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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Monday 16 March 2020

2.30 pm

Prayers—read by the Lord Bishop of Rochester.

Lord Speaker's Statement

2.36 pm

The Lord Speaker (Lord Fowler): My Lords, I would like to make a short statement about Parliament's response to Covid-19.

I co-authored a letter with Mr Speaker on this subject and circulated it to all noble Lords on Friday. As we all know, the nation is facing an extremely challenging set of circumstances. The spread of Covid-19 has already begun to have widespread implications for the way the country is run and for individuals' lives. Parliament is no different. Mr Speaker and I are resolved that Parliament should, in so far as is possible, continue to fulfil its important constitutional duties, but it is also our duty to take proportionate and reasonable measures to reduce the risk to those who work on the Parliamentary Estate and those who have to visit it.

It is in that spirit that we have decided to implement a number of restrictions relating to overseas travel and visitor access. These steps have been developed in conjunction with Public Health England and reflect the Government's current approach. From today, all passholders should refrain from bringing non-passholders on to the estate unless they are here for parliamentary business. No banqueting or commercial tour bookings will be accepted; existing bookings have been cancelled and refunds will be issued. No mass lobbies will be allowed, and all-party parliamentary groups are asked not to invite non-passholding guests on to the estate. These restrictions are effective from today. Copies of the letter with details of the restrictions are available in the Printed Paper Office. Should noble Lords have specific queries, please feel free to speak with the Clerk of the Parliaments' Office, which will be able to provide advice or direct you to the appropriate person or department.

I thank all noble Lords for their co-operation. As you would expect, Mr Speaker and I, together with our commissions, will continue to keep the situation under constant review. I will make further statements as necessary.

Royal Assent

2.39 pm

The following Acts were given Royal Assent:

Supply and Appropriation (Anticipation and Adjustments) Act,

NHS Funding Act.

The following Measure was given Royal Assent:

Church of England (Miscellaneous Provisions) Measure.

Innovation Economy: Skills

Question

2.39 pm

Asked by ***Baroness Bull***

To ask Her Majesty's Government what assessment they have made of (1) the skills required for a successful innovation economy, and (2) whether the education system is structured to deliver a workforce equipped with such skills.

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, the Government want the UK to be a science and research and development superpower, increasing our research and development spending to 2.4% of GDP by 2027. The Government are constantly assessing the skills required to deliver this ambition. We are prioritising STEM, digital and technical education; creating a new £3 billion skills fund; and reforming the global talent visa so that we can create a fast-track scheme for top scientists, researchers and mathematicians.

Baroness Bull (CB): My Lords, the innovation foundation Nesta and the OECD have identified three skill sets required in an innovation economy: technical, behavioural and creative-thinking skills, the process by which we generate, critique and refine ideas. Their research shows that pupils who study art at school are more likely to develop these skills. Do the Government recognise the contribution of arts-based learning to the wider innovation economy? Given that creative thinking is identified as a core innovation skill, will she commit to reviewing the department's decision to opt out of the PISA 2021 test for creative thinking?

Baroness Berridge: My Lords, as part of our ongoing commitment to arts in schools, we are continuing funding of about £85 million a year for a range of music and cultural education programmes. Cognitive science shows that a knowledge-based curriculum is then the foundation for stimulating the critical thinking and creativity that we need. That is why the focus of our curriculum is on getting that bed of knowledge on which all students, including arts students, need to build. The Government believe that the short, online, intensive survey by PISA is not sufficient to give us a realistic indication of creative thinking in our students.

Baroness Blackstone (Ind Lab): My Lords, as so often, the Minister made no reference to further education in her initial reply. Given the importance of FE in delivering skills training, will she say something about how the Government will tackle the problem of lack of trained staff in the FE sector, following the enormous cuts made to it? I know that the House will welcome the extra funding that has been provided for FE, but it will be useless if we do not have the relevant and appropriately skilled staff to do the training needed.

Baroness Berridge: I am grateful to the noble Baroness for raising the role of FE, which often does not get mentioned in this space. Yes, £400 million has been invested into the estate, and I think that more money

[Baroness Berridge]
was announced in the Budget. There has not been a specific fund to skill up the FE workforce as well, but one initiative that the Government have embarked on are the new institutes of technology, 12 of which have begun to open from September 2019. They are an innovation of employers, universities and the FE sector. The Government are committed to the role of the FE sector in delivering the skills that we need for the future.

Lord Fox (LD): One of the problems highlighted by the noble Baroness, Lady Bull, in other Questions is transitioning from schools into apprenticeships, particularly in the creative and media sector. In an Answer to a Written Question from me, the Minister said that nearly half a billion pounds in the apprentice levy budget is unspent from 2018-19. Can she undertake to use some of that budget to enable creative and media companies to provide a route to work for this important group of people?

Baroness Berridge: I am grateful to the noble Lord; I expected that this Question would highlight the role of the creative and arts sector. There has been a specific initiative in the apprenticeship space, which I have mentioned before in your Lordships' House, because of the difficulties of a 12-month apprenticeship when we have an industry sector that has a lot of sole traders. We have therefore devised the apprenticeship training agency—I think that is what it is called—to be one employer, so that a number of placements can be created. We are committed to delivering apprenticeships in the creative sector.

Baroness Jenkin of Kennington (Con): My Lords, will the Minister outline what the Government are doing to ensure that future skills needs are better understood nationally?

Baroness Berridge: My Lords, it is essential that this is both a local and a national approach by the Government. A national skills and productivity board has been announced and is in development, made up of experts sitting at a national level. There are now 36 skills and advisory panels—similar name but different function—at local level, which include the FE sector and employers, so that at local level we can provide the skills that the local economy needs.

The Earl of Clancarty (CB): My Lords, does the Minister agree with the statement from Innovate UK on its website that

"One of the most frequently-overlooked yet crucially important elements of innovation is design"?

If so, will the Government address the currently precarious and actually pitiful position of design subjects in schools, where design and technology in particular has 67% less GCSE take-up and 43% fewer teaching hours than 10 years ago?

Baroness Berridge: My Lords, the Government are committed to all those sectors with a skills gap: there is design, the automotive sector and engineering. What I just outlined at local and national level is to ensure what is being developed in qualifications and skills. That is why employers are involved in ensuring that apprenticeships match the needs of the economy.

Lord Flight (Con): My Lords, is the Minister aware that about 70% of people graduating from Russell group universities now end up working for SMEs and similar smaller companies? That is totally different from the position 20 years ago and is one reason for the strength of our economy.

Baroness Berridge: Yes, SMEs are a huge part of our economy. Along with the FE sector, the biggest single contribution the Government make to research and development for businesses is what is called the R&D tax credit. In the latest figures that I have, £4.3 billion was paid to businesses for that tax credit for their R&D spend, but £2.3 billion of that was to small and medium-sized enterprises, so this is not just about big business and universities, it is about the FE sector, local skills needs, and small and medium-sized enterprises.

Baroness Whitaker (Lab): My Lords, what are the Government doing about the skills needed to reach a zero-emissions, low-carbon economy?

Baroness Berridge: My Lords, through the education sector, that is part of what is taught in our schools—there is the environmental science A-level—but in terms of what the Government seek to deliver, it is part of our priority to develop the industries we need to deliver that commitment.

Lord Cormack (Con): My Lords, I declare my interest as chairman of the William Morris Craft Fellowship Committee. What is my noble friend doing to ensure that more young people in our schools are aware of the immensely rewarding careers available in the skilled crafts?

Baroness Berridge: My Lords, the Government are investing in the Careers & Enterprise Company, there is a careers strategy nationally in schools and it is part of the Ofsted framework, but we leave it to teachers to determine who they should invite in through our various initiatives. I am sure that that is one that many schools would want to invite participants into.

Chemicals Regulation

Question

2.47 pm

Asked by ***Lord Fox***

To ask Her Majesty's Government what is their economic assessment of the impact of the introduction of a new system for the regulation of chemicals.

The Minister of State, Department for the Environment, Food and Rural Affairs, Foreign and Commonwealth Office and Department for International Development (Lord Goldsmith of Richmond Park) (Con): My Lords, leaving the EU provides a unique opportunity to set up our own system for chemicals that will deliver high standards and be flexible to the current and future needs of the UK. It will give us the freedom to do things differently, where that is in our best interest. There will be transition costs, but by keeping changes as straightforward as possible, we will minimise the burdens and costs for business.

Lord Fox (LD): I thank the Minister for his Answer and for speaking to me earlier today, but, as he is aware, the costs are unlikely to be minimal. If we take the statutory instrument currently laid as our model, the costs will be at least £1 billion simply to reregister chemicals that are currently legal under the EU system. This is a tax on British business, and even if it is spent over two years, it still constitutes a large number. Will the Minister undertake to work in close co-operation not just with his colleagues in BEIS but with the industry, which is extremely concerned throughout the sector, from manufacturing through basic chemicals industries down to cosmetics? Will they work with the industry to look at stretching the implementation period, cutting registration costs, finding ways to reuse data and all ways to make this a costless transition?

Lord Goldsmith of Richmond Park: We absolutely recognise that the costs may be substantial. That is why we are aiming to keep the transition to UK REACH as simple and straightforward as possible. We are considering a wide range of measures to minimise the burden and costs for businesses and will continue to work with BEIS, which we of course already work closely with, and the wider industry sector to keep these measures under review. We have developed grace period provisions, grandfathering and downstream user import notifications to minimise disruption to businesses and supply chains at the end of the transition period, while ensuring that UK regulators know which chemicals can legitimately be placed on the market. These measures give businesses two years, starting from the end of 2020, to provide the information required to be compliant with UK REACH

Baroness McIntosh of Pickering (Con): My Lords, will my noble friend commit to the UK remaining a partner of the European Environment Agency? As he will be aware, a leading figure of the Johnson household —no less a figure than Stanley Johnson—was responsible for setting up this agency and is very wedded to remaining. It plays a leading role in terms of chemicals and all sorts of environmental protections. Will the Minister commit to our remaining a member of the EEA?

Lord Goldsmith of Richmond Park: I have discussed the issue many times with the Johnson in question. We will take decisions based on science and on the best available evidence, including looking at approaches taken by other chemicals regimes right across the world, well beyond the European Union. We will not seek ongoing alignment with the EU regulatory system but we will not diverge simply for the sake of it. There may be good reasons for taking a different approach on a particular substance to reflect UK circumstances, but that does not mean reducing standards or levels of protection. For example, for many years the UK has been at the forefront in opposing animal tests where alternative approaches can be used—the last-resort principle. We could be more rigorous in applying this principle in the future and there are many other examples where we might want to diverge.

Lord Haskel (Lab): The Government's decision to withdraw from REACH contradicts what the Minister has just said. Experience has shown that shared research enhances that research. Leaving the European research organisations will diminish our research work. Therefore, will the Minister reconsider that decision? Surely it would be another way of reducing the costs that he has just told us about.

Lord Goldsmith of Richmond Park: The noble Lord is right that we will reduce the costs that have been mentioned if we can facilitate the sharing of data between the UK and the European Union, and that is something that we are pursuing. It is not something that I can describe in any great detail now because much of it depends on the ongoing negotiations. However, he is absolutely right, and it is certainly our intention that data sharing should be used wherever possible to bring down the costs for businesses both here and in the EU.

Lord Oates (LD): My Lords, does the Minister recognise that the outcome of the UK/EU trade negotiations will be vital for the chemicals industry and indeed for the economy as a whole? In view of that and the fact that both the UK and the EU will, rightly, be distracted from those negotiations by the current public health crisis, will the Government consider amending the withdrawal Act in the forthcoming emergency legislation so that they have the power to extend the deadline of 31 December should that prove necessary?

Lord Goldsmith of Richmond Park: Were it the case that the British Government felt the need to do such a thing, they would take the step that the noble Lord has outlined, but that is not the view of the British Government today. There is no need for any additional delays.

Lord Naseby (Con): Will my noble friend give an undertaking to consult closely with the horticultural industry, which so often is the poor cousin of the broader agricultural and chemical world?

Lord Goldsmith of Richmond Park: I am very happy to give that undertaking. As my noble friend will know, we are on the cusp of developing a new chemicals strategy. We will be putting out a call for evidence this spring and will consult on a draft strategy before its eventual publication, which currently is proposed to be in 2021-22. It will cover the full range of the UK's approach to tackling chemicals and pesticides as used in horticulture.

Baroness Smith of Basildon (Lab): My Lords, can I take the Minister back to the answer he gave about REACH? My understanding of paragraphs 16 and 17 of the recent White Paper is that the Government want a dedicated annexe on chemicals regulation, but in his answer he said, "We don't want to deregulate for the sake of it; we don't want to have lower standards". Therefore, how similar to REACH does he think the EU/UK memorandum of understanding will look?

Lord Goldsmith of Richmond Park: That is a difficult question to answer. I cannot tell the noble Baroness exactly where we will choose to diverge. I gave one example earlier but there are plenty of others. Poland,

[Lord Goldsmith of Richmond Park]
for instance, has made a proposal to the EU about banning the use of methanol in windscreen-washing fluids. It has done so because it is affected by abuse of that substance by alcoholics. That might be very sensible for Poland to do but our view is that it is best addressed at the national level. Therefore, there will be areas where it is in our interests to diverge but there will be other areas where, in the interests of both efficiency and saving money, and in the interest of maintaining high standards, we will choose not to diverge. The core principle is that it will be our choice.

Lord West of Spithead (Lab): My Lords, can the Minister clarify something for me? The noble Lord, Lord Fox, mentioned a figure of £1 billion to reregister chemicals that are already acceptable within Europe. Is that figure accurate? Is that what it will cost us?

Lord Goldsmith of Richmond Park: Again, I am afraid I am not able to give a precise figure—I do not think anyone is capable of doing so—but we have had these discussions with industry and, as I say, with BEIS. It is the case that industry estimates are not a million miles away from our own but we cannot put a precise figure on them at this stage.

United Kingdom Government-Northern Ireland Executive Joint Board

Question

2.55 pm

Asked by ***Lord Lexden***

To ask Her Majesty's Government whether the United Kingdom Government-Northern Ireland Executive Joint Board, announced on 15 January, will publish reports on its work; and if so, how frequently.

Viscount Younger of Leckie (Con): My Lords, the UK Government/Northern Ireland Executive joint board will regularly review UK government funding provided under the *New Decade, New Approach* agreement, and the implementation of all agreements. The terms of reference and reporting arrangements will be agreed between the Secretary of State and the First Minister and Deputy First Minister at the first joint board. There will be quarterly implementation review meetings, and updates on the implementation of the agreement will be published alongside these meetings.

Lord Lexden (Con): My Lords, the union with Northern Ireland badly need strengthening. Is it the Government's view that the new board will help to achieve that? Are the Government confident that their substantial extra spending can be overseen by the new board? Will it undo the damage that was inflicted upon the public services, particularly the health service, in Northern Ireland during the long period of the Assembly suspension?

I would also like to raise a point about the renewable heat incentive scheme, which has been in the news the last few days. Will the Government honour in full the undertaking, given in this House on 19 March last year by my noble friend Lord Duncan of Springbank, to help to mitigate the hardship that has been inflicted on many of those who entered the scheme in good faith when it was started and who have been adversely affected, often greatly so, by the subsequent changes made to the scheme?

Viscount Younger of Leckie: My noble friend is right: after three years of no Assembly, there is much work to be done. The UK Government will work with the restored Executive in fora such as the joint board to continue making Northern Ireland a great place to live, work and do business. I believe that this is one of the best ways in which we can strengthen Northern Ireland's place in the union. On his point on spending, the Government have provided the Executive with a substantial financial package, with necessary checks and balances, to deliver for the people of Northern Ireland. This includes boosting infrastructure and transforming public services. On RHI, very briefly, we will be looking very carefully at the 44 recommendations from Sir Patrick Coghlin's report.

Lord Alderdice (LD): My Lords, given that I trained and worked as a doctor in Northern Ireland, the Minister will not be surprised that I turn to two of the health issues mentioned in the Statement of 15 January, particularly given the parlous state of the health service and the crisis of Covid-19. First, by what date does the Minister expect the first tranche of medical students to start medical training in the new postgraduate faculty in Derry? Secondly, have the problems of pay for nurses been resolved, two months on from 15 January? We desperately need the nurses.

Viscount Younger of Leckie: The noble Lord makes some very good points. It is critical that we do whatever we can to support the health service in Northern Ireland and that the Executive take the issues forward. There is some £245 million to support the transformation of public services, which includes health, and the rapid injection, which he will know about, of £550 million to resolve the nurses' pay dispute. These are just two of the measures that are happening immediately.

Baroness Watkins of Tavistock (CB): My Lords, I would like to return to the issue of the nurses' pay. I welcome the fact that the Government have made the money available, but we really and truly need to know when it is going to be paid to the nurses, particularly at this time when it is so vital that we keep up morale in the health service.

Viscount Younger of Leckie: The noble Baroness is right. I do not have a precise date, but I know that the joint board, which is going to be meeting imminently, will be discussing this very important factor, along with other important issues. As I say, I do not have a date for that, but it will happen soon.

Baroness Smith of Basildon (Lab): My Lords, to stay with the issue of health, I am not 100% clear on this particular question, so perhaps the Minister can tell me. Is the joint board purely for discussions on the delivery of the Stormont deal, or is it an opportunity

for a new mechanism in UK/Northern Ireland co-operation? If so, there is an opportunity here. The Northern Ireland Executive were talking to the Irish Government last week to co-ordinate responses on Covid-19. I do not know what meetings there have been between UK Ministers and members of the Northern Ireland Executive, but there seems to be an opportunity to use this body as a way of co-ordinating responses, particularly given the differences that there are—schools are one example; health is another. Can the Minister say something about what meetings have taken place?

