriate in consequence of the Bill. I hope that I have answered the way the consequential amendment would be used to respond to the complexity of provisions and the legislative landscape, which we would need to respond to. On that basis, I hope she feels sufficiently reassured to withdraw her amendment.

Baroness Jolly: My Lords, we have had an interesting debate that has not, for the most part, been about Clause 41 or the legislation itself, but about health. I guess that that was always what would happen. I am quite happy to withdraw the amendment.

Amendment 21 withdrawn.

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

Amendments 22 to 28 not moved.

Schedule 4: Regulations under this Act

Amendment 29

Moved by ***Lord Howarth of Newport***

29: Schedule 4, page 68, line 9, leave out from "41(1)" to end of line 10 and insert "may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

Lord Howarth of Newport: My Lords, this is the grand finale of Report stage. If the Chamber is not packed then I am not personally dismayed because we prefer quality to quantity in our debates, do we not?

Subsections (1) and (2) of Clause 41, as the noble Baroness, Lady Jolly, explained just now in the preceding debate, contain "breathtaking" powers, to use her word. The very valuable report of the Delegated Powers and Regulatory Reform Committee says that

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

That provision for the negative procedure is set out in Schedule 4 on page 68, line 9. It is that point of the Bill that I seek to amend.

Clause 41 and Schedule 4 provide a portmanteau Henry VIII power. It is the ultimate set of Henry VIII powers; you can go no further with such powers than the Government seek to go with these. The Government might seek to defend themselves on the basis that these powers are provided in the context of consequential and transitional provisions, but if the Minister seeks, in the pursuit of the policy set out in the Bill as a whole, to amend primary legislation there is nothing at all in the legislation to inhibit him in any way from doing so.

The Government might also seek to defend themselves on the basis that the courts in practice would construe pretty strictly what powers the Government sought to exercise under these provisions, but we do not want these matters going to the courts. If they do, it takes the courts and judges into political terrain that it would be much better they kept out of.

The Government take powers in Clause 41 to amend or, indeed, repeal any previous enactment up until the end of this year. The noble and learned Lord, Lord Judge, pointed out to us yesterday that a certain provision of Magna Carta was vulnerable under the policy adumbrated in the Bill. I am sure that when he comes to respond, the Minister will explain that he has no intention of repealing Magna Carta. Indeed, we have already been reassured in previous debates that the Government do not intend to use the Henry VIII powers with which they have peppered the Bill to undo the devolution settlements or to pursue other draconian purposes.

However, the Government really have written a constitutional monstrosity into the Bill. As the noble Baroness, Lady Kramer, said just now, this is a bad and improper precedent. Unless the Government can produce a justification, which I find unimaginable, for the taking of these extravagant powers they should not write them into the Bill at all. As the noble Baroness suggested, in an age of populism it is particularly undesirable that extreme powers be taken casually. It is a proper responsibility of your Lordships' House to keep an eye on what is going on and, where legislative practice becomes unacceptable, to point it out to the other place.

If Members of Parliament perused the Bill and informed themselves in close detail about it, they might consider that they had been rather insulted. We should

[Lord Howarth of Newport]
certainly give them the opportunity to consider that possibility. Members of Parliament on the Conservative side of the House of Commons might be uneasy about what appears to be in conflict with the Conservative Party's manifesto. I have taken the precaution of looking at it. In the section entitled "Protect our democracy", it is asserted:

"As Conservatives, we stand for democracy and the rule of law."

It goes on to say:

"Once we get Brexit done, Britain will take back control of its laws."

I do not think that, when voters studied the Conservative Party's manifesto and Conservative parliamentary candidates took it as their oath of prospective office, they actually thought that taking back control of our laws following Brexit would mean a power grab on the part of the Executive, which is potentially happening.

Ministers have already sought to reassure us. In the debates we held on Clauses 21 and 26, it was insisted that there were no such malign intentions as the legislation would make possible. They wanted to reassure us by pointing out that the regulation-making powers so extensively set out in Clauses 21 and 26 could be exercised only under the affirmative resolution procedure. That is a mitigating circumstance, but it by no means undoes the mischief of taking the Henry VIII powers in the first place.