Viscount Younger of Leckie: As I said earlier, the members of the joint board, which is made up of the Secretary of State, the Deputy Minister and the First Minister, are in touch. They have yet to meet, but they will meet very soon. On the health issues and Covid-19, the CMOs are in direct touch. There is a very good link between the CMO in this country and those of the devolved Administrations to discuss matters relating to that very important point.

Lord Robathan (Con): My Lords, will this joint board be able to take a look at the vexatious prosecution of former public servants—police officers and Army soldiers—who were sent to Northern Ireland to do their duty to protect the people of the United Kingdom and are now being pursued unnecessarily through the courts, often some 40 years later?

Viscount Younger of Leckie: My noble friend is right, and I know he takes an interest in these matters. There is broad agreement that the current approach to legacy issues in Northern Ireland is not working well for anybody. That is why this Government are committed to address the legacy of the past in Northern Ireland in a way that provides certainty for veterans and justice for victims. The Secretary of State for Northern Ireland is working very closely with the Ministry of Defence, the Office for Veterans' Affairs and other Whitehall departments to develop proposals.

Lord Caine (Con): My Lords, I echo the sentiments expressed by my noble friend Lord Lexden about the joint UK Government-Northern Ireland Executive board, the establishment of which I very strongly support. My noble friend the Minister will be aware that, following the Stormont House agreement and the fresh start agreement in 2015, we established an implementation group which regularly provided updates on progress. Does my noble friend agree that, in the interest of accountability and transparency, which was very much highlighted by the RHI report only last week, the 2015 precedent would be a useful one to follow?

Viscount Younger of Leckie: Yes, indeed. I can reassure my noble friend that, as well as the joint board, there is an implementation group. These review meetings are particularly important because they include the Northern Ireland Executive party leaders. There will be quarterly meetings and an implementation programme and timetable will be agreed. The UK and Irish Governments will be involved as appropriate, in accordance with the three-strand approach.

Metropolitan Police: Live Facial Recognition

Question

3.02 pm

Tabled by ***Lord Strasburger***

To ask Her Majesty's Government what discussions they have had with the Metropolitan Police about the use of Live Facial Recognition deployments; whether the watchlists for such deployments are composed exclusively of serious criminals; and what is the definition of serious criminals for this purpose.

Lord Foster of Bath (LD): On behalf of my noble friend Lord Strasburger, and with his permission, I beg leave to ask the Question standing in his name on the Order Paper.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Home Office has regular discussions with the Metropolitan Police Service about a wide range of issues, including facial recognition. It has published detailed information about its approach to the deployments, including on the composition of watchlists.

Lord Foster of Bath: My Lords, I thank the Minister for that reply. As this dangerously invasive technology develops, taking us ever closer to a surveillance society, the Government continue to claim that it is for use in the catching of only serious criminals, not people with overdue parking fines. However, the Metropolitan Police's operating procedures make no mention whatever of limiting its use to serious criminals. How does the Minister explain this discrepancy? When will the Government end their wilful blindness and halt the uncontrolled use of facial recognition until Parliament has had an opportunity to legislate to manage it?

Baroness Williams of Trafford: My Lords, there were several points in that question. First, the High Court has said that the police are operating within the legal framework. Secondly, this technology would not be used in relation to overdue parking tickets. To quote the Metropolitan Police, its use of this technology targets

"those wanted for imprisonable offences, with a focus on serious crime, with a particular regard to knife and gun crime, child sexual exploitation and terrorism".

Lord Brownlow of Shurlock Row (Con): My Lords, does my noble friend the Minister agree that there is a lot of misinformation on this subject in the public domain? Can she confirm to the House that there is no intention to record images of members of the ordinary public?

Baroness Williams of Trafford: I can absolutely confirm that LFR is deployed against a watchlist, which is not made up of every member of the public but of those people I have just listed, for the safety of the public.

Lord Anderson of Ipswich (CB): My Lords, in her annual report of 25 February, the Forensic Science Regulator described the biometric oversight board, relied on in the High Court judgment that the Minister mentioned, as having made

"no substantive progress towards establishing an effective governance and oversight framework for police use of facial recognition or other biometrics."

The role of the Surveillance Camera Commissioner is coming to an end in June, with no future plans announced. There is, to coin a phrase, a question of trust. Does the Minister agree that overt surveillance and biometric uses such as live facial recognition need to be properly regulated by statute, or at least until then by a revised code, and that the office of the Investigatory Powers Commissioner would be the appropriate body to take this on?

Baroness Williams of Trafford: As the noble Lord will know, we engage with both the ICO and the Surveillance Camera Commissioner. I totally get his point about the term of office being up in June and I know that we will have further discussions about how best to deploy the governance of this very exciting but potentially risky technology.

Baroness Jones of Moulsecoomb (GP): My Lords, I would be delighted to stand for that job if there is an opening. Peers have heard that the Met is not only looking for serious criminals with this technology but also mixing up vulnerable people who are being looked for. Can the Minister convince me that that is not true?

Baroness Williams of Trafford: Missing people deemed vulnerable—a risk either to themselves or to other people—may well be the subject of LFR deployment for their own safety.

Lord Rosser (Lab): My Lords, I certainly endorse the point made by the noble Lord, Lord Anderson of Ipswich, and I hope the Government will take it on board. How accurate is this facial recognition technology? I have been told that a deployment of the technology at Oxford Circus on 27 February scanned 8,600 faces to see whether any matched a watchlist of more than 7,000 individuals and that, during the session, police wrongly stopped five people and correctly stopped one. If that information is anywhere near accurate, it would suggest that the technology is not overly reliable. For how long were those apparently wrongly stopped at Oxford Circus detained, and for how long is the record of those wrongly stopped, including where they were stopped, retained?

Baroness Williams of Trafford: My Lords, I understand that the incident at Oxford Circus was on 20 February. I understand also—I will be corrected if I am wrong—that the machinery was not working on that date .

Lord Clement-Jones (LD): My Lords, the Home Office and the Met seem absolutely determined to ignore all the advice they have been getting from the Information Commissioner, RUSI and many others. To cap it all, the database of Clearview, a US tech company with highly controversial data-collecting methods, is now being used by the Met and several other UK police forces in their facial recognition deployment. For what purposes are the Clearview database being used? Has legal advice been sought, given that 3 billion images are involved in this sensitive biometric processing without any data subject's knowledge or consent, and does all this not add up, once again, to make the case for a moratorium and a review of the regulation of this technology?

Baroness Williams of Trafford: My Lords, I understand that the Met has stated that the images on the watchlist are drawn from its own database of images taken on arrest, or other images of suspects.

Lord Lexden (Con): Why is the Metropolitan Police so slow to improve its performance in this and some other respects?

Baroness Williams of Trafford: That sounds like a warm-up to our Question on Wednesday.

Conduct Committee

Motion to Agree

3.10 pm

Moved by ***Lord Mance***

That the Report from the Select Committee *Progress report and amendments to the rules of conduct* (1st Report, HL Paper 34) be agreed to.

Lord Mance (CB): My Lords, I beg to move the 1st Report of the Conduct Committee, which, as you may remember, was increased in size last year to consist of five Peers and four lay members. This is our first report since the House appointed the four lay members. We have been meeting monthly. We have concentrated on reviewing the Codes of Conduct for Members and their staff, with a view to their updating where necessary and their effective operation.

The report today before the House makes a series of recommendations—I will not detain the House by speaking to all of them—and the reasons for each are set out in our report. I am happy to answer questions.

The main focus of the first part—paragraphs 4 to 27—is the independent complaints and grievance scheme, ICGS, through which allegations of bullying, harassment and sexual misconduct can be reported. The recommendations seek to ensure that the procedure for determining complaints and any appeals, and the safeguards and sanctions that may be involved, are clear, fair and effective.

I will take but three points. First, the commissioner should have power to restrict access to services or facilities during her investigation; or as a condition of agreed remedial action; or to make a similar recommendation to the Conduct Committee as a sanction for an offence. The code should, furthermore, require observance with any such restriction. That is paragraphs 19, 20 and 22.

Secondly, we consider that the full Conduct Committee need not, and probably should not, be involved in appeals. A subset consisting of three Peers and two lay members—that is our quorum—should suffice. That is paragraph 12. Thirdly, more serious sanctions—

suspension and denial of financial support, for example—should continue to require the House's endorsement; but a sanction that simply requires a Member to regularise the position by apology or training where the Member will not voluntarily do this, or by statement to the House, should be capable of being imposed by the Conduct Committee without need to refer the matter to the House. That is paragraph 16.

The second half of the report relates to some miscellaneous wider matters—paragraph 28 onwards. First, on the investigation of old cases, we propose a single rule for both ICGS and other cases—currently the rules are different—so that both can be investigated if they allegedly occurred within the last six years but with a power to the Conduct Committee to allow older complaints if appropriate. That is paragraph 33.

Secondly, in cases where a Member is imprisoned, we propose closing a loophole whereby a Member sentenced for over a year for an offence committed before 14 May 2014 at present is not susceptible to either exclusion or any disciplinary action under the code—paragraph 35. That is an anomaly which was no doubt an oversight. Thirdly, at the end of the report there are provisions relating to Members' staff—paragraphs 36 to 40.

I emphasise that this is the first of a series of reports we expect to make to the House in the coming months. We have in particular recently been considering a number of points drawn to our attention by the Registrar of Lords' Interests and we have had a meeting with the chair of the House of Commons Conduct Committee, Kate Green, on common issues, such as publicity in respect of complaints, and we propose to have a joint meeting of this House's Conduct Committee and the House of Commons Conduct Committee in April to sort out various matters on a common basis as far as possible, as is obviously desirable.

I should like to take this opportunity, finally, to draw the attention of all Members to the Valuing Everyone training. That is a Parliament-wide training programme designed to ensure that everyone working on the estate is able to recognise bullying, harassment and sexual misconduct and to address it. We strongly encourage and make clear that we expect all Members of the House to attend Valuing Everyone training. It is not at the moment a code matter. We aim at a 50% take-up by the summer Recess, failing which we shall have to consider whether to recommend making non-attendance a breach of the code or to suggest some other sanction. I beg to move.

Motion agreed.

European Union: Negotiations (European Union Committee Report)

Motion to Agree

3.15 pm

Moved by ***The Earl of Kinnoull***

That this House agrees with the conclusion of the European Union Select Committee, that the Council Decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, published in draft on 3 February 2020, and adopted in amended form by the General Affairs Council on 25 February 2020, raises matters of vital national interest to the United Kingdom.

Relevant document: 8th Report from the European Union Committee

The Earl of Kinnoull (Non-Afl): My Lords, I thank those who, despite difficult national circumstances, have signed up for this debate. I extend my best wishes to those who are, for entirely understandable reasons, staying away from Westminster.

This is the first time that the House is debating a Motion under Section 29 of the European Union (Withdrawal Agreement) Act. Section 29 imposes a duty and a power on the European Union Committee of this House. This is in addition to the remit already reflected in our terms of reference, which, inter alia, is to help inform parliamentary and public debate on EU-related matters. The new Section 29 comes into play once we have identified a document of "vital national interest", and leads on to the production of a report, a Motion and a debate in a relatively short timespan. The document we are concerned with today is the Council's decision that was adopted on 25 February: the EU's negotiating mandate for our future relationship.

Before I address the detail of the report, I will say how glad I am that the Government have tabled their Motion today, as we had expressed our regret—at paragraph 29 of our report—that the UK Parliament had not had the opportunity to debate these vital matters to date. The fact that the Government also have put down their Motion sets a good precedent. Can the Minister commit to tabling further Motions in government time as and when there are significant developments in the negotiations?

I thank Michael Gove, who has agreed to appear before us shortly. However, we are still trying to establish clarity and structure as to how the Government will work with committees scrutinising the future relationship negotiations and, importantly, the withdrawal agreement's implementation. As a committee, we have commented on this several times. It is very important to get it right. Will the Minister commit to working with me in agreeing in short order the structure of this engagement for the months ahead?

Our report is neutral, factual and analytical. We have sought to compare the Council decision of 25 February with the Government's command paper of 27 February on the future relationship and the political declaration that was agreed by both parties in October 2019. A further relevant item is Article 184 of the withdrawal agreement, ratified in January this year. This places a treaty obligation upon both parties to

"use their best endeavours, in good faith and in full respect of their respective legal orders, to take the necessary steps to negotiate expeditiously the agreements governing their future relationship referred to in the Political Declaration".

The Council decision is structured very similarly to the political declaration, with some texts simply copied over. Naturally, there are areas where the EU has expanded on the political declaration, a number where the emphasis has changed and some that are omitted. Broadly, however, the council decision is a mark-up and development of the political declaration, and this has facilitated our analysis.

[The Earl of Kinnoull]

Things have been rather more difficult where the UK's Command Paper is concerned. During the passage of the withdrawal agreement Act in January, we heard from the noble and learned Lord, Lord Keen of Elie, who said:

"The political declaration ... sets out the framework for a comprehensive and ambitious free trade agreement with the EU. The general election result has clearly shown that the public support that vision and we consider that we have been given the mandate to begin negotiations on that basis." [*Official Report*, 13/1/20; col. 553.]

This was clarified later by the noble Lord, Lord Callanan, who said that

"the Government's vision for the future relationship with the EU is already set out … in the political declaration". [*Official Report,* 20/01/20; col. 1004.]

Yet the Command Paper is a wholly different structure from that of the political declaration and is instead based on existing EU free trade agreements, such as its Canadian and Japanese ones. This makes it very difficult to conduct a line-by-line comparison with the political declaration, or to trace and explain changes to the Government's position since the political declaration was settled in October last year.

At paragraph 26 of our report we said:

"It would be helpful if the Government, without prejudicing its negotiating position, could publish a comparative analysis of the Political Declaration and the Command Paper, explaining the changes in its approach."

Will the Minister commit to provide this in the near future?

The bulk of our report is taken up by a comparison of the UK and EU opening negotiating positions. These are opening positions; it is the haka at the start of a match, and both sides will have left themselves room to manoeuvre. But the current trajectory, as exposed by our analysis, is clear: the two sides are currently diverging, not converging. I draw your Lordships' attention to four examples.

The first is the overarching structure that the two sides state they are aiming for. The Council decision envisages a single association agreement. The Command Paper proposes a "suite" of agreements within a "broader friendly dialogue". It would be helpful to hear from the Minister about the strength of feeling that the UK has on this.

The second is fisheries—I have no doubt we will hear more about this in the debate. I stress that this is very much one area where the devolved Administrations need to be involved. The political declaration looks to a new fisheries agreement but lacks detail in this difficult area. Both sides have now set out their vision in considerable detail. There is a lot to be said for the Government's position, in particular their reliance upon scientific evidence. But it is fundamentally incompatible with the EU's position, and it is not easy to see how this gap will be bridged.

Thirdly, and equally difficult, is the "level playing field". The political declaration again lacked detail in this difficult area. Since agreeing the political declaration, the EU has toughened its line, as we set out in paragraphs 107 and 108 of the report. The political declaration contained no explicit reference to continuing UK alignment to EU rules. Instead, it referred to

"appropriate and relevant Union and international standards".

The Council decision now wants to use

"Union standards as a reference point"

and, more importantly, for EU state aid rules to apply "to and in" the UK. So the EU's position has hardened, and state aid will necessarily be a key point of disagreement. Again, the widening gap looks hard to bridge, not least given the position of Northern Ireland, where EU state aid rules will apply directly as a result of the Northern Ireland protocol of the withdrawal agreement.

My fourth and final example concerns foreign and defence policy. The Government have set their face against a formal structure and there are no discussions about this in the future relationship negotiations. The terms of reference document notes that while the EU would be open to have them, the UK feels that none are needed. The political declaration on this area states that the future partnership

"should provide for appropriate dialogue, consultation, coordination, exchange of information and cooperation mechanisms."

To take sanctions as an example, co-ordination is vital if they are to have real bite. It seems to me that effective co-ordination would require at least some structure. Given the political declaration's language, I ask the Minister to comment.

We expect both sides to produce draft legal texts shortly—indeed, the EU's text was leaked over the weekend. I have received four copies through separate leaking arrangements. It is 441 pages long. I very much hope that we will be able to scrutinise both texts. The risk is that, on the current trajectory, these texts will reinforce the divergence between the UK and EU approaches and that, in effect, both parties could back themselves into opposing corners.

In closing, I come to time: the ticking clock so often cited in this era of silent digital timepieces. The Government's insistence on the 31 December deadline and the threat of walking away after June have added greatly to this time pressure. Current world events must be adding further to it. Statecraft might be best served by at least some flexibility here.

I hope that the Minister will offer a considered explanation of the Government's approach to the negotiations. I certainly do not expect him to give away the Government's negotiating confidences. However, simply restating their demands and insisting that they will walk away if those are not met is not enough for Parliament in our bounden duty to play our scrutiny role in these vital negotiations. I beg to move.

3.26 pm

Amendment to the Motion

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

At end insert "and notes the undertaking of Her Majesty's Government in paragraph 40 of the Department for International Trade's summary of responses to a public consultation on trade negotiations with the United States, published on 18 July 2019, to 'draw on the expertise and experience of Parliamentarians' by working with a parliamentary committee which would be afforded 'access to sensitive information' during the process, before taking a 'comprehensive and informed position on the final agreement'; and therefore calls on Her Majesty's

Government to ensure that, in a manner consistent with the European Commission's treatment of the European Parliament, both Houses of Parliament are able to receive regular updates from ministers, scrutinise all relevant policy documents and legal texts, and debate the terms of emerging agreements, as negotiations on the future relationship between the United Kingdom and the European Union progress."

Baroness Hayter of Kentish Town (Lab): My Lords, this is a timely debate. It is two days before the second round of face-to-face negotiations was due to open in London. As we know, the negotiations cancelled because of the virus, a matter of serious national concern. As the noble Earl, Lord Kinnoull, has just set out, there were also these EU talks, which are matters of vital national interest.

Despite the description clearly and persuasively set out in the report, our Government seem curiously shy about the content, unlike the EU side: while Monsieur Barnier had a press conference and took questions after round one, this Parliament had a 200-word Written Statement and no discussion in either Chamber until today. I am thankful to our brilliant EU committee, the Bill Cash amendment and the Chief Whip, who agreed to table the Government's Command Paper for debate. It is this reluctance to engage with Parliament that leads to my amendment.

It is somewhat strange that a civil servant rather than a Minister has been sent out to bat for Britain in these talks. I am sure that Mr Frost, who likes to quote Edmund Burke, is excellent. However, as a Member of neither House, he is neither here nor there to explain or be questioned. Is it not shameful that our Government hide behind him to avoid accountability and debate?

In their response to an earlier consultation about discussions with the US, the Government promised

"to draw on the expertise and experience of Parliamentarians"

by working with a parliamentary committee that would be afforded "access to sensitive information" during the process. This would, in the Government's words, enable Members to take an

"informed position on the final agreement"

before being asked to ratify.

That is what we are requesting for the EU negotiations: this Parliament should have the same access as that given by the European Commission to the European Parliament, receiving regular updates from Ministers, as well as seeing relevant documents and legal texts. Our debates would therefore inform the UK negotiators and ensure that at the end of the process we have a treaty acceptable to the Government and the Commons, who have to agree it.

The report of the EU committee was brilliant. It did all the work that the rest of us would otherwise have had to do. From the Command Paper in the Motion tabled by the noble Lord, Lord True, it is clear why we need such dialogue, given the disparity between the opening gambits of the two sides and the shift in the Government's stand since the political declaration signed by the Prime Minister in October and ratified on 31 January this year. As the *Financial Times* noted,

"the longer Prime Minister Boris Johnson holds power, the faster Brexit is evolving into a project more extreme than most British people"

anticipated

"at the time of the … referendum".

No wonder Monsieur Barnier said that "very serious divergences" had emerged and, as we have heard, the noble Earl, Lord Kinnoull, talked about the widening gap.

I shall mention only a handful of issues, as other speakers have much more experience in dealing with some of the very thorny issues on the path towards a settlement satisfactory to both sides. My first point is about the tone of the Government's paper. "Mean spirited" is the kindest way I can describe it. It goes on and on, saying, "We'll only do what's fair to us"—as if any sovereign state would settle for anything less. It reiterates again and again its hang-up about any contamination by the ECJ, while at the same time proposing no ideas on dispute resolution that do not use that sort of mechanism It repeats five times that various of the elements will not be subject to the Chapter 32 dispute resolution mechanism, which itself excludes the ECJ. It goes on and on about what we will not accept, but offers no ideas about what to put in its place.

That abhorrence of the ECJ means that we will even pull out of EASA, to the consternation of ADS, the aerospace industry and every specialist carrier and business involved. They all see this as a threat to the very future of the air sector. Similar prejudice about the ECJ undermines our withdrawal from the EMA and from the Early Warning and Response System, which is particularly significant at this moment.

Secondly, the crucial, and possibly the most problematic, issue is fair competition and the level playing field. Competitiveness is good for consumers, who get a better deal; it is good for business and good for the economy. The competition remit of the EU has driven much of its focus and much of the bloc's economic growth. As we leave that regime, it will be imperative that the UK strengthen its competition authorities, as disturbance of trade could lead to less competition, and greater opportunities for rip-offs.

In addition, after December the UK will face major cross-border competition and merger cases. This is urgent, and demands Ministers' attention now. Following the CMA's proposals for new duties to put consumers first and to act quickly, and the Conservative manifesto's welcome commitment to provide those powers, can the Minister update the House as to whether such legislation, to end rip-offs and bad business practice, will be introduced, when it will be introduced, and also assure us that it will be in time to be effective from January next year?

Thirdly, the Government say that they want no tariffs, charges or restrictions, but this would mean shared standards, recognised enforcement, independent checks and a level playing field. EU countries are hardly going to accept our goods tariff-free if they are produced to lower standards, or simply by paying workers less.

The Government have finally admitted that no alignment means checks, costs and paperwork. Indeed, we hear that 50,000 extra pairs of hands will be needed across the piece—a number well in excess of the 32,000 employed by the European Commission.

[Baroness Hayter of Kentish Town]
Unsurprisingly, British Chambers of Commerce is calling for more funding for customs agents, as declarations on goods will rise from 55 million to 300 million a year from January. Oh, and by the way, the NAO reckons that we have already spent £4 billion on Brexit preparations —with, of course, more to come.

Fourthly, turning to financial services, the Government plan to streamline how firms are regulated, raising concerns in Brussels that Brexit will allow London to reduce oversight of the industry. Trillions are at stake if the EU, perhaps as a result, decides to deny the UK so-called equivalence. As Michel Barnier has said, granting access to EU financial markets is a unilateral decision so there will be dialogue but no negotiations. I wonder whether the tone of our language and apparent light-touch regulation will damage the chances of a satisfactory outcome.

Fifthly, the Government's document fails to include a demand that that UK tourists should be able to travel to the EU visa-free, despite other Statements referencing that. It is slightly hard to imagine why that is not in this important Command Paper.

In addition to what my amendment is about—dialogue with this Parliament—there is the crucial issue of the involvement of devolved authorities. I hope it was simply an error when on 27 February, the noble Lord, Lord True, said:

"We will keep the devolved Administrations informed".—[*Official Report*, 27/02/18; col. 287.]

That is not good enough. Involvement is needed, not just information.

The Welsh Government have tried to reach agreement with the UK Government to facilitate a united position as we enter the negotiations. However, Welsh Ministers had no early involvement in negotiating objectives and saw the text less than a week before publication, with a mere telephone conference with Ministers hours before the Cabinet sign-off. Ever since the referendum, the Government have consistently ignored, as we have repeatedly said in this House, the terms of reference of the JMC(EN) which require it to seek agreement on negotiation positions with the devolved Governments. This does not bode well for the future negotiations where the devolved regions have particular concerns, be they over agriculture, non-tariff barriers, regional and economic development, or other things, and those must be central to the Government's thinking.

This side of the House continues to worry that the Government will either accept no deal or else something as bad as no deal. The document itself threatens that if by June there does not appear to be the outline of an agreement which could be finalised by September, then the UK should move from negotiating to preparing for a no-deal exit. Michael Gove has been telling business groups that, while he wants a Canada-style agreement, they should nevertheless prepare for no deal on 31 December, while Boris Johnson has said he was prepared to walk away from talks in June if there was insufficient progress. No wonder the EU committee said that this raises matters of vital national interest. So it is imperative that Parliament is not shut out; my amendment is about dialogue and engagement with Parliament. I beg to move.

The Deputy Speaker (Viscount Simon) (Lab): My Lords, the original question was that this Motion be agreed to, since when an amendment has been moved at the end to insert the words as set out in the Order Paper. The question I therefore have to put is that this amendment be agreed to.

3.39 pm

Baroness Ludford (LD): My Lords, as a preliminary, I just want to send best wishes to colleagues from any Benches who are ill or staying at home because of coronavirus. Just before I left home, I was pleased that Radio 4 on "The World at One" responded to the plea from Esther Rantzen for some amusing material to keep up morale and played a clip of Martin Jarvis as Bertie Wooster. More from where that came from, please.

Yet again, we on these Benches are very grateful to our EU Committee for a timely and high-quality report of the standard we have come to expect from it. I can say that now without any vestige of self-congratulation as I have, alas, been rotated off even a sub-committee. The report's finding that there is a wide gap between what the Government committed to in the withdrawal agreement and the political declaration and the policies now espoused in the Written Ministerial Statement in last month's Command Paper is deeply concerning. I shall focus on the question of trust, as exemplified by the Government's behaviour over the Ireland protocol; on the triumph of absurd hard-line ideology over pragmatism, as illustrated by the rejection of heath co-operation; and on the damage that the Government's limited ambition for the future relationship will cause.

In the current coronavirus crisis, trust is an essential component of the Government's credibility; people will not follow advice they feel does not have a grounding in facts and competence, as opposed to political posturing. A Government who acquire a reputation for playing games or crying wolf will not be trusted in a crisis. This is one reason it is so essential that the Government can be trusted in their conduct of the Brexit negotiations —both to comply with their legal obligations and to deliver a Brexit that meets, as far as possible, the pledges made by the leaders of the leave campaign in 2016.

Under those legal obligations, respect for the terms of the Northern Ireland protocol, which came at the request of the May and then Johnson Governments and which became, at their request, a front-stop instead of a backstop, is at the core of this. A few weeks ago, Tony Connelly of RTÉ wrote a commentary in which he noted that, in one breath, Michael Gove had told the House of Commons that

"this government are wholly committed to implementing the withdrawal agreement, to respecting and enacting the Northern Ireland protocol,' yet minutes later told the DUP's Jim Shannon that 'there will be no border down the Irish Sea'."

Mr Connelly reminded us that public messaging from Boris Johnson and Northern Ireland Secretary Brandon Lewis has added to the confusion, such that Michel Barnier could barely conceal his irritation at the UK's apparent doublespeak on the protocol after the EU adopted its negotiating mandate.

After suggestions that Suella Braverman, former chair of the hard-line European Research Group, had been appointed Attorney-General to help Downing

Street extricate itself from some of the obligations of the protocol, one EU diplomat reportedly said, "The UK can't mess around with peremptory norms of international law, as that goes to the heart of the UK's reputation as a reliable international partner."

Paragraph 42 of the EU Committee's report says that the Government have explicitly distanced themselves from the withdrawal agreement and the protocol on Ireland, with a consequence that some of the language in the Command Paper is misleading. We are entitled to be shocked and dismayed. In particular, the Command Paper rejects any obligation to align with EU laws, or to allow the CJEU any jurisdiction in the UK. Yet, as the committee points out, such jurisdiction is conferred in respect of Northern Ireland by the protocol. Can the Minister make it very clear in his reply today how the Government intend to comply with the Ireland protocol? Can he give an assurance that they are not trying to wriggle out of that protocol, which would be totally corrosive of trust?

Turning to what sort of Brexit the Government are now pursuing, let us recall that, after many twists and turns, Prime Minister May finally settled on the goal of a "high alignment" future relationship. Perhaps nothing demonstrates how far we have come from Mrs May's intentions than the question of co-operation on health matters.

The Written Ministerial Statement said rather pompously:

"The UK is ready to consider participation in certain EU programmes",—[*Official Report*, Commons, 3/2/2020; col. 4WS.]

oddly, making it sound as though we would be doing everyone else a favour by such participation. In fact, this Government have not only pulled out of the European Medicines Agency, booting it out of London and therefore booting the UK out of its fast-track drug and vaccine approval system and the joint procurement system, they have also declined to take part in meetings of EU Health Ministers, which Switzerland asked to be part of and was allowed to be. The Government have also declined to participate in the EU systems of public health co-ordination in the European Centre for Disease Prevention and Control, and its early warning and response system. The ECDC was set up in 2004, just after the SARS epidemic, and has been active in advising and co-ordinating in respect of bird flu. Norway, Iceland and Liechtenstein are associates, and Switzerland has been granted temporary access to cope with coronavirus.

What possible justification can there be for the Government's refusal to participate in these mechanisms? It goes against the pleas of, we understand, the Department of Health and Social Care and sectoral bodies such as the Brexit Health Alliance, whose co-chair is Niall Dickson, the chief executive of the NHS Confederation, which, as its website says,

"speaks on behalf of the whole NHS."

This Government's failure to seek association with these EU bodies and networks, as well as their failure to prioritise staying plugged into research programmes, is nothing less than a dereliction of their duty to do all in their power to keep the people of this country safe. Do they seriously think that sovereignty trumps safety? Have they discovered a way to instruct a virus to respect national borders? Of what value is autonomy in these dangerous times? It is all very well seeking, in the words of the Written Ministerial Statement, for the UK to

"have recovered in full its economic and political independence",—[*Official Report*, Commons, 3/2/20; col. 86WS.]

but at what price in terms of the social and economic welfare of the people of this country? Why should they be put at risk because of some idiotic ideological bee in the bonnet of hard Brexiters such as Dominic Cummings? Can the Minister give any other explanation?

Another example of the triumph of hard-line ideology over pragmatism is the Government's rejection, as a matter of policy, of the notion of an extension to the negotiations, which has to be requested by 1 July. This was untenable before coronavirus hit; it is even more so now. Will the Minister assure us that the question of an extension will be guided by the needs of this country, not the prejudices of the ERG?

It is increasingly suspected that this Government have reverted not only to a preparedness for no deal but to an ambition to that end. They have certainly set the bar of ambition very low—for a minimalist free trade agreement of zero tariffs and zero quotas, rejecting any level playing field, regulatory alignment obligations or shared governance akin to an association agreement. This Government also reject the mutual respect for core values and principles, including explicitly staying in the European Convention on Human Rights and keeping the Human Rights Act, which the Council decision calls for. This will also hit the prospect of co-operation on internal security, which is supposed to be a high priority for the Government.

Outside the single market and customs union, the costs for business, including mountains more red tape, and the risk to jobs will be very high. Of course, we know what the Prime Minister's attitude to business, including manufacturing in aerospace and cars, is—he expressed it very pithily—but that is a bit tricky when you are appealing to manufacturers to turn their hand to the production of ventilators. New border frictions and delays due to checks and formalities instead of just-in-time deliveries are very bad for filling supermarket shelves. This is a long way from what was promised in 2016, when a "deep and special partnership" was said to be the goal. Hostility and resentment have characterised the approach of those who won the referendum. The aim now, apparently, is the dogmatic rejection of anything and everything remotely connected to the EU, whether that is in health, Galileo, Erasmus, Euratom, EASA, REACH, the Unified Patent Court, the European arrest warrant and many more.

The Government intend to replicate the functions of these agencies at huge cost, but money is one thing that will be in short supply. Not only is there absolutely no Brexit dividend, but the OBR says that we have already lost 2% of GDP since the leave vote; it also warned that leaving the EU will hit growth, exports and the public finances at a time of rising uncertainty, predicting a 5.2% loss of potential GDP over 15 years if a "typical" FTA is struck. It blames trade friction, restrictions on migration and red tape. Even before coronavirus struck, economic growth had sunk to zero. Why are the Government refusing to publish their own

[Baroness Ludford]
economic impact assessment of the limited Canada-style trade deal that they are aiming for, when they published one on the not very beneficial US deal that they want? Are the Government afraid that the citizens of this country will wake up to the price they are paying for the ideological dogmatism of the hard Brexiters, who are now in charge of this country's fortunes—or, rather, misfortunes?

Our EU Committee has done us a huge service with its forensic report, but it sets off many alarm bells. The country cannot afford the hard-line, doctrinaire Brexit policy of this Government, especially when our health is so much under threat. As one commentator, Professor Chris Gray, observed, their policy is indeed demented.

3.50 pm

Baroness Noakes (Con): My Lords, it will not surprise the House to find that I will not be echoing the sentiments of the noble Baronesses, Lady Hayter and Lady Ludford. I welcome the Government's plans for a future relationship with the EU, as set out in their White Paper, and I particularly welcome my noble friend Lord True as the Minister in this debate; it is in very capable hands.

I could not be more proud of the approach that the Government are taking to our relationship with the EU. We have left behind us the servile acquiescence that characterised the first three years of negotiations with the EU after the referendum. In its place, we now have a confident Government who really believe in our future outside the EU and have the strong backing of the British people from last year's general election.

In the Command Paper, the Government have set out their vision of

"friendly co-operation between sovereign equals".

Those of us who strongly supported the UK's exit from the EU are much heartened by both the content and the spirit of the Government's position, and I look forward to my noble friend's summary of the key elements of our policy when he winds up.

For me, the most important aspect is that we are seeking a comprehensive free trade agreement with the EU. We are one of the world's largest economies, and we expect to be able to negotiate trade agreements with our trading partners on a basis of mutual respect on both sides. The EU is no different from any other trade counterparty in this respect. It is the same basis on which we should approach negotiations with other important trading partners, such as the USA.

Of course, that means that we do not want an association agreement and will not bind ourselves to the rules and mechanisms of the EU, whether for a level playing field or any other purpose. Our country did not vote to leave the EU in order to recreate the past relationship all over again. We especially did not vote to leave the EU to be bound to mirror any part of its regulatory environment in perpetuity. Dynamic alignment is a million miles from any reasonable interpretation of what the British people voted for in 2016.

Lord Lea of Crondall (Non-Afl): Is the noble Baroness saying that she is advocating no deal?

Baroness Noakes: I will come on to that in a short while. I was saying that dynamic alignment is simply not what the British people voted for in 2016 or in last year's general election. It is right that it forms no part of our approach to our longer-term relationship with the EU.