However, in the letter that he wrote to us, the noble Lord, Lord Duncan of Springbank, acknowledged that the regulation-making powers it is proposed that the Government should have under Clause 41 would be exercisable under the negative resolution procedure. He gave no explanation or justification for that. I do not know whether this inconsistency in approach and resort to extensive regulation-making powers under the negative procedure at Clause 41 is the result of a drafting error and a mistake, but if it was there will be an opportunity for the Government to amend it.

Following the amendments made by your Lordships' House, the Bill will go back to the House of Commons. It would be quite easy for the Government to amend it in this regard, and they could do so with no loss of face or dignity. When Governments are flush with electoral success, they have a tendency to swagger. The bigger the majority and the higher the euphoria of electoral success that they feel, the more important it is that they act soberly when legislating and proceed with humility and magnanimity in their dealings with Parliament. Magnanimity is a Latinate word, which I hope will appeal to the Prime Minister, but if humility and magnanimity are too difficult, the Government should at least conduct themselves in relation to Parliament with respect and courtesy. Macho attitudes to legislation make for bad law.

The manifesto goes on to say that

"we… need to look at the broader aspects of our constitution: the relationship between the Government, Parliament and the courts".

Indeed, our scrutiny of the Bill thus far has indicated that there is a great deal for the Government—and the commission it proposes—to consider in the relationship between the Government, Parliament and the courts.

The manifesto then goes on to say that the new Government and their commission will want to look at the role of the House of Lords. I hope that Ministers in the other place and Members of Parliament will understand that the traditional constitutional role of your Lordships' House is to act as an advisory and revising Chamber. The principal way in which the House of Lords offers its advice and proffers its revisions is by way of amendments to legislation. In doing so, your Lordships' House poses no threat to the Government. There is no lese-majesty. In all the debates we have had on this Bill, it is clear that this House accepts that the Government have a mandate for Brexit. There is no attempt by your Lordships to subvert Brexit and thwart the Government in their purpose of enacting this withdrawal legislation.

Lord Hamilton of Epsom: It is probably true that since the election and the outstanding victory of the Prime Minister, this House has finally accepted that a Government are in power who want to deliver Brexit. However, that certainly was not true before the election; a very large number of amendments passed by your Lordships' House then were intended precisely to stop us leaving the EU. They were wrecking amendments which went completely in the face of the decision taken by the people in the referendum.

Lord Howarth of Newport: As the noble Lord knows, I shared some of his frustrations about the last Parliament. However, in the last Parliament this House did not subvert the authority of the elected House but sought to be in consonance with its wishes. I therefore do not think that Members of Parliament need to be concerned —nor did they need to be concerned during the last Parliament—that the House of Lords is a threat to the House of Commons. That plainly is not the case in this Parliament.

Amendment 29 is a moderate amendment. There are two issues. One is the Government's propensity to take excessive Henry VIII powers. The other is procedure—the manner in which Parliament should approve the regulation-making powers that would be brought forward under this legislation. My amendment does not seek to remove the Henry VIII powers. It does not say that Clause 41 should not stand part. I do not know what the consequences would be for the proper functioning of the legislation if I had sought to achieve that. I have sought to amend the aspect of the Bill dealing with the procedure for adopting regulation-making powers. I hope that the Government accept that it would be appropriate to substitute the affirmative resolution procedure for the negative one. Even then the amendment would not be ideal, because if your Lordships' House rejected regulation-making powers under the affirmative procedure, there would be howls of protest, as my noble friend Lady Hayter observed earlier in our debates. It would be regarded as a constitutional outrage on the part of your Lordships' House. At any rate, if the Government are willing to accept this amendment, it will enable Parliament as a whole—both Houses—to express its view on the legislation and, if necessary, for either House to reject any attempt that the Government might make, by way of regulations, to alter the principles of law or to rewrite primary legislation. I beg to move.

5.45 pm

Baroness Butler-Sloss: My Lords, I have put my name to this amendment. A few days ago, we discussed Clauses 21 and 26, as referred to by the noble Lord, Lord Howarth, which people called a constitutional outrage. This is far, far worse. As a constitutional issue, Clause 41(1) takes the Government into realms which, in the years that I have been in this House, I have never seen before.