One symbol of being an independent nation again is fisheries. The EU seems to think it can recreate the existing quota arrangements, which are so disadvantageous to our home fishing industry. That simply cannot happen. The fishing industry may not be the most important contributor to the nation's GDP, but it is symbolic of what it means to be a free nation: controlling our own waters and setting the rules by which we will be responsible conservators of our fishing stocks.

I am also completely behind the Government's decision that we should not seek any extension of the transition period at the end of this year, even in the face of the current pandemic, which may well disrupt negotiations but does not present an excuse for not completing them. It is essential that we move to prepare for life without a comprehensive agreement if we do not make enough progress by the summer. I have never been afraid of trading on WTO terms and I will not start now.

All in all, I believe that the Government's approach as set out in Command Paper 211 and as illuminated by the wonderful speech last month by Mr David Frost, our chief negotiator, is terrific. I hope that the House will support it.

I turn now to the other Motions before us, namely the Motion in the name of the noble Earl, Lord Kinnoull, on behalf of the EU Select Committee, and the amendment in the name of the noble Baroness, Lady Hayter. If I had to sum up both of these Motions, I would say that they are seeking to rerun battles that have already been fought and lost. I was absolutely amazed that the EU Committee managed to hang its first report on Section 29 of the EU withdrawal Act. I shall express no opinion on the validity of the argumentation around this as set out in chapter 1 of the report. It may well be technically accurate. I do not, however, believe that Section 29 was intended to be used for the purpose of requiring a debate on the negotiations on our longer-term relationship. I had understood that section to allow Parliament to raise important issues about EU legislation passed in the transition period and therefore applying to the UK while we do not have any representation in the EU.

Noble Lords will be aware that the terms of the 2020 withdrawal Act differed significantly from the version of the earlier Bill that was considered by the last Parliament. The earlier Bill required the approval of Parliament to the Government's negotiating objectives, which themselves had to be consistent with the political declaration. It also required three-monthly reports to Parliament on the progress of negotiations. Those provisions were inserted in a doomed attempt to get the last Parliament to pass the withdrawal Bill. But since then, the general election has given a huge mandate to the Prime Minister to "Get Brexit done". The provisions for involving Parliament in the negotiations were removed from the Bill which became law in January this year. The will of Parliament is now clear:

these provisions of parliamentary scrutiny are neither necessary nor desirable; yet here we are with the EU Committee using Section 29 of the Act to achieve a debate on negotiating principles, and even calling for the Government to publish a comparative analysis of the political declaration and the Command Paper.

The political declaration has no legal force and, as the EU Committee's report makes clear, neither the Government nor the EU are using the political declaration as the starting point for their negotiations. We have moved on. I respectfully suggest that the EU Committee does as well.

Lord Hannay of Chiswick (CB): Will the noble Baroness explain why it is that she believes that the European Union is not behaving in a manner consistent with the political declaration when my noble friend's report says quite explicitly that it is?

Baroness Noakes: I will say to the noble Lord only that it may have the headings of the political declaration but the content is significantly different in a number of places, as indeed was set out in the EU Committee's report.

Baroness McIntosh of Pickering (Con): I am following very closely what my noble friend has said. I understand that she has years of experience in a certain sector, but what does she fear about scrutinising a policy such as fisheries or agriculture, or a potential no deal where the consequences could be to decimate the sheep market in this country? She is a parliamentarian. What does she fear from scrutiny?

Baroness Noakes: My Lords, I fear nothing from scrutiny. I am making the point that Parliament has consciously removed provisions that were contained in an earlier Bill; the version of the withdrawal Act that is now the law of the land has no such provisions and has deliberately removed them. That, to me, expresses the will of Parliament that Parliament does not expect to be involved in the minutiae of the negotiations with the EU; it is simply that.

I suspect that what is driving a lot of this debate is the fact that the majority of Members of this House never favoured exiting the EU and continue to be of the remain persuasion. I am sure that that is true of the EU Committee. Having been a member of that committee, I am well aware of the balance of its membership. I have raised in your Lordships' House before the point that, if this House is out of alignment with the opinion of the country at large, that is at best unhealthy; at worst, it could undermine support for this House's continuation, at least as currently constituted. I believe that the House and its committees need to think very carefully about that.

To conclude, we should praise the Government's approach to negotiations with the EU and then let them get on and deal with them.

4 pm

Lord Hannay of Chiswick: Well, my Lords, that really was back to 1958.

Were the coronavirus pandemic not dominating the public debate almost to the exclusion of everything else, the admirable and forensic report of your Lordships' EU Select Committee, which was so excellently introduced by my noble friend Lord Kinnoull and which we are discussing today, and which deals with the opening positions of the UK and the EU in the post-Brexit new relationship negotiations, would be getting a great deal more attention, and rightly so. The political and economic choices that will be made in these negotiations will be felt for a long period—a period measurable in decades, not just in months and years—and very possibly long after the consequences of coronavirus will have been consigned to the history books and academic research. The consequences of the post-Brexit negotiations are likely to be seriously negative, which is no doubt why the Government are still refusing to publish any impact assessment of the proposals that they have put on the table in Brussels.

This report tells us that, on 31 January, this country ratified a political declaration annexed to the withdrawal agreement which set out the framework for our new relationship with the EU, and that from 3 February onwards—a mere four or five days later—every statement made by the Government treated that framework with blithe disregard, often contradicting it. Before anyone jumps up to say that the political declaration was not legally binding, I would not dream of suggesting that it was, but the time was when this country prided itself that its word was its deed. No more, apparently. Such blatant disregard for what we signed up to will carry a heavy cost in lost trust and confidence on the other side of the negotiating table. That will no doubt become clear when the two parties meet to thrash out the details of the Northern Ireland protocol to the withdrawal agreement, the interpretation of which by the Prime Minister bears no resemblance to what he actually signed up to.

The level playing field will clearly be a major bone of contention. In the political declaration we agreed—I emphasise: "we" agreed—and ratified the following words:

> "Given the Union and the United Kingdom's geographic proximity and economic interdependence, the future relationship must ensure open and fair competition, encompassing robust commitments to ensure a level playing field."

There is not much ambiguity there, you might think, but the Government are driving a coach and horses over it by turning to the precedents of the EU's agreements with Japan, Canada and South Korea, all many thousands of miles distant and much less interdependent with the EU, and ignoring the fact that agreements with its neighbours—Norway, Switzerland and Ukraine, for example—all have elaborate level-playing-field provisions.

Why are we insisting on the principle of regulatory divergence before we have even worked out in what sectors divergence might be to our advantage? I noted that today the noble Lord, Lord Goldsmith, made it quite clear that we have not worked that out yet on motor vehicles and chemicals. I wonder whether business really wants us to diverge. Surely it would have made more sense—and still makes more sense—to discuss the practicalities of divergence, not the principle of it.

Then there are all those regulatory agencies for which we seem determined to set up or restore separate, national institutions come what may, for largely ideological reasons. That will involve more costs, some no doubt

[Lord Hannay of Chiswick]
to be loaded on to business, and more civil servants. Will it also mean more safety and protection for consumers? That is not terribly likely. Think of the implications of leaving the European Medicines Agency. As for internal security and law enforcement—on which the EU has made great strides in recent years from which we have benefited substantially—if the use that we have made of those new instruments is anything to go by, will we be safer without the European arrest warrant, or less safe? I think the answer is the latter.

One of the most blatant departures from the political declaration, which has already been mentioned, is the way that we have turned our back on any systematic co-operation with the EU on foreign and security policy, opting instead for bilateral ad hoc approaches. However, we will have no control over this. If the EU decides to act together on an issue of foreign policy, security, defence or sanctions, we will have no choice but to deal with it on that basis or not at all. Will we have more or less influence on the formulation of EU policies if we refuse systematic co-operation? That question is not too difficult to answer.

It is not too late to remedy some of these defects as the negotiations proceed—not too late even to reach mutually beneficial arrangements over fisheries which give our fishers a better deal than they had in the past, so long as we do not take an all-or-nothing approach. But imposing artificial deadlines which ignore what is written in the political declaration about the possibility of extending the transitional period and threatening to walk out in June are not the best ways to promote out interests, nor are they likely to succeed. That is why I support the resolution in the name of my noble friend Lord Kinnoull and the amendment moved by the noble Baroness, Lady Hayter, and why I regard the Motion in the name of the noble Lord, Lord True, as grossly inadequate to meet the challenges that lie ahead.

4.07 pm

Lord Hain (Lab): My Lords, without any scrutiny apart from the excellent report from the European Union Committee, since the election the Government have been rushing to an extreme hard Brexit which will simply compound the profound economic damage already triggered by the coronavirus into quite unnecessary and reckless national self-harm. Incredibly, the Prime Minister has unilaterally committed—come what may and way before he needed to—to leaving the transition period at the end of December, meaning the spectre of no deal is once again on the horizon, with immensely damaging long-term consequences for the UK's economy. With respect to the noble Baroness, Lady Noakes, it would also be an outcome that was not foreseen or supported by most people at the time of the 2016 referendum.

In recent weeks, the magnitude of the coronavirus crisis has vividly demonstrated the limits of national action and the challenges of an unregulated, globalised world. Contrary to the belligerently nationalist tone adopted by the Prime Minister, Britain alone cannot fight the virus. We need leadership like Gordon Brown's as chair of the G20 at the time of the global financial crash. The need for internationally aligned standards on isolation, quarantine and contact tracing and for much more investment in public health systems has been demonstrated. For instance, the UK has no vaccine production capacity of its own. As we have exited the EU, this could make us vulnerable to a potential second wave of Covid-19 and future pandemics. The European Medicines Agency, which once ensured that London was the centre for scientific evaluation, supervision and safety monitoring of medicines in the EU, relocated to Amsterdam in March 2019. As David Meek, the CEO of Ipsen, a leading pharmaceutical company, has warned, when it comes to availability of new treatments, pharmaceutical companies will first of all target the far bigger markets of the EU, the US and China. The UK, as predicted by President Obama, will indeed be at the "back of the queue".

The EU Committee has drawn attention to the extent to which the two sides have diverged since last October's agreement, which has created a mismatch of expectations on virtually all aspects of the future relationship. This analysis shows that the EU Council's decision adopts the same structure as the agreed political declaration. As the UK is no longer a member of the EU, it seeks not to maximise trade but to prevent the UK undercutting the single market by lowering standards. However, the UK's position appears to have changed significantly following the December election. A precursor to this can be found in changes made to the draft in November 2019 by the new Prime Minister's negotiator. In particular, the words in the protocols relating to alignment of the UK in the areas of taxation, environmental protection, labour standards, state aid and competition were moved from the binding withdrawal agreement into the aspirational political declaration. Then, on 3 February, the Prime Minister announced that there was

"no need for a free trade agreement to involve"

the UK

"accepting EU rules".

The new approach by the UK's negotiating draft is also therefore motivated by a desire not to maximise trade but to seek the fullest amount of regulatory independence for the UK, putting Brexiteer dogma ahead of jobs and prosperity. This was confirmed by the Prime Minister's statement:

> "The question is whether we agree a trading relationship with the EU comparable to Canada's—or more like Australia's."

But no trade deal exists between Australia and the EU, and his comments have also been interpreted as "code for no deal" by Ireland's EU Trade Commissioner Phil Hogan. Even the Canada deal to which the Prime Minister referred—which took seven years to negotiate—would be disastrous for the UK, which already has a sizeable trade deficit on goods with the EU, as competitive EU suppliers could take advantage of zero tariffs in many areas, while services, where the UK has a trade surplus with the EU, would lose access to their former EU markets.

It is now clear that the obsession of Brexiteers with the so-called "sovereignty" of the UK means that the Government now believe there must be no alignment with EU rules. Slashing European regulation has, of course, long been a right-wing article of faith for those promoting a "Singapore-upon-Thames" UK, but the truth is that divergence caused by Brexit will lead to

more bureaucracy, not less. First, the UK will need to replicate the functions of the EU regulatory bodies. Secondly, UK exporters will then have to deal with two sets of rules, as they will still need to meet EU standards to trade into the biggest, richest market in the world.

The sectors affected do not want to lose the protection and market access provided by EU regulatory frameworks, which have been developed, with UK support and influence, over the last 40 years. A case in point is the recent announcement by the Transport Secretary that the UK will leave the European Aviation Safety Agency, which enforces safety standards in the airline industry. The trade body representing the British aerospace and defence industry immediately condemned this decision as "unnecessary and unwanted divergence" from EU norms and harmful to the UK aerospace sector. The automotive, food and drink and pharmaceutical industries, among others, have also warned the Government that moving away from key EU rules would be damaging. But there is no sign that their pleas have been heard.

The Government's own analysis in 2018 concluded that under a no-deal scenario the UK economy might be 6% to 9% smaller. Yet Number 10's "divergence for divergence's sake" could be catastrophic for British manufacturing industry and its workers. The industrial heartlands of the north-east and the West Midlands face the greatest potential economic hit—down by 16% and 13% respectively, it was estimated. Their economies are heavily dependent on European-wide just-in-time production found in advanced manufacturing such as cars, aerospace and chemicals. No doubt the Prime Minister will blame the EU for making these regions poorer when his damaging hard Brexit cuts our manufacturers off from lucrative EU single market access. This malign threat now looms over all sectors of the UK economy.

Take fishing and financial services as two very different examples. A bizarre stand-off between the UK and the EU over fishing rights triggered alarm that the Government were thinking of sacrificing the UK financial service industry's access to the EU market in order to "save" UK waters for the British fishing fleet. Financial services account for around 7% of GDP, 11% of UK tax take and more than 1 million jobs, over half of which are outside Greater London. Fishing, while deserving of full support as it is important, especially to coastal communities, employs fewer than 10,000 people and is worth a fraction of 1% to national GDP.

The Brexiteers do not understand how this industry works. After years of promises of "frictionless trade" by Brexiteers, on 10 February, Michael Gove was finally forced to admit that this will cease at the end of this year. As one person's fish is another person's poisson, the UK fishing industry relies completely on overnight frictionless UK/EU trade. Informed analysis has shown that the most likely outcome of closing the UK's sea borders would be a lose-lose situation for both UK and EU consumers and for both fishing industries. It would therefore be yet another spectacular own goal if the UK refused a deal on finance, which is critical to the UK's prosperity, as the price of not reaching one on fishing.

We now learn that the government team negotiating with Brussels has been ordered to find ways to "get around" the Northern Ireland protocol, which includes checks on goods moving from Great Britain to Northern Ireland, measures adopted to protect the balance of the Good Friday agreement and avoid a hard border on the island of Ireland. This would trigger dispute-resolution arrangements in the withdrawal agreement, which in turn jeopardises a future trade deal with not only the EU but the US, where support for the island of Ireland, north and south, in Congress is strong.

When the UK and the EU together ratified the withdrawal agreement last October, it became legally binding under international law, as noble Lords have already mentioned. This means that, regardless of the outcome of the current negotiations on the future relationship, the protocol on Ireland/Northern Ireland is legally in place, and the Good Friday agreement must therefore be fully protected. Implementation of the protocol will ensure that there is no hard border on the island of Ireland and that the common travel area is maintained, to the continued benefit of UK and Irish citizens, and that more practical things such as the single electricity market in Ireland are part of protecting north-south co-operation. The protocol also maintains commitments to ensure no diminution of rights and safeguards equality of opportunity, as set out in the Good Friday agreement. It confirms that people in Northern Ireland who exercise their right to Irish citizenship will continue to enjoy their rights as EU citizens and reaffirms the EU and UK commitment to the PEACE PLUS programme.

The protocol states that Northern Ireland will remain in the UK customs territory but continue to apply the rules of the EU customs code. This means that there will be a need for checks on goods entering Northern Ireland from Great Britain, some of which already exist—for example, on livestock. However, the Prime Minister has insisted there will be no checks on goods moving in either direction. Unless the UK honours its legal commitments in the protocol, we will damage our long-standing and deserved global reputation as a credible international actor and undermine our ability to conclude international agreements of any kind in the future, including free trade agreements and the negotiations on the future relationship with the EU.

The protocol effectively moved the UK/EU customs and regulatory border into the Irish Sea, so that Northern Ireland will be on the EU side of the barriers to UK/EU trade. At the very least, this means more paperwork and administration; it could also well mean regulatory divergence, duties and even quotas. It poses an existential challenge, not only to the UK exporting but to the model of intra-UK business itself. I spell this out bluntly, because the Prime Minister is sailing blithely on, denying that there will be any problem implementing what he has legally agreed to on Northern Ireland, and sooner rather than later he is going to hit a brick wall.

Finally, we must surely insist that, in the light of the coronavirus catastrophe, the Government will face down the hard-Brexit zealots and reconsider the decision to exit the transition period at the end of the year, come what may. Right in the thick of the coronavirus

[Lord Hain]
pandemic, the last thing the country will need by then is yet more disruption and instability triggered by the double whammy of a rushed Brexit driven by dogma to meet an arbitrary deadline, especially when so many questions about the Government's agenda remain mired in confused contradiction.

4.20 pm

Baroness Falkner of Margravine (Non-Afl): My Lords, I agree with the EU Select Committee's report and support the Motion in the name of the noble Earl, Lord Kinnoull. I was a member of that Committee until last summer and I know how carefully it strives to be as objective as possible. This report upholds that tradition of neutrality. However, I do not support the amendment to the Motion in the name of the noble Baroness, Lady Hayter, for reasons that I will set out.

The EU Committee's report notes the change in the Government's Command Paper of February to the political declaration of October 2019. Again, I agree that there is a change, but I point to the significant fact that explains that change: the event of a general election on 12 December 2019. This was contested on the basis that, if the Conservatives won the election, they would seek a very different settlement from Prime Minister May's withdrawal agreement in terms of the sovereign autonomy of the United Kingdom. They won that election resoundingly, hence the hardening of the autonomy provisions in the UK's negotiating position.

The Committee also notes the EU's new hardening of its own position on provisions to implement a level playing field, almost predicating the deal on this proviso. This change of position has some history. During my time on the committee, we had several meetings with Mr Barnier through the course of the negotiations. The quest for a level playing field was there, but mainly in regard to market access for, for example, financial services. I recall one meeting in, I think, November 2018 when there was a robust exchange between us when I asked him why he thought the UK would wish to leave the EU if it would end up as a rule-taker with no rights but having to abide by EU rules. I remember his answer in the margins of the meeting, which was simply, "Well, it is your choice."

Regulatory autonomy is particularly relevant at a time of rapid technological and economic change, which will undoubtedly impact the prospects for all advanced economies in the relatively near future, so dynamic alignment with EU rules in areas such as environmental protection and workers' rights come at a time when most independent states will seek as many levers at their disposal as possible to mitigate the effect of job-displacing technology. In plain English, every country wants to do what it needs to do to protect the jobs and prosperity of its citizens. That is why carve-outs and exemptions exist in all trade agreements.

Regarding state aid, Mr Johnson, in his speech of 3 February 2020, detailed the enforcement taken by the EU against EU member states. He did so to prove that the UK is not front of the pack in diverging from EU rules. The UK, he said, was subject to four actions in 21 years, compared with 29 against France, 45 against Italy and 67 against Germany. The record speaks for itself.

A further change to the EU position not mentioned in the report is the reluctance of the EU to envisage a Canada-style CETA. Again, Mr Barnier's sideshow, wheeled out frequently during the negotiations, had several levels of relationship on offer, depending on what the UK sought to do in its withdrawal agreement and future relationship. If we wanted untrammelled market access, we had to be in the single market and the customs union. At the other end of the scale was the Canada CETA as an ordinary third country. So it is surprising to see that once the UK has resolved to be a third country, the EU now discovers, three and a half years later, that we have a close geographical proximity and are a large economic power—which are the reasons it gives for why a Canadian-style CETA is inappropriate for us.

The UK position, reflecting the Government's majority, can be summed up by the observation made by John Maynard Keynes: "When the facts change, I change my mind." However, instead of a similar realisation that the facts on the ground have changed, the EU seems to move away from the political facts in the UK, its negotiating partner. However, I hope that these are just negotiating positions through which a consensus will emerge.

My objections to the Labour amendment are mainly in its seeking an analogous position to the European Parliament, not in its desire for greater scrutiny, which to a great extent I share. This comparison with the European Parliament has been a long-standing ask from those in the Lords and the Commons, and was promised by the Government in response to a question that I asked Mr David Davis in 2017 during EU Select Committee evidence sessions. I was surprised that he agreed to grant the committee that, and I continue to be surprised that the Lords continues to ask the question as the Government move away from that offer.

The Motion seems to imply that Parliament should be given the same rights as the European Parliament. That in turn implies that the UK Parliament is similar in composition and powers to the EU, whereby it should have the same rights. First, the European Parliament was given the powers under Lisbon as the Commission, post Maastricht, had come under attack for being insufficiently democratic. The status quo ante had been that the Commission negotiated agreements and the European Council agreed them. Post Lisbon, the European Parliament forms a bicameral legislature with the Council of Ministers. This is not analogous to the role of the UK Parliament vis-à-vis the UK Government; I think that should be self-evident. As the EU institutions—

Baroness Smith of Newnham (LD): I am a little confused. I thought that the point of the United Kingdom voting to leave the European Union was to take back control and that Parliament was sovereign and no Parliament could bind its successor. In such circumstances, is it not wholly appropriate for this Parliament to seek to hold the Government to account? Why is there anything peculiar about this?

Baroness Falkner of Margravine: I fear that the noble Baroness is a little enthusiastic in jumping in before I have concluded setting out my rationale for

why I think that this is not analogous. I will not go into "taking back control" because we are a bicameral Parliament and the European Parliament is not, so it is a different entity entirely.

As the EU institutions practise in an area of trade policy that is not analogous, there is a distinction between straightforward trade agreements and mixed agreements, with differing procedures as the CETA debacle apropos Wallonia demonstrates. I remind noble Lords that CETA remains a provisional agreement; as yet it has not been ratified by all member states. So I would argue that how the Commission works through blockages is still a work in progress. My prediction is that the EU will find it increasingly difficult to pass the kind of comprehensive deals with either the US or other large countries that it seeks if such divergent and multiple checks on its autonomy prevail.

I turn to the noble Baroness's question about the UK Parliament and the attempt to replicate the European Parliament's powers here. One singular distinction is that we are bicameral and the European Parliament is a single Parliament, as I have just reminded her. Moreover, we have an elected Chamber, the Commons, which is similar to the European Parliament, and a further appointed Chamber, the Lords. Were we in the Lords to seek to put up objections to a trade deal that had been agreed by the Commons potentially where the detail may not have formed part of that Government's manifesto, where would we be if the Commons cleared it but the Lords did not? Moreover, if one takes the EU analogy for mixed agreements and replicates it at national level, is one not saying that the devolved nations should also have a veto on the deal?

I am all for involving the devolved powers in the details of free trade agreements as in the end they have to implement them. The current mechanism for consultation should be improved. Would that be against changing our settlement for reserved matters? If that is the case, I will need to look again.

It seems to me that this ongoing quest for analogous powers to those of the European Parliament on the part of some sides of this House is misguided.

Baroness Hayter of Kentish Town: Will the noble Baroness accept that the amendment only asks for access to documents, not for powers over their content?

Baroness Falkner of Margravine: I will read the wording of the amendment, which

"calls on Her Majesty's Government to ensure that, in a manner consistent with the European Commission's treatment of the European Parliament, both Houses … are able to receive regular updates from Ministers"—

and so on. In my view, that goes too far, because it draws the analogy with the European Parliament. I also say that to the noble Baroness, Lady Hayter, because I have noticed sections of this House consistently making that analogy.

The noble Baroness may be interested to know that I would seek powers of scrutiny over future trade deals through a Select Committee on international trade—perhaps a Joint Committee of both Houses that would have several and various powers of scrutiny that the Government have said that they are perfectly willing to consider. I see benefits to Parliament, the public and the Government in that pathway, as Governments undoubtedly benefit from the early warning of problems that comes through Select Committees. But ultimately it is the Government's prerogative to be the sole negotiator of trade agreements and, while the UK should improve its own constitutional arrangements, it should not seek to emulate processes designed for other institutions.

4.32 pm

Viscount Trenchard (Con): My Lords, it is a great pleasure to follow the noble Baroness, Lady Falkner. She made some very interesting new points to inform your Lordships' debate. I thank the noble Earl, Lord Kinnoull, for introducing this debate. His committee rightly concludes that the recent Council decision raises matters of vital national interest.

I believe that the matters that the committee raises are not exactly new, because we have been debating them since before the referendum of 2016 and, indeed, before that. Indeed, a majority of the electorate voted to leave because they considered that remaining in the EU raised matters of vital national interest. They thought that reclaiming our right to have our laws made in this Parliament by MPs accountable to the British people was one of these matters.

I am sure that your Lordships are grateful to the noble Earl's committee for its report and for promoting debate on our EU negotiations, which will, whatever their outcome, profoundly and permanently change the United Kingdom. However, even if we had not left the EU, the continuing incremental transfer of competences to the European institutions would have continued to profoundly and permanently change the country.

I regret that the negotiations leading to the withdrawal agreement were conducted ahead of and separately from the current negotiations on our future relationship with the EU. As your Lordships know very well, Article 50 states that the negotiations on the withdrawal of a member state shall take account

"of the framework for its future relationship with the Union."

My understanding is that it was expected that the framework for the future relationship would be agreed at the same time as the withdrawal agreement. Article 50 does not suggest or imply that there should be two separate sets of negotiations or agreements. The EU insisted that we should agree the terms of withdrawal first, dealing with the future framework in the separate and non-binding political declaration.

The political declaration, as your Lordships are well aware, provided for a number of possible outcomes, ranging from continued close alignment with EU laws and regulations, to a clean break with full restoration of national sovereignty but also starting from a point where our legal and regulatory systems are identical.

The Conservative Party manifesto—on which the new House of Commons was elected—made it very clear that the Government would seek a future relationship with the EU based on a free trade agreement similar to that enjoyed by Canada; leave the single market and the customs union; and not agree to the continuing jurisdiction of the ECJ in this country. The Prime Minister made it clear in his Greenwich speech that if the EU would not agree to an FTA similar to that

[Viscount Trenchard]
which it has with Canada, the UK would seek trading arrangements similar to those which the EU has with Australia.

I am opposed to the amendment of the noble Baroness, Lady Hayter, which seeks to exercise control over the actual process of our negotiations, or even debate the terms of emerging agreements. This would detract from our negotiator's ability to obtain the best possible result for the UK and make it more likely that we will not be able to reach agreement with Mr Barnier and his team. I therefore urge your Lordships to reject this amendment, which, if agreed, would send the wrong message to the EU, and damage the authority of Mr Frost and our negotiating team.

One area where the Government's Command Paper differs significantly from the EU's decision is state aid. Indeed, the amended text of the decision adopted on 25 February implies not only that the EU will require the UK to continue to apply existing state aid legislation, but that it will be expected to adopt new or amended EU state aid rules in future. But the UK is very far from being the worst culprit of the excessive use of state aid. As the Prime Minister pointed out, and as the noble Baroness, Lady Falkner has just reiterated, the EU has enforced state aid rules against the UK only four times in the last 21 years, compared with 29 enforcement actions against France, and 67 against Germany. The recent hardening of the EU's position on state aid will make it very difficult to reach agreement on a satisfactory FTA within the time available.

I would like to say a few words about services, especially financial services, based on more than 40 years' experience as an investment banker. The political declaration suggested that the EU and UK should seek close and structured co-operation on regulatory and supervisory measures, including by working together in international bodies. As a member of the committee's Financial Affairs Sub-Committee, formerly chaired by the noble Baroness, Lady Falkner, and now chaired by the noble Lord, Lord Sharkey, I can confirm that we have discussed this matter to a considerable extent. Our witnesses have included the present Governor and the Governor-designate of the Bank of England. Both have expressed the view that we should not be a rule-taker from the EU and should in future adopt a regulatory regime which recognises London's connections with other important financial markets, such as New York and Tokyo.

I regret that the EU did not match our decision to grant temporary equivalence to EU clearing houses for two years, but was willing to grant this only for one year. Does the Minister concur that, in agreeing the basis of granting and withdrawing the recognition of equivalence in financial regulation, we should not establish a cumbersome and bureaucratic bilateral structure for assessing divergence with the EU which would, in effect, tie our rule-making more closely to Brussels than to other important financial markets, such as those of the US and Japan? Does he also agree that in future the UK should seek to maximise its influence in establishing best practice and designing proportionate regulation at the global level, through bodies such as the International Organisation of Securities Commissions, IOSCO? There are several EU financial rules, such as AIFMD, Solvency 2 and MiFID 2 which contain elements which we tried to resist and from which we may wish to diverge. If the structures we agree with the EU unduly restrict us from divergence, it will complicate our freedom to reach agreements on regulatory equivalence with third countries such as the US and Japan.

I agree with the former Chancellor who called for a durable equivalence relationship, whereas the EU has stated that its equivalence decisions can be withdrawn at 30 days' notice unilaterally, as it has done in the case of Switzerland. This has increased the cost of trading in Swiss stocks, especially in the case of smaller companies.

On defence, the Government's Written Ministerial Statement contains no specific reference to defence but states that foreign policy alignment, which is likely to be substantial, does not in itself require a joint institutional framework. However, the EU's decision reflects the political declaration in agreeing that the UK may co-operate in certain projects under the European Defence Fund and PESCO. Our Armed Forces enjoy a close collaborative bilateral relationship with those of France. Does the decision mean that UK-France defence co-operation will be possible only under the framework of the EDF or PESCO in future? Does that mean that in order to co-operate, British forces could work with French forces only under the command of a European general?

Lord Hannay of Chiswick: Perhaps I can give the noble Viscount an answer to his question. The answer is no, it does not mean that. It could only mean that if the French agreed to make it mean that, and they will not.

Viscount Trenchard: I thank the noble Lord for his assurance.

As noted in paragraphs 34 to 40 of the report, the decision envisages an overall institutional framework, which suggests the EU wishes to enter into an association agreement. Does the Minister agree that such an arrangement would be inconsistent with the Written Ministerial Statement, which proposes a suite of agreements appropriate to a relationship of sovereign equals? Will he confirm that the Government have made it clear to the EU negotiators that the UK will not entertain such a semi-detached continuing relationship with the EU which would make it impossible for this country to respond positively and flexibly to the opportunities that our new freedoms to pursue an independent trade and regulatory policy will provide?

I much look forward to other noble Lords' contributions and especially to my noble friend's winding-up speech.

4.43 pm

Lord Kerr of Kinlochard: I bow to the noble Lord's experience in financial matters. I usually find the usual channels as baffling as the Sibyl of Cumae, but on this occasion we have to congratulate them on arranging such a prompt debate on the Select Committee report. We must also congratulate the noble Earl, Lord Kinnoull, on producing such an excellent, analytical, factual report—a good trigger for the first test of what we

mean by Section 29 of the Withdrawal Act. I declare an interest: I sit on his committee, which is why I suck up to him.

As he spelled out, the report brings out the striking contrast between the detailed negotiating mandate put forward by the 27 and the terse assertions of the Government's White Paper. Of course, these are only opening positions but the gap is quite wide, particularly in the four areas where it seems to have arisen because our Government's position has changed.

On architecture, we no longer believe in an overriding institutional framework, which is what we agreed to in the joint political declaration of 19 October. Instead, we now want only a free trade agreement

"supported by a range of other international agreements, all with their own appropriate and precedented governance arrangements"—

all, presumably, with different governance arrangements.

The EU mandate sticks with what the political declaration said, and still wants "an overarching institutional framework". I suspect that this reflects the EU's unhappy experience with Switzerland and the unsatisfactory multiplicity of separate EU-Swiss agreements. We were one of many member states to agree that the Swiss experiment should never be repeated. I expect the others still feel the same.

Secondly, on the level playing field, as the noble Lord, Lord Hannay, reminded us, we agreed in October that:

"Given the Union and the UK's geographic proximity and economic interdependence, the future relationship must ensure open and fair competition, encompassing robust commitment to a level playing field".

That is still in the EU mandate, but it seems that we have changed our minds on that too. We now say that we will not agree to any obligations for our laws to be aligned with the EU's. That could have consequences. In October, we agreed that the "precise nature of" level playing field

"commitments should be commensurate with the scope and depth of the future relationship".

That works both ways. If we will not provide convincing assurances on competition and the other topics, any free trade agreement is likely to be rather shallow and narrow in scope.

Thirdly, in October we wanted "ambitious, close and lasting co-operation" on foreign policy, sanctions, security and defence. The EU mandate now covers the same ground in broadly the same terms, but our White Paper is completely silent on the subject. I note that, according to the press, we have rejected the Commission's idea that one of the negotiating groups working to Mr Frost and Monsieur Barnier should cover external relations topics. I am not clear why our position has changed. Perhaps the Minister could tell us.

Finally, the White Paper robustly rejects the idea of any role for the Court of Justice. Mr Gove, giving evidence last Wednesday to Mr Benn's committee in the other place, spelled out that this extended to any organisation—say, REACH, the chemicals regulator or the European arrest warrant—that was under CJEU jurisdiction. This, too, would seem to indicate a preference for narrowing the scope of any eventual agreement.

I draw two observations from those four facts. First, I am not sure that our continental friends will fully understand that the election has changed everything, as the Prime Minister, Mr Gove and Mr Frost have maintained in their recent speeches. October's joint political declaration is not, of course, a legally binding text, as the noble Baroness, Lady Noakes, reminded us—I was delighted to hear something I could agree with—but it is an international agreement. It is not legally binding—it is not part of the treaty—but it was an agreement that emerged from a negotiation involving mutual compromise.

I do not think it follows from Mr Johnson's election victory that his 27 colleagues will accept that the balance of the declaration can now somehow be changed, with the UK cherry-picking the bits we like best and dropping the other bits, and their having to acquiesce. The thesis seems to be that the political situation in the UK is now different, so we can just pick and choose the bits we like. Perhaps the foreigners may accept that; I am not sure.

Secondly, on the other hand, it must be true that by aiming low and going for a narrow agreement and a more distant relationship with continental Europe, we increase the chances of getting something agreed by the end of the year. If it does not extend beyond trade in goods, as seems plausible on the basis of the opening position, it probably will not need national ratification in 27 capitals with the delays that inevitably entails. I thought it rash of Mr Johnson to rule out any extension to the negotiation period—perhaps coronavirus will now change his mind—but I am not one of the those who argue that it is impossible to secure a deal by December. I am certain that, if the Prime Minister sticks to his timetable and to the brusque autarkic assertions of his White Paper, the best we can get will be a narrow deal, a shallow deal and a very bad deal—but if that is what we want, I think it is possible.