The noble Baroness, Lady Kramer, set out most of what I wanted to say, putting it rather better than I would have. There is not a great deal else to say, but if the Government are going to say, as I am sure they will, that they do not propose to use these powers, other than to a very limited extent, the short answer to that, speaking as a lawyer, is, "Why have them here?" Why put something so unbelievably wide, which could apply to any law enacted in the past until the end of this year, into the withdrawal Bill if they do not intend to use it?

As the noble Lord, Lord Howarth, said, it is not his—or my—intention to get rid of this objectionable clause but purely to alleviate it, so that if the Government require to make such provision in consequence of the Bill, at least we can look at it. If the Commons can get over its majority of 80, it could look more critically at the legislation to see whether it is really what is wanted and look, with the affirmative resolution, at what is being offered by the Government. Therefore, I support the amendment. It needs to be brought forward to both this House and the other place, because this Clause 41 really is beyond belief.

Lord Callanan: My Lords, we have reached the final amendment. I thank the noble Lord, Lord Howarth, and the noble and learned Baroness, Lady Butler-Sloss, for their comments and for setting out their positions. I understand the concern of noble Lords about the parliamentary procedure attached to the consequential power in Clause 41. We have already noted these concerns; noble Lords in other debates have raised them and we all read closely the reports of the Delegated Powers and Regulatory Reform Committee and the Constitution Committee. I addressed many of these points last week, when I spoke to the amendment in the name of the noble Lord, Lord Tope. I hope today to provide similar reassurances to the noble Lord, Lord Howarth. I agree with so many of his points on EU withdrawal, although perhaps not this one.

As noble Lords are aware, consequential powers are standard provisions in legislation, even legislation of great constitutional significance, such as the Scotland Act. If noble Lords look at Schedule 5 to the Bill, they will see that we have already included many of the consequential amendments required as a result of the Act. However, we also believe that we need a power to make further consequential provisions to the statute book.

I am aware that the noble Lord, Lord Howarth, yesterday asked for assurance about why the consequential power in Clause 41 is subject to the negative procedure. I understand the noble Lord's concern but reiterate that the power is limited to making amendments that are consequential to the contents of the Act. Its scope is very different from the powers discussed over the last 10 days by my noble friends Lady Williams and Lord Duncan, which will be used to implement the withdrawal agreement. It is in everyone's interest that the statute book functions effectively. Moving the consequential provision to the affirmative procedure would frustrate the ability of departments to make the necessary consequential changes before exit day and could lead to legal uncertainty. I hope noble Lords agree with me that this is not the appropriate course of action.

This procedure is limited to giving Ministers the power to make regulations that are in consequence of the Act, like consequential powers in many other pieces of primary legislation. This power will be construed strictly by the courts. It can be used only to make amendments that are appropriate to legislation in consequence of something that the Act does. I am sure noble Lords agree that the use of the negative procedure does not prevent parliamentary scrutiny taking place. Members of this House will still have the opportunity to pray against regulations, should they consider them inappropriate, as is usual for regulations of this kind. I hope I have provided the necessary reassurances to the noble Lord and that, as a consequence, he is able to withdraw his amendment.

Lord Howarth of Newport: The noble Lord, Lord Callanan, has not provided me with the reassurance I seek. In my earlier remarks, I anticipated the arguments that he would offer about why we can be relaxed about these powers being taken and believe him when he says that the scope would be minimal. That is not the case. I am extremely grateful to the noble and learned Baroness, Lady Butler-Sloss, for speaking as a most distinguished lawyer. She encourages me, in my legal amateurism, to believe that I am on the right track. I think I am. I hope that, even overnight, the Minister may be willing to reflect further on this, and that the Government will accept the amendment. It would be in earnest to the magnanimity on the part of the Government that I venture to hope might manifest.

Lord Callanan: For the avoidance of doubt, this is not a matter that we will reflect on further. Therefore, if the noble Lord wishes to pursue his amendment, he needs to test the opinion of the House.

Lord Howarth of Newport: I also hoped that the Government might want to demonstrate their good intentions towards their future constitutional behaviour, but there it is; we cannot win every battle. Maybe, in the watches of the night, the Minister will repent and reconsider. On that basis, I beg leave to withdraw the amendment.

Amendment 29 withdrawn.

5.53 pm

Sitting suspended.