However, there is a wild card and I turn to it now. It is Northern Ireland and the 131 pages of the protocol on Ireland and Northern Ireland in the withdrawal treaty, which has been in force since 31 January. In Brussels and among the 27, one today detects a growing suspicion that we are not terribly keen to implement the protocol. In Brussels, that is understandably taken rather seriously. The protocol is part of the treaty, and it is legally binding. Were we seen to be resiling from it, the consequences would be grave. I would certainly expect the EU to break off negotiations on the further treaty. I would assume that the nightmare of a hard border in Ireland would be back and the Good Friday agreement in grave danger. The noble Lord, Lord Hain, has drawn attention to the United States repercussions of that.

Of course, it seems wild and outlandish to suggest that this country would ever resile from a treaty obligation, an obligation we have only just taken on, on the last day of January. I hope that the suspicions of Brussels are misplaced, but we are currently not trusted over there, as the noble Baroness, Lady Ludford, explained. The Minister has made clear more than once in the House that he believes that the Government will fulfil their legal obligations, and I believe him, but there is a new Attorney-General, who may be more malleable than the previous one.

[Lord Kerr of Kinlochard]

Why is trust evaporating in Brussels? The issue is the frontier in the Irish Sea and the suspicions spring from what the Government say and from what they do or do not do. First, let us look at the words. Mr Johnson and his new Secretary of State still seem in denial about what the protocol means for trade between Northern Ireland and Great Britain. Under Article 5 of the protocol from 1 January, we will be obliged to collect on the EU's behalf EU customs duties on goods moving from Great Britain to Northern Ireland, except for those goods on which the UK and EU agree there is no risk of them moving into the Republic. We agreed that; that is what the treaty says. In Article 6 of the protocol we also agreed that the EU customs code and hence EU export checks will apply to goods moving from Northern Ireland to Great Britain, although with controls at ports and airports minimised to the extent possible. We agreed that; that is what the treaty says. In Article 12 we agreed to give the EU the right to monitor and supervise these two-way frontier arrangements. We agreed that. It is in the treaty.

As long ago as 21 October, the then Secretary of State for Exiting the EU, Mr Barclay, confirmed to the Select Committee chaired by my noble friend Lord Kinnoull that there would be two-way checks, but the Prime Minister continues to deny it and, unlike his predecessor, Mr Smith, so now does Mr Brandon Lewis, the new Secretary of State for Northern Ireland. In this context, the White Paper's flat rejection of any role for CJEU jurisdiction in this country starts to look, in Brussels' eyes, very sinister. Seventy-five pages of the protocol consist of long lists of single market laws that will apply in Northern Ireland and will be under CJEU jurisdiction.

Did the drafters of the White Paper just forget about Northern Ireland? Or, as some in Brussels fear, are the Government hoping to forget about the protocol? Giving evidence to Mr Benn's committee in the other place last week, Mr Gove refused to confirm the description of the Irish Sea frontier, which the Government themselves set out in their explanatory document on the EU (Withdrawal Agreement) Bill, published on 21 October. He brushed questions aside, saying that they were a matter for the Joint Committee set up under the protocol, which will, I understand, finally meet at the end of this month. But the Joint Committee's task, as spelled out in the treaty, is to agree how to implement the provisions of the protocol. It cannot change them—and we have signed up to them.

So much for the words—it is the deeds that worry me most. The Select Committee, visiting Belfast on 25 February, could find no evidence of any central or devolved government action to prepare to implement the protocol. The business community was equally unsighted, and suggested that with five months gone and only eight to go, it would be a "herculean" task to get workable frontier arrangements up and running. I think "herculean" is Hibernian for "impossible".

We were told that no one from HMRC, which will be responsible for the two-way customs border in the Irish Sea, had, as of 25 February, given the business community of Northern Ireland any indication of what to expect or how best to prepare for it. We were told that 2,500 trucks cross the Irish Sea within the UK every day—850,000 a year—and that for GB-NI movements, 45 questions would probably have to be asked about every consignment. We were told that for NI-GB movements there might be 31 questions, if the precedent of the EU's Ukrainian-Polish frontier were followed.

I find all this acutely disturbing—indeed, shocking. I can think of few greater infringements of national sovereignty than a foreign-supervised frontier inside our United Kingdom. I am not surprised that Mrs May—and Mr Johnson, before he got to No. 10—ruled it out as something no UK Prime Minister could possibly accept. But he did accept it: it is in an international treaty, and we do not break treaties.

The Government in Dublin are well aware that we are dragging our feet. So, too, is the Commission, whose members have been in Belfast to find out. No wonder there are suspicions in Brussels. If we walk away from the treaty we signed, there will not be another to sign. The worst of all possible worlds would be to leave the people of Northern Ireland in limbo and in the dark, puzzled by the words being uttered and totally unbriefed on the necessary deeds.

I would be grateful if the Minister could confirm that it is not our Government's intention to seek to reopen or reinterpret Articles 5, 6 and 12 of the Irish protocol, and tell us when the people of Northern Ireland will be informed—ideally, consulted—about the preparations they should make for their resultant new trade frontier with the rest of this kingdom.

Lord Lamont of Lerwick (Con): I do not disagree with everything the noble Lord has said in his formidable speech, but is there not one scenario that he has not covered? If there is a free trade agreement, will not a large part of the protocol fade into it?

Lord Kerr of Kinlochard: Yes, I think that is true. The checks would then become much less onerous—but they would still be required. The EU would still be required to collect data on its exports, which means that there would still be checks on Northern Ireland-GB trade, and in the other direction there would still have to be VAT checks, phytosanitary checks and rules of origin checks, even if the customs checks were reduced to near zero.

The noble Lord is right: it is perfectly true that, if there is a comprehensive free trade agreement, checks will be less onerous, but they will still have to happen in both directions. I support both the Motions on the Order Paper. I also support the amendment in the name of the noble Baroness, Lady Hayter. The Minister will note how supportive I am being today.

4.59 pm

Lord Whitty (Lab): My Lords, I thank the noble Earl, Lord Kinnoull, and his committee for producing this report. It is very timely and clear. I will be supporting my noble friend Lady Hayter's amendment and I thank her for tabling it. I will say something towards the end of my remarks about the whole issue of accountability.

I also thank the noble Lord, Lord Kerr, even though he has largely pre-empted some of my more important points. Like him—and the committee, rather more

delicately—I regret that there has been a departure from the spirit of the political declaration. There has been a bit of a departure by the EU, one has to say, but a very substantial departure by the British Government from a political declaration that was, after all, signed by this Prime Minister. That is serious enough but, as the noble Lord, Lord Kerr, has just said, even more serious is the apparent departure from what is already in a signed treaty in relation to Northern Ireland and the protocol in the withdrawal agreement.

My main remarks will be about trade, which is, after all, the most important dimension of our joint relationship, although it is not the only one. I had to look back; it was as long ago as December 2016 when the committee I was then chairing jointly produced for the then EU Committee a document entitled *Brexit: The Options for Trade*. I had another look at it over the weekend. We were very prescient and far-sighted in the options we looked for. We accepted that Britain would be outside the EU and that we would leave in formal terms the customs union and the single market. I remember saying several times in this House and elsewhere that, in that situation, frictionless trade is a relative term; you have to look at the different implications of the different arrangements.

We looked at a number of arrangements, ranging from membership of the EEA through to trading under WTO rules. It seems to me that all those outcomes might still conceivably be the case. We are no further ahead. In effect, in the latest Council decision, the 441-page treaty which the noble Earl, Lord Kinnoull, has clearly read—he might send me one of his four copies, even if it is in French—the EU clearly goes for the option of something very like an association agreement. In fact, in treaty terms, it will be under Article 217 relating to association agreements.

The British option, as far as one can interpret it, is much closer to the arrangements with Switzerland, as the noble Lord, Lord Kerr, has said. They are looking for a trade agreement but also a whole suite of other agreements. That was an option that we looked at but largely dismissed. It could still be a form of free trade agreement, similar to that agreed with Canada or Japan, or to what the Government used to talk about—Canada-plus-plus-plus. That has been relegated to just one "plus" in recent ministerial announcements, but all those options are still there, as is the bare-bones agreement of limited clauses and effect that was once referred to by David Davis; or it could be on WTO terms, as I say, which is now known as Australia. They are all still available, although the one that we identified at the time as the easiest and least disruptive course to take—namely, to join on EEA terms: the Norway option—although we did not actually advocate it, has been clearly rejected by the Government and, in effect, by the EU. So there are still a lot of potential outcomes between now and the end of December.

It is three and a half years after our report, after two general elections, two Prime Ministers, three Governments and four Secretaries of State. Until very recently, the only continuous presence was that of the noble Lord, Lord Callanan, on the Front Bench opposite—I am pleased to welcome the noble Lord, Lord True, in his stead. There have been many changes in the British political situation since we produced that trade report. However, there has been no serious progress regarding relations on this key issue between ourselves and our largest and closest trading partner.

Do the Government mean what they say about wanting a Swiss-type suite of separate agreements with separate Governments? That has caused many ructions between the EU and Switzerland, and it is a relatively small part of EU trade compared with the EU's trade with the UK. I am not sure why we need that suite. In the British government documents and the other pronouncements there is, for example, a reference to a bilateral aviation agreement. I hope we have one, otherwise aviation range will fall on 1 January. There was a reference in the timetable for the trade talks—before the virus slowed them down a bit—to talking about a separate aviation safety agreement and a general aviation agreement. I have a Question set down for later in the week about the European Aviation Safety Agency. The situation there, as both the airlines and the aerospace manufacturing industry recognise, is that if we are not careful and do not continue to act very closely with EASA, the airlines will be faced with a situation where their aircraft, their components, and the qualifications of their personnel may be legal at one end of a short European hop but queried at the other end. If we want to diverge, there are consequences. If we do not want to diverge, why do we not say so and reach some sort of association agreement with EASA?

The same applies to many of the other EU agencies, which, during the course of several different withdrawal Bills, I raised in the House. Mrs May, when she was Prime Minister, recognised that there would need to be some separate arrangement on aviation, as she did on chemicals. We had a Question today from the noble Lord, Lord Fox, and the Government were not at all clear on what arrangements would be made for that vital industry. Environmentalists and the industry itself are deeply concerned about the capability of the HSE and air authorities to reproduce the arrangements in the European Chemicals Agency. Indeed, even if we manage to duplicate those arrangements, it is a double administrative cost and charge, and a potential delay for our chemicals-based sector and the industries that use chemicals.

If we are going to have separate agreements on separate areas that are covered by such things as the aviation or chemicals agencies, now we ought to be particularly concerned about the medicines agency, which was of course based here and has already left—and there are many others, for example on food safety. If we are to have a separate agreement on fisheries, the EU will insist that that is reached before we reach a general agreement. Indeed, because of the timing of this, the Government seem to be going along with the view that we can reach a fisheries agreement by June. I think that is unlikely. It is equally unlikely that we will reach a financial services agreement by July. The noble Lord, Lord Kerr, and my noble friend Lord Hain spelled out the ambiguities in meaning of the Northern Ireland protocol and whether we can reach mutual understanding on that in time for this to be all agreed, broadly speaking, by September, and ratified through the European Union and ourselves by December. It is about time for the Government to

[Lord Whitty]
recognise that, leaving aside the current serious difficulties because of the coronavirus, the timetable they set themselves was never achievable and is certainly not achievable now.

Other issues, such as the level playing field—where we started from the position in Mrs May's Chequers proposition that we were talking about a common rulebook but ended up with the Government making a virtue of maximum divergence—and state aid, also need to be resolved. There is certainly deep anxiety among our former partners in Europe that there will be heavy state intervention to support competitors against their own industries. Not that long ago, during the election, it was regarded as a very leftist position to look to subsidise British industry—people were worried about Jeremy Corbyn breaching the state aid rules in that regard—but now, with this big-state Toryism, the Government in Brussels and Governments throughout the continent are worried about this Government causing unfair competition. These issues are not easy to resolve and are unlikely to be resolved in the timetable currently announced—but they need to be resolved.

My last point is on accountability to Parliament, which is the main point of my noble friend's amendment. I understand what the noble Baroness, Lady Noakes, said about the political situation having changed but, like the noble Baroness, Lady Falkner, we are not asking for the exact equivalent of the European Parliament. We are simply asking that both Houses of Parliament are kept informed on the progress of these negotiations and can comment on them.

The strange thing is that, in discussing the potential trade treaty with the United States, the Government have, in effect, given that guarantee, at least to the House of Commons. When we talk about a prospective treaty with the United States, they are prepared to be accountable to Parliament; when we talk about a trade agreement with our largest and closest neighbour, they are not. That needs to be addressed; Parliament needs to assert itself in that process. I support my noble friend's amendment.

Baroness Falkner of Margravine: Does the noble Lord agree that there are many routes for Parliament to carry out that scrutiny? One route could be a Joint Committee of both Houses or a dedicated Select Committee—possibly even an extension of the European Union Select Committee. It does not have to be a replication of the European Parliament's powers but can be something where scrutiny is undertaken adequately.

Lord Whitty: I thank the noble Baroness. I agree. We need the principle of scrutiny; the form of it we can debate. We can debate the correct structure within our two Houses but, without the principle being conceded by the Government, we are in an anomalous situation in relation to Europe and to what has been promised on this side of the pond in potential trade negotiations with the United States.

5.12 pm

Lord Hamilton of Epsom (Con): My Lords, your Lordships' House has always regarded itself as the guardian of our constitution. Of course, included in our unwritten constitution, although many people wish it were not, is the whole question of referenda. I know that many people think we should never hold referenda in this country, but the fact is that it was decided that we should.

I want to put a hypothetical question to your Lordships' House: what would have happened if all the Euro-enthusiasts, described by a noble Baroness on the Liberal Democrat Benches as Euromaniacs, had succeeded and kept us in the EU when the country had voted to leave—or, indeed, kept us in Brexit in name only when the country had made it quite clear that it wanted to leave the EU? I totally accept that this is a hypothetical question because the whole situation has now changed. For that reason, I do not expect my noble friend the Minister to reply to this—he should not reply to hypothetical questions—but your Lordships' House should give thought to this matter because, let us face it, that referendum was in the 2015 Tory manifesto and was honoured in both the 2017 manifestos of the two major parties, which said that they would honour the result. If at the end of all this we had decided that somehow we were going to stay in the EU, where would that have left democracy in this country? We must think about this very seriously. Your Lordships' House has done itself no credit in its role of scrutinising the whole business of European legislation and conspiring to do everything it could to ensure that we would never leave the EU at all.

I turn to the report. Much comment has been made about the level playing field, but also included in that is the fact that the role of third countries has been completely redefined. I thought that a third country was a country that did not happen to be in the EU—as simple as that—and that once you signed the withdrawal agreement and left, you were no longer in the EU but were a third country, but oh no, that seems to have been redefined. Now, for some reason, our closeness to the EU puts us in a unique category, and the amount of trade that we have with the EU puts us in a special position. I was somewhat surprised because, reading the report—

Lord Hannay of Chiswick: Obviously the noble Lord did not listen very carefully to the quotation that I read from the joint declaration. It makes it quite clear that we recognise that geographical proximity, and the extent of our independence, require a level playing field. Perhaps he could answer that question.

Lord Hamilton of Epsom: That is the point I am trying to make; this should have been answered in the report. It does not matter where it comes from. Whether our closeness to the EU makes any difference to our relationship with it is questionable. The problem is that we have had the nerve to vote in favour of leaving the EU. Therefore, the EU must redefine the position of a country that leaves so that it can mete out special treatment to that country and somehow discourage others from leaving as well. This report should have addressed these issues. Does it make any difference whether or not a country is close to the EU? Does the size of trade make any difference? I agree that our trade with the EU is probably greater than that with the United States, but the United States does a massive amount of trade too. Nobody is asking for a level

playing field with the United States, and they would be told where to go if they tried. We should be questioning these things, as I hoped the report would. Perhaps the noble Earl, Lord Kinnoull, can tell me why this was not included in the report.

The Earl of Kinnoull: Certainly I can make some practical points on the very interesting questions that have been raised by the noble Lord. These are vital documents that have become public. There has been no opportunity for Parliament to read a report or have a debate. We were given a power and a duty under Section 29 of the Act. We heard a very interesting interpretation of that, which I am afraid I disagree with. If we were to write and address a separate question, we would have to take evidence or find evidence in the stock of evidence that we have, and there was no time to do that. The second of those documents, the Command Paper, arrived on 27 February. We had a report agreed by people on every position of the spectrum agreed by 3 March. We felt that it was important to bring it to the House immediately so that we could have this very interesting debate.

Lord Hamilton of Epsom: The document that I am reading says that this statement was made on 18 February. That is quite a distance from 3 March, when the report went to the printers. I question whether you can reach a decision as a committee unless you have taken evidence. The whole business of whether how close you are to the EU counts or whether the size of your trade is a determinant factor is surely something that the committee can make its mind up about without taking evidence.

The Earl of Kinnoull: Section 29 addresses that issue. The Command Paper—a key document in our report—was issued on 27 February. I do not have Section 29 in front of me, but it says specifically that such evidence as we have deemed necessary should have been taken. I am sure we would have loved to read a report about a whole lot of other very interesting questions, but unless we had the evidence on file we would have had to have taken more evidence, which would have slowed things down immensely.

Lord Hamilton of Epsom: We could go on arguing about this indefinitely. However, the noble Earl is rather underestimating the intellectual abilities of his committee if it cannot reach a conclusion on this relatively simple issue without taking evidence. I will move on to the amendment in the name of the noble Baroness, Lady Hayter.