European Union (Withdrawal Agreement) Bill

Third Reading

8.30 pm

Lord Ashton of Hyde (Con): My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the European Union (Withdrawal

[Lord Ashton of Hyde]
Agreement) Bill, has consented to place her prerogative and interests, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

Motion

Moved by ***Lord Callanan***

That the Bill do now pass.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, in moving this Motion, I hope that the House will forgive me if I say a few words. I am delighted to say that we are now in the final stretch of our withdrawal from the European Union. Over the past days and weeks, your Lordships have debated the merits of the Bill and I thank the vast majority who have engaged so constructively in this process. It is a testament to the importance of what we do and the experience and expertise that noble Lords have to offer.

I particularly thank my colleagues on the Front Bench—in particular, the Leader of the House and the Chief Whip for their unstinting support, generally—and I thank all my ministerial colleagues. Perhaps I may be impolite and single out two in particular who have done a sterling job: my noble and learned friend Lord Keen and my noble friend Lady Williams, whose support, guidance and efforts in this House have been unstinting. Many other colleagues have helped as well.

I also pay tribute to my opposition counterparts, the two formidable noble Baronesses, Lady Ludford and Lady Hayter. They have worked so hard and kept us on our toes throughout the Bill's progress.

I also note in particular the valuable work of the Select Committees of this House, so ably chaired by the noble Lord, Lord Blencathra, the noble Earl, Lord Kinnoull, and the noble Baroness, Lady Taylor. As I noted during my Second Reading speech, their scrutiny and insight are most valuable, and their ability to report on the Bill so quickly in order to aid debate is to be commended.

Finally, I pay tribute to those working in my private office—to Bianca Russo and Joe Moore, who have generally exceeded all their hours, even in excess of what the working time directive would permit them to do. I pay tribute, too, to officials across government who have worked tirelessly on the Bill for many months and years, particularly the Bill managers, Oliver Ilott and Hugo Gillibrand. Personally, I particularly thank the government lawyers who have patiently briefed me on everything from glossing, which apparently has nothing to do with paint, to consequential amendments and all the legal technicalities in between.

I would like to take a moment to note that we are disappointed that the devolved legislatures have not consented to those parts of the Bill for which we sought their consent. I want to be clear that the Government recognise the significance of proceeding with the Bill without the consent of those legislatures. Nevertheless, we find ourselves in exceptional circumstances. The Bill must proceed so that we can deliver on the referendum result and leave the EU at the end of the month with a deal in place. However, I want to make it clear that we will continue to uphold and abide by the spirit of the Sewel convention. As I made clear earlier today, I look forward to continuing to work with the devolved Administrations and the legislatures on future legislation.

Tomorrow the other place will consider the amendments made in our House. It is, of course, your Lordships' right and duty to rigorously scrutinise legislation, to hold the Government to account and, if necessary, to ask the other place to think again when noble Lords believe that is appropriate. However, I take this opportunity to remind noble Lords that we received a clear message from the elected House on 9 January. We have had important debates, noble Lords have made their views known and we must now see what the elected House thinks of those amendments. All noble Lords must bear this in mind that, as we prepare to leave the EU on 31 January, and deliver the Brexit that the people voted for. I beg to move.

Baroness Hayter of Kentish Town (Lab): My Lords, this is a time for both thanks and regrets. Both are heartfelt and serious. We have a lot for which to thank the Ministers—all five of them, I think—as well as their Whips. They have kept to their script, given us no surprises and worked with courtesy and information to enable the process to proceed smoothly.

The Bill team has performed above and beyond normal expectations. Second Reading and three days in Committee in one week, and two consecutive days on Report, is not what they are taught when they go to the "managing a Bill" lecture. We thank them.

On our side, the team has been stellar. It includes my noble friends Lord Tunnicliffe—near silent but businesslike—Lord McNicol, Lord Murphy, Lord Bassam, Lady Smith, Lady Thornton and Lady Jones and my noble and learned friend Lord Goldsmith, with, as ever, Dan Stevens and Ben Coffman behind the scenes. They are a magnificent troop.