Lord Lea of Crondall: We may be criticised on our structure. In the next month, noble Lords will have the chance to make comments on the work of committees. I agree that committees are too reliant on "evidence" which is simply regurgitating things that other people have said. This is an excellent report by an excellent committee; the noble Lord may have just contradicted himself.

Lord Hamilton of Epsom: I do not know whether or not the noble Lord, Lord Lea, was on the committee. I am saying merely, as he did, that committees should be intelligent enough to reach their own conclusions without necessarily having to take evidence.

The noble Baroness, Lady Hayter, said that it was not good enough for the Government to inform devolved assemblies what was happening: there should be consultation. However, when we talk about consultation we are actually talking about reaching agreement, so you are, therefore, giving the devolved assemblies a veto over a compromise on the final deal. I have a problem with Parliament getting too involved in all this. At the end of the day, everybody has a different opinion. My noble friend Lady Noakes thinks that we should be preserving all our fishing. I suspect that quite a bit of it will be given away. That will be part of the negotiating ploy and my noble friend will have to ask herself whether or not the compromise which the Government have reached and the overall deal—which I suspect will include some sacrifice of fishing—are acceptable as a whole. That is what Parliament will have to decide.

However, the Government cannot possibly go into these negotiations constantly referring back to Parliament and asking if it is all right to do this or that. By their nature, the negotiations will be a compromise. Concessions are going to be made in some directions and gains made in others. At the end of the day, the Government have to be judged on whether the overall package is satisfactory as a whole. We have to be wary of undermining the Government's negotiating position but, now that they have a decent majority, I do not think they will be too moved by many of these arguments.

5.22 pm

Lord Anderson of Ipswich (CB): My Lords, in a constructive spirit, I will raise two matters concerning civil justice. My purpose is not to press the Minister on the Government's bottom line, which of course he will not—and should not—share with the House while negotiations are ongoing. Rather it is to test the currently uncertain limits of the Government's aspirations and to encourage them to aim high.

The first matter relates to judicial co-operation in the field of family law. This is the subject of the very last paragraph of the Command Paper, all three and a half lines of it. It says simply that the UK will continue to work with the EU through multilateral precedents set by the Hague Conference on Private International Law. If lawyers agree on anything, which I accept is rare, it is that, in relation to family law, the EU's Brussels II revised regime is faster and more flexible than the Hague conventions. What does this mean in practice? It is only under the Brussels II regime that a father who is given access to his child after a divorce in Spain can automatically enforce that contact order in the UK. In the case of a child which is abducted from England to Poland, under the Hague convention, the left-behind parent in England is limited to a remedy in Poland; under Brussels II, they have, if they need it, a second bite of the cherry: the ability to ask the English court to return the child. We would also lose the maintenance regulation which allows someone in the UK to go to an EU country to enforce a maintenance order made by a British court.

I understand very well that we are out of the EU, that we cannot put the clock back and that the Government prefer not to sign up to regimes where the Court of Justice of the EU has the final say, except

[Lord Anderson of Ipswich]
of course in the substantial respects already agreed in the withdrawal agreement. But we are looking here at real disadvantages to real children. As one of our witnesses said—and I declare an interest as a barrister and a member of the EU Justice Sub-Committee, which has been taking evidence on this—any child abducted from a European Union state will be in a more difficult position after Brexit than before. It will be a terrible shame to settle for something demonstrably worse than what we have, yet the self-imposed deadline looms and the cursory reference to family law in the Command Paper suggests that it may not have been given the importance that it deserves. So, I have two questions for the Minister. Is there any aspiration to negotiate something with the EU that improves on the Hague conventions? If not, will we, as EU law permits in the field of family law, seek bilateral agreements with the countries where we would make most use of them?

The other matter I want to raise is the UK's participation in the unified patent court agreement, which, as noble Lords will know, is an international agreement made outside the EU's formal structures by 25 states including the United Kingdom. The court is not an EU institution. That is why the pharmaceuticals and life sciences section of the court is earmarked for Aldgate Tower in London. Unlike the European Medicines Agency, which had to leave London, as the noble Lord, Lord Hain, said, it is not an EU entity. The court will hear cases on the validity and infringement of European patents and unitary patents granted by the European Patent Office, itself a non-EU intergovernmental organisation with 36 members. The advantages of the UPC for innovative British companies are self-evident. It will be a one-stop shop for patent disputes to be resolved continent-wide. That is of particular importance to research-led small and medium enterprises, on which I asked a Written Question last week. More than that, if the UPC goes ahead, it will be an instrument for the transmission of good British practice across Europe. The reputation of our intellectual property judges is second to none and the procedural rules of the UPC draw heavily on those of our own intellectual property enterprise court. It is true that the UPC agreement obliges the court to refer any question of EU law that may arise during a patent case to the Court of Justice, but the main elements of patent law—obviousness, novelty and infringement—are not governed by EU law. Questions of EU law do not arise in patent cases, save in very limited areas such as supplementary protection certificates. Indeed, so dominant is the intergovernmental element of this system that the UPC agreement is not even mentioned in the Command Paper on the future relationship.

On 28 February, the *Law Society Gazette* quoted a Downing Street spokesman as saying that the UK will not be seeking involvement in the court and the associated unitary patent. However, that report has been, so far as I can see, officially neither confirmed nor denied. The Justice Sub-Committee has written to the Government about this. Can the Minister tell us today whether a final decision has been taken on UK participation in the unified patent court? If the door has been closed, why was this not announced to Parliament on the record? If the door remains open, which I dare to hope it does, I urge the Minister to cast aside dogma and use his influence pragmatically and in the interests of the innovative British firms on whom our future outside the EU particularly depends. Other noble Lords will speak for themselves, but as urged by the noble Baroness, Lady Noakes, I have moved on. Brexit has happened and, whatever our views on that, we must all now unite in seeking our best possible future as a self-governing nation. However, as one of our committee's witnesses, the chair of the Intellectual Property Bar Association, Daniel Alexander QC, said last week, if one wants to be a self-governing nation and a powerful one, it is wrong to reject institutions that help you to be an independent, powerful and self-governing nation. He was referring to the unified patent court—inter governmentalism, so lightly tempered by EU law that only the ideologically purist could possibly object. It will strengthen us in an area where we need to be at our strongest. In our own interests, let us not turn our back on it.

Finally, I listened carefully to what the noble Baroness, Lady Falkner of Margravine, said but, as I read the amendment in the name of the noble Baroness, Lady Hayter, it calls not for any parliamentary veto—still less a veto vested in this House—but simply for information, updates and scrutiny. That, as I understand it, is what we are for. On that basis, and subject to what we might yet hear from the Minister and others, I am minded to support the amendment.

5.30 pm

Baroness Donaghy (Lab): My Lords, I made very few contributions during the Brexit debates but, now that we have reached the very beginning of the negotiating stage, I am interested in the stance taken by both sides. At one stage in my career, negotiations were my bread and butter. My comments are intended to be practical rather than principled. As the great Tommy Cooper said, "It's not the principle, it's the cash".

First, I thank the noble Earl, Lord Kinnoull, for setting out the questions that the Government should try to clarify, if not immediately then as the negotiations proceed. The document from the EU Select Committee was produced in double-quick time by its staff, and I pay tribute to them for their hard work and to the Select Committee, which gave it careful scrutiny. In case the noble Baroness, Lady Ludford, accuses me of self-congratulation, I confess that I am a member of that committee. The image produced by the noble Earl, Lord Kinnoull—that the negotiating stances are the equivalent of the haka—is quite disturbing. I shall be studying any changes of clothing by the noble Lord, Lord True, as the negotiations proceed.

Secondly, I thank my noble friend Lady Hayter for emphasising the scrutiny role of our Parliament and the need to keep it fully informed. I recognise that this Government can force their view through Parliament, within certain limits, and that the real deadline of 31 December 2020 will concentrate minds. I also recognise that ECJ involvement over time is regarded as a red line by the Government, but there is nothing to stop a deal that recognises that reference to the ECJ, and that is how the EU 27 will proceed—by the way, if they are wise enough, they will try to limits its scope in the

future—and also recognises an infrastructure that the UK will use in the future. If the quality of that infrastructure is satisfactory to the EU, a deal is possible.

I also recognise that the language of state aid versus subsidy and the definition of "level playing field" have changed. This is not something to go to the wall about if the Government are sincere when they say that they will not lower standards in consumer rights, workers' rights and environmental protections. I winced a bit—but I am trying hard not to fight old battles—when the noble Lord, Lord True, read out the Statement on 27 February by the right honourable Michael Gove, that:

"The United Kingdom has a proud record when it comes to environmental enhancement, workers' rights and social protection."—[*Official Report*, Commons, 27/2/20; col. 468.]

I could not help remembering that, before we joined what I think was called the EC, our beaches were so filthy that we were known as the "dirty man of Europe", and that we waited 10 whole years in the late 1980s and 1990s for a single improvement in workers' rights. But let us celebrate late conversions.

The noble Lord, Lord True, also said that we were

"seeking … an agreement based on full respect and friendly co-operation, and centred on free trade."—[*Official Report*, 27/2/20; col. 286.]

I cannot argue with that or that fisheries, internal security and aviation will be dealt with separately, so I will not deal with them in this debate. The success of any negotiation will be the acceptance by the parties of the deal, not necessarily its quality. It will have to be something that both sides can live with. It will not be as good as the deal that the UK had before 31 January but will have to be good enough.

I do think—this is where I do not agree with the noble Lord, Lord Hamilton—that proximity is important. All the charts that we have seen in my EU Sub-committee B show the enormous weighting of existing trade with the 27 and the very much smaller weighting the further away that a country is from the UK. However, let us just say for the sake of argument that the noble Lord is right and that proximity is not important. How then can it be explained that Germany's trade with China has knocked the UK's into a cocked hat? Does it have better-quality politicians or better-quality goods? Do the Germans try harder? Germany's success was done within what some call the strict and debilitating bureaucratic confines of EU membership. How does the noble Lord explain that?

I return to the negotiations. I understand that some of them will be conducted by videoconferencing because of the coronavirus pandemic. I can only hope that the technical quality is adequate, and certainly a lot better than in this Parliament building. There is something to be said, as my experience in ACAS shows, for keeping the parties in separate rooms; it may be that sooner or later a deal may be more productively done in that way. When it is done, though, there has to be some clarity on precisely what "standards", "ongoing alignment" and "subsidy" mean and, as has been well covered by the noble Lord, Lord Kerr, and others, what the Northern Ireland protocol really amounts to, because that is one of the things that cannot be squared.

I will make three more brief points. First, the devolved Administrations may well have been kept informed, but they have certainly not been consulted. "Consult" does not mean "veto" in anybody's language; it means being consulted. This has led to a fear that the devolved competences will not be respected in the outcome of the negotiations. Will the Minister give some assurance to the devolved Administrations on the matter of competences?

Secondly, the Prime Minister's speech of 3 February 2020 suggests that the UK will maintain a subsidy control system after the end of the transition period, albeit not necessarily based on EU state-aid rules, which are likely to change in any case as a result of its recently published industrial policy. The UK has a consistent record of compliance on state aid—or "subsidy", as the UK Government now call it. Successive Governments were so strict that they did not even use the flexibility in the system to increase state aid that was allowed. It is acknowledged in the EU that UK Governments led the way in trying to ensure discipline in this area, but it is a fact that France, Germany and Italy were always looking to take advantage of the flexibilities. If we are so good, and if we led the way, why not take the lead again? Why not make a clear declaration about what the UK's subsidy infrastructure will look like on 1 January 2021? Is the Minister able to assist the House in this matter? It is one area where we could declare our independence by setting out the structure that we believe will work.

Finally, Sub-committee B on internal markets, which I have the privilege to chair until Easter, is conducting a brief inquiry into state aid and level playing field definitions and possible outcomes. It is hoping to finalise its report by 26 March, before it disappears into the sunset. I very much hope that the work done by my committee will prove helpful to the general debate.

5.39 pm

Lord Bowness (Con): My Lords, like other noble Lords, I thank the noble Earl, Lord Kinnoull, and the EU committee for producing this report and enabling us to have this debate. While I acknowledge that the Government are rightly concerned about and occupied with the coronavirus situation—and so are the media—Brexit nevertheless remains of vital importance and we must not let it go off our radar.

I refer to Brexit because I am tired of the statement that Brexit "has been done". As witnessed by this afternoon's debate, the important and heavy-lifting part of Brexit remains undone and the most important elements of our future relationship remain to be settled. It might even be that, given the economic consequences of coronavirus, it will be even more important than we can envisage at the present time. A simplistic free-trade agreement, as in Command Paper 211, might not be a good substitute for the existing deep relationship with our near neighbours. I say to my noble friend Lord Hamilton that it is not about 22 miles across the water: it is about 40-plus years of integration of our economy and much of our personal interests and activities that make us a different kind of third country from other third countries.

Lord Hamilton of Epsom: Would that not make a free-trade agreement easier rather than more difficult?

Lord Bowness: I just do not agree: I do not think it makes any of the Brexit negotiations easier. We have had that integration. The noble Lord, Lord Anderson of Ipswich, talked about family law, as I was going to do later on in my speech, but thankfully, from his knowledge, he has touched upon that particular issue. I just cannot accept the idea that it makes it easier. We are a unique third country as a result of the 40-plus years that we have been members of the European Union.

I do not know what happened to the ambitions of the political declaration: that talked about a broad, deep and flexible partnership across trade and economic co-operation, with a comprehensive and balanced free-trade area. It talked about security and law. Those ambitions seem to have gone away and I am afraid that I am not proud—I say to my noble friend Lady Noakes—of the Government's approach to this matter: I am alarmed by their approach. I remain unconvinced—and I hope that my noble friend Lord True might be able to convince me—that this Government, and many of their prominent members, actually want a deal or anything other than the most basic agreement. If they do, then surely the attitude they take towards an extension—especially in the current climate—would be rather different.

There are so many matters that give me cause for concern and make me wonder what our objectives are. The debate in your Lordships' House this afternoon has been about some of the major issues. I have been—I was going to say "wasting my time"—occupying my time over the last few weeks asking some Written Questions. It is a triumph of hope over experience because even if the Questions were silly, the Answers—with great respect to those who have given them—were even sillier. They did not advance matters one iota. I asked these Questions because of the involvement that we as individuals—not necessarily as corporations or financial institutions—had with the European Union.

I have been seeking answers to some simple questions, such as whether the Government are going to negotiate mutual recognition of the European Health Insurance Card and of driving licences. People from the EU in this country have exchanged their national driving licence for a British driving licence. They cannot easily change it back, but they will nevertheless go home from time to time. That is a matter that ought to be on the agenda of the Government.

What about mutual recognition of disabled persons' blue parking badges—I declare an interest in that my wife has one. I was referred in the reply to one Parliamentary Question to the Written Ministerial Statement of my noble friend the Leader of the House, who made a statement some time in February. I was told that it was covered, in terms of when it was going to be negotiated, under some vague heading of "Other Provisions", but in fact it does not appear in Command Paper 211 at all, so I am now asking, and awaiting an answer, as to which chapter or part of Command Paper 211, or in which group in negotiating terms, these things are covered. Because I do not get any answers, and because I get the distinct impression that it is all a bit of a nuisance and people are thinking, "I do wish the noble Lord would go away", I wonder how seriously these matters are being taken.

We have talked in the past about participation in agencies. We have heard already this afternoon from other noble Lords about the European safety agency. I pose the same question: why did we take the decision to set up our own, and at what annual cost compared to the contributions currently made to the European agency? Part 2 of Command Paper 211 talks about the UK and EU agreeing a bilateral safety agency. What is the real position about this? Are we going to have a joint enterprise, or are we going to build our own castle in the air?

I have asked about family law. The noble Lord, Lord Anderson of Ipswich dealt with this. I remember when I chaired the Law and Institutions Sub-Committee of your Lordships' EU committee: a lot of work was done because—again, I refer to my noble friend Lord Hamilton of Epsom—after 40-odd years, many nationals of one state have married nationals of another. They may have property in one or other of their countries—or, indeed, a third country. They have family disputes. Members of the family die and they need to deal with inheritance tax matters. All these things are important for people; they cannot be dismissed with "Brexit is done" or just washing our hands of them to satisfy some ideological requirement, or some macho desire to meet a self-imposed deadline.

I do not know where the Government are going on these matters. I hope that I am wrong in my perception of the way they are going, but would it not be a gesture of incredible good faith to many of our citizens who need and want to travel to the EU if the Government were to try to establish equality of treatment between EU citizens visiting the UK, who I understand will get a six-month visa, and UK citizens who, at the moment, when visiting the EU after the end of December, are very likely, depending on the state, to get only 90 days? I should have thought that we should try to resolve that matter for the benefit of our citizens, who are now going to lose a benefit as a result of leaving the European Union.

Lastly, I turn to the amendment of the noble Baroness, Lady Hayter. I support it and cannot understand the objection to it. It does not prescribe how; it refers to a committee. This could be any kind of committee: a Joint Committee, a Select Committee, or any other that is devised. It does not ask for a veto; it asks for information. If a Parliament does not want information, then that Parliament might as well go home. But it complained, very loudly, when it was sent home, and it had better make sure that it is here to do things that are worth while.

5.50 pm

Lord Davies of Stamford (Lab): My Lords, the narrow nationalism of this Government has been deeply depressing for a long time. But the fanatical, pedantic ideology that the Government have displayed in the last few weeks is quite unspeakable. The Government have withdrawn from the European Aviation Safety Agency and from Euratom. They have withdrawn from the EMA, the European Medicines Agency, in the middle of a pandemic, without any idea of what they are going to put in its place.