However, our regrets are also sincere. Despite the arguments set out across the House, not simply on these Benches, the Government have turned a deaf ear to improvements to the processes in the Bill; to safeguarding the independence of the courts; to pleas for reassurance from EU citizens; to requests from the devolved authorities—we have heard the results of not listening there; and, indeed, to the needs of refugee children. And now we hear that the Government will use their majority to overturn all four of our reasonable, and reasoned, amendments.

We do not lay that on the Ministers in this House but on their masters—or perhaps even their servant—elsewhere. For the moment, as Ed Murrow would say, "Good night, and good luck."

Baroness Ludford (LD): My Lords, I too thank everyone involved in the Bill: Ministers, the Opposition, the Cross-Benches, the Bill team and other officials, the clerks and other staff of the House and, as the Minister mentioned, the committees of the House, which provided us with such useful and timely reports. Of course, I also thank the many colleagues on my own Liberal Democrat Benches—too numerous to mention—who have taken part in the Bill's proceedings, as well as my leader and noble friend Lord Newby, my

Chief Whip and noble friend Lord Stoneham, and our adviser Elizabeth Plummer who is, quite frankly, indispensable to us.

Clearly, we would have preferred not to have had this Bill. We on these Benches continue to think that Brexit is a bad mistake and that the UK will, sooner or later, re-join the EU. We feel that this Bill has been improved by the detailed scrutiny and votes in this House that I believe we were entirely right to deliver. We have improved the Bill in two major areas: first, respect for people—the rights of EU citizens and child refugees—and, secondly, respect for the law and the constitution regarding the courts, judicial independence and the devolution settlement. We hope that the other place will consider those carefully, but I am bearing in mind what the noble Baroness, Lady Hayter, has just said. I strongly believe that we have given value for the many days of work we have done on the Bill. I just wish that the Government had been in listening mode.

Lord Hamilton of Epsom (Con): My Lords, I shall not delay the House long—I know that we all want to go home—but I had a conversation with a distinguished noble friend of mine a few hours ago, and he said, "Of course, the Government will give way on a few small amendments on this to satisfy your Lordships' House," and I strongly disagreed with him. Indeed, the noble Baroness, Lady Hayter, has confirmed that the Government will use their majority to turn down all these amendments.

There could only be two reasons why the Government might not want to do that. One would be if there were a tremendous fault in the legislation, and some drafting were completely inconsistent and needed to be adjusted. There seems to be none of that: there have been no compelling arguments as to why the Bill should be adjusted in any way. The other reason would be to create good will in your Lordships' House. But I have to say that there is no good will towards your Lordships' House in the other place. We have lost all our friends, who ensured that we continued as an appointed House. Jesse Norman, who was key to all that, is a Minister, and we roughed up everybody else.

The noble Lord, Lord Howarth, described the Government as suffering from euphoria as a result of their majority. I think "euphoria" is a bit strong, but the Government do now have a great feeling of relief because they have a majority that will enable them to ensure that the people's wish in the referendum of 2016 is fulfilled. The Government, and the other people I talk to in the other place, feel that there has been a conspiracy of remainers, both in this House and in the House of Commons, to ensure that we stayed in the EU.

The debate I have listened to here on this Bill gives me the impression that this House is now resigned to the fact that we are going to leave the EU, but will make those negotiations as difficult as possible for the Government, so that we will get a very bad deal and people can be justified in their view that we should never have left. The storm clouds are gathering, and there is constant speculation in the press on what will happen to this House—but we seem to be completely oblivious to it. We should be very careful about where we go over the coming months.

Lord Cormack (Con): My Lords, that is the most ill-judged—

Noble Lords: Oh!

Lord Cormack: My Lords, I apologise for starting to speak from the Bishops' Bench, and I hope I shall be forgiven. I just wanted to put it on record that the speech we have just heard is the most ill-judged I have heard for many long years. This House has behaved entirely properly. I think that it is a great pity that there were votes against this Bill, and I made that plain on Second Reading. The will of the people must, of course, prevail. But to pretend that this House has behaved improperly is wrong. We have a place in our constitution that we must honour, and my noble friend is entirely inaccurate in suggesting that what has happened in this place over the last two days has done great damage. I wish it had not proceeded as it did, but I believe behaviour has been right. The only thing that could jeopardise this place would be to return any amendments back to the other place—and that, I trust, we will not do.

Bill passed and returned to the Commons with amendments.

House adjourned at 8.44 pm.

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