We had a debate a few weeks ago in which I asked the Minister a series of questions about what might happen and the various possibilities for replacing

the EMA. It is obvious that the Government did not have the faintest clue what they were going to do. You cannot build up a new EMA—or FDA, to use the American term—in just a few months, let alone in nine months. We literally have the prospect that any new compound coming from the world's pharmaceutical industry—and that could well be a vaccine for the coronavirus—will not be registrable in this country, will not be registered, cannot be licensed and will not be available to British patients. This seems fantastic but is actually the case.

What does one do in these circumstances? Until that debate, which left me with a profound sense of concern and anxiety, I took the view that these negotiations were going to be very difficult, take a long time and that there would be a lot of posing, rhetoric and so forth but that, at the end of the day, between rational, reasonable people, and given the importance of trade, there would be some compromise. Indeed, I worked out what I thought could be a viable compromise in the area of the regulation of traded goods, or what is now known as the level playing field.

I do not mind telling the House what I worked out; it will not have any relevance and, for reasons I shall come on to, it will never be implemented. I had in mind that we would start off with regulatory alignment, and we would then have an understanding, or a rule, that any party wishing to introduce a new regulation or change an existing one would have to give three months' notice to the other. This would provide time and opportunity for negotiation and possibly compromise. But if the party insisted on having his or her way, at the end of the three months, he or she could withdraw from the whole arrangement. It would be so unlikely that anyone would want to withdraw from an arrangement affecting the exchange of tens of billions of pounds or euros of goods every year that it would be very unlikely that it would ever occur.

But I then realised, particularly after the debate that I have referred to, that I had really got it quite wrong. It was a great mistake to look at this from the point of view of rational analysis. We are dealing with much more powerful emotions than that. If you ask—and I have done this—the members of the ERG, who are supposed to be dominating the Government, what regulations they would like to introduce, if they are going to introduce new British regulations, or about the regulations we currently have that they would like to get rid of, they have no idea. This is not about regulations at all; it is about something much more profound and deeply emotional—something which goes to the heart of the Government's ability to continue with its nationalist and populist campaign and which has brought it such electoral success recently. It is all about sovereignty.

On the continental side, there are equally strong emotions. In my view, what drives the continentals is more important than pounds, shillings and pence—or euros—or the productivity gains that you can certainly achieve from international trade, or the wealth creation or employment creation. Those things are very important. They are very attached to them. However, even more important to them is the survival of the European Union and the protection of that great sense of solidarity that has been built up over the past 50 years: the cultural changes, the exchanges and the bringing down of barriers; the educational and scientific research programmes; the enhancement of security through things such as the common arrest warrant and Europol; and the economic benefits of the single market—very much so. Above all is the assurance that Europe would not go back to the international system of 1914 or 1939, in which we had a bunch of highly competitive, nationalism-driven states quarrelling from time to time about economic, ethnic and territorial disputes. We know very well to what appalling tragedies that led. These matters are far more important than they appear. I am afraid that I can draw the conclusion only that it is most unlikely that there will be any agreement on them in present circumstances.

I will take another example, which is that of equivalence in financial services—I only have time for two examples, but they are perhaps the big two potential deal breakers in this whole negotiation. Equivalence is not quite the same as the example that I have given about the level playing field, because the proposals on equivalence do not involve giving privileges not available to members of the union to someone who has been a member of the union but has left. That seems absurd and unjust—it is, of course—and would be a permanent source of resentment, bitterness and recrimination within the union. If we came to an arrangement similar to the one that I just proposed theoretically for the level playing field, I do not doubt that, within a day or two, Mr Viktor Orbán would come up with a demand for 200 more regulations to be imposed or removed, so as to show how absurd and unjust the whole thing was.

Equivalence is not quite in the same category because it is not having something better than what members of the union have: it would not be as good as what they have, because they have stability and confidence that the regime will continue in the future. Equivalence means that you are considered equivalent as of today. However, banking regulations change the whole time: you might not be equivalent after six months, most unlikely to be after two years and certainly would not be after five years. You will have no guarantee of it being renewed and do not know what new regulations might come in. You are not in a better position, although it is still a much better position than not having the right to deal in the markets concerned without setting up separate subsidiaries and fragmenting your capital base, which no bank wants to do.

Equivalence is valuable and important but not likely to be granted. There are perhaps three reasons for that. The first is very understandable, and I do not think that anybody should be shocked by it, because I do not doubt that we would be behaving in exactly the same way if the boot were on the other foot. The continentals have noticed that London has attracted an enormous amount of the wholesale banking business that can be so profitable in normal circumstances. Since you need only one capitalised entity in the EU to trade throughout it under present EU arrangements, most of those entities have been placed in London. I doubt that there is a general desire on the part of our continental former partners to ensure that our commercial advantage continues indefinitely; they may well feel that there should be a level playing field there too,

[Lord Davies of Stamford]
and that they should put themselves in a position where they can attract that sort of business to their own financial markets. There will be an element of that, which you can call protectionism, but it is natural—it is human nature, really. As I said, I do not think that we should be particularly shocked about it. We should just accept it. It is a strong argument and there is no answer to it.

The second thing is precedent. All Governments are very concerned about precedents when they give a favour to anybody—we are talking here about a major favour. As has already been said, there has been a considerable extension of the idea of equivalence far beyond what was originally envisaged as a purely EU-US arrangement. The EU is currently locked in difficult negotiations with the Swiss on precisely that point. No doubt the Chinese, the Indians or all sorts of people would like to have equivalence, and they are people whom it is very difficult to refuse, but in this context it would have to be refused because they do not have the effective banking supervision and regulatory systems that would be required. The creation of yet one more precedent would be something that a lot of people in the European Union would want to resist.

Thirdly, there is a point that possibly will not be spoken about very frankly, but it plays a big part in this, and that is the attitude of the central bank, the ECB. All central bankers, before they go to sleep at night and when they wake up in the morning, have two great concerns: one is whether there will be a financial crisis; the other is, if there is a financial crisis, whether they have the instruments to deal with it satisfactorily. If you have a financial crisis, you have to give orders to the banking system—like the orders we gave to banks after the Lehman collapse to stop buying CDOs—and those orders have to be obeyed immediately. You cannot really have a situation in which somebody says, "But I'm British and I've got a special protocol. I don't have to obey you. I want to go to arbitration and do this, that and the other and call in lawyers." It does not work that way. Equally, central banks depend upon a situation in which the major bankers in their jurisdiction are very beholden to them. I speak as a former investment banker for 14 or 15 years. Latterly, I was a main board member and head of European corporate finance in a large investment bank. Anybody who has ambitions in the City in that field has to make sure that they do not cross the Old Lady—that they do not upset the Bank of England. It is not a question of breaking some specific rule, but you want be regarded as responsible and helpful, particularly in a crisis when it is necessary.

Christine Lagarde and her colleagues will almost certainly be asked by Monsieur Barnier about their views on equivalence—no doubt it has already happened. I doubt very much that they have said that it would be a great idea to have more people in this market based outside the European Union with the privilege of operating under the equivalence regime. I very much doubt they will be saying that. I think they will be saying that it is something they would be reluctant to see. There are serious reasons why in both these cases—and I described them both as potential deal breakers—we will not get what we want.

The Government are very optimistic. They are trying to up the ante the whole time—saying that the continentals have got to agree everything by the end of the year and they have to make substantial progress by May or June otherwise we will drop the whole thing et cetera. They have even, as has come out very clearly from this debate, broken the terms of the agreement that they made on Ireland, which will make it very difficult for a negotiation to succeed. I think they are doing this because they are extremely confident. They have always said that the continentals are much more dependent on us than we are on them because they sell much more to us than we sell to them. It is a wonderfully quaint, mercantilist idea from the 17th century. Most people dropped that idea with Ricardo in the early 19th century. We now believe that the benefit of international trade is the opportunity gains through the international division of labour, and the benefit is computed in terms of gross domestic product, not in bullion accumulated in the central bank as mercantilists believed, or perhaps still do believe.

Nevertheless, if we look at it from the point of view of GDP, it is quite instructive. We find that the reverse is true. Their dependence on us is much less than our dependence on them. Some 14% of British GDP is exports to the European Union. In no European Union country, with the exception of the Republic of Ireland—and the Netherlands, where there is quite a lot of entrepot trade through Rotterdam which perhaps falsifies the figures—is the figure for exports to this country greater than 4% of GDP.

Lord Lamont of Lerwick: Is that not a very mercantilist view?

Lord Davies of Stamford: No, indeed it is not. I am not saying that the benefit we get is accumulating bullion, because we have a balance of payments surplus. That is the mercantilist idea, and I can only describe it as quaint; it is curious that people still believe in it. Yet the Government evidently do—because that is what it means when people say, "We're in a better position, because they sell more to us than we sell to them, so they're more dependent on us." In fact, the GDP figures show the reverse.

To complete what I was saying about the figures, no EU country, apart from the two I mentioned, has exports to this country greater than 4% of GDP. That means that, if there were a 10% reduction in our trade because we went over to a WTO basis after the end of the transition period, the continentals would lose 0.4%, which is within the annual fluctuations of national accounts, whereas we would lose a much more important 1.4%. If there were a 20% reduction, they would lose 0.8% of their GDP—still manageable, although it would be a difficult blow—whereas we would lose 2.8%, which would be cataclysmic.

For those who do not like elementary economics, I should add that one could ask a 12 year-old, "Who has the greatest leverage and influence: someone who speaks for a market of 500 million people or someone who speaks for a market of 60 million people?", and that 12 year-old would give you the right answer. The Government have the wrong answer. The first step in wisdom is self-knowledge, and the Government should take that step before they get involved any further in these negotiations.

6.06 pm

Lord Barwell (Con): My Lords, I thank the members of the committee for producing such a thorough report in short order. It is right that the Government of this country should determine our strategy for the negotiations, and it is right that Parliament should scrutinise that strategy. I also congratulate the noble Lord, Lord Kerr, on an outstanding speech. I find myself, as I all too often have on this issue, stuck between those who seem to believe that dismantling our economic and security relationship with most of our nearest neighbours is nothing to worry about at all, and those who blame the gap between the two parties solely on the British Government and attribute no blame to the other side of the argument.

I shall look at the three key conclusions in chapter 2 of the report. The first is that changes in the structure, and the way the Government have set out the Command Paper, make it difficult to trace changes in government policy. I do not agree with that conclusion. Indeed, I would argue that the committee's excellent report proves that it is eminently possible to see where those changes have taken place.

Paragraph 20 says:

"The headings … rather than following the PD"—

the political declaration—

"appear to be based on those used in … Free Trade Agreements".

As the Government are seeking to negotiate a free trade agreement, I do not think one can criticise them for that.

The second conclusion is that truncating the timetable will make it harder to reach an agreement. It is certainly true that the decision not to extend the transition period —taken for reasons I well understand—makes it all but impossible to negotiate the entire future relationship. The Canada-EU deal is nearly 2,000 pages long, and the future relationship is far more than an FTA. It is possible that, unlike the withdrawal agreement, it may need ratification by all the national parliaments, as well as by the European Parliament. The EU's mandate is clear:

"The Commission should aim to achieve as much as possible during the short timeframe of the transition … and should be ready to continue negotiations on any remaining issues after the end of the transition."

If we prioritise the key issues, it is certainly possible to negotiate a deal and reach an agreement by the end of the year.

The third and central conclusion is that both sides have moved away from the political declaration, making it harder to reach agreement. I very much agree with that, and I shall now consider the two sides in turn. First, with our Government, there are four areas in which it is undeniable that the UK's position has changed since the political declaration. As the noble Lord, Lord Hannay, said about the level playing field provisions, the political declaration is clear that the future relationship must include robust commitments to ensure a level playing field. That is in paragraph 77.

It is also implicit that the UK is not Canada. As paragraph 77 also says, these commitments need to be robust,

"Given the Union and the United Kingdom's geographic proximity and economic interdependence".

I assure the noble Baroness, Lady Falkner, and the noble Lord, Lord Hamilton, that this is not some sudden change in the EU's position. I sat with the former Prime Minister in every interaction she had with EU member states, individually and through the EU institutions, from the 2017 election onwards. This was always and consistently the European Union's position, and it is in the political declaration that this Government signed up to in the autumn.

The political declaration is also clear that the parties should uphold the common standards applicable in the Union and the UK at the end of the transition period in a whole range of areas—I will not detain the House by reading them out. It is also clear that the agreement should include appropriate mechanisms to ensure effective implementation domestically, enforcement and dispute settlement. That is what the political declaration that this Government signed up to says.

Now the Government are saying that they no longer accept the argument that the UK's geographic proximity and economic independence necessitate more robust level playing field permissions. The Command Paper, and the Written Statement to Parliament that preceded it, state:

"The Government will not agree to measures in these areas which go beyond those typically included in a comprehensive free trade agreement."—[*Official Report*, Commons, 3/2/2020; col. 3WS.]

As a result, it appears that they are rejecting not just dynamic alignment but any enforceable, non-regression clause. I can give noble Lords one example from the UK Command Paper. It says:

"The Agreement should include reciprocal commitments not to weaken or reduce the level of protection afforded by labour laws and standards … and … these provisions should not be subject to the Agreement's dispute resolution mechanism".

In essence, we are asking the EU to trust us to keep our word that we do not intend to cut standards. It feels unlikely that that will work at a time when, as the noble Lord, Lord Kerr, said, we are denying that the withdrawal agreement that we signed up to means that there will be checks when goods move from Great Britain to Northern Ireland. I was going to rehearse in some detail what is in the withdrawal agreement, but the noble Lord, Lord Kerr, did so quite brilliantly; I will just make a simple point for those who remain unconvinced. If there are no checks when goods move from Great Britain to Northern Ireland, and no checks when goods move from Northern Ireland to Ireland, goods will move from Great Britain into the European Union without any checks. If the Prime Minister had succeeded in negotiating that, people like me would be cheering him to the rafters. That is what Theresa was trying to negotiate and achieve; she was struggling to maintain the continuous free trade in goods. It is clear that the withdrawal agreement does not provide for that.

The second area where the Government's position has shifted is in relation to the ECHR. The political declaration says:

"The future relationship should incorporate the United Kingdom's continued commitment to respect the framework of the European Convention on Human Rights".

That is what this Government agreed to in the autumn. Now, the Command Paper says:

"The agreement should not specify how the UK or the EU Member States should protect and enforce human rights".

[Lord Barwell]

That decision has critical implications for the likely level of security co-operation that we will be able to enjoy after the end of this year.

A number of noble Lords have touched on the third area: the architecture of the agreement. The political declaration says:

"The future relationship should be based on an overarching institutional framework … The Parties note that the overarching institutional framework could take the form of an Association Agreement."

The Command Paper says that the comprehensive FTA

"should be supplemented by a range of other … agreements … All these agreements should have their own appropriate and precedented governance arrangements".

My noble friends Lady Noakes and Lord Trenchard were allergic to the idea of an association agreement. I gently point out that countries as diverse as Israel and South Africa have association agreements with the European Union. Having an association agreement with the European Union does not mean that we have not regained our sovereignty. There are other arguments that the Government may wish to advance for why they want a separate suite of agreements, but let us not mislead ourselves that an association agreement is somehow inconsistent with the decision of the British people.

The fourth area critically relates to dispute resolution. The political declaration says:

"The Parties indicate that should a dispute raise a question of interpretation of provisions or concepts of Union law … the arbitration panel should refer the question to the Court of Justice of the European Union … as the sole arbiter of Union law, for a binding ruling as regards the interpretation of Union law".

We agreed that, but now the Command Paper says:

"The arrangements will reflect the regulatory and judicial autonomy of the UK and accordingly there will be no role for the Court of Justice … in the dispute resolution mechanism."

During this debate, the justification that we have been given for these changes is that the Government won a huge mandate in the general election. That is true and obviously, since I am on these Benches, I welcome it. But that is not a justification for changing the position in relation to the political declaration. The message that we Conservatives took to the doorsteps in that general election was that we had an oven-ready Brexit deal: we were going to get Brexit done; the deal was done. So, that is not a justification for now changing the nature of the deal.

I turn now to the European Union. Too often in this debate, we look at our own Government and are critical if we think their position is not right. The European Union has also shifted its position in some areas—not as significantly as the British Government, as the committee's report recognised, but, none the less, there are changes. I shall run through those in my remaining time. On the level playing field, the European Union is now saying:

"The envisaged partnership should ensure the application of Union State aid rules to and in the United Kingdom".

This is not just dynamic alignment but the actual application of the EU's rules in this country after the end of the transition period. It is quite understandable that the British Government are resisting that request. It also says that

"the envisaged agreement should uphold common high standards, and corresponding high standards over time with Union standards as a reference point"

in these areas. That is a clear implication, at least, of dynamic alignment.

On the ECHR, the EU has hardened its position. Its mandate now says that

"the envisaged partnership should...provide for automatic suspension if the United Kingdom were to abrogate domestic law giving effect to the ECHR, thus making it impossible for individuals to invoke the rights … before the United Kingdom's courts."

That is not something that was in the political declaration.

Thirdly, and crucially, the EU's mandate refers to the date by which agreement needs to be reached on fishing. However, it does not reference two other crucial dates in the political declaration: the dates for completing assessment of equivalence on financial services and data protection. It is no accident that those dates have been left out of the EU's mandate.

On architecture, the EU's changes are nothing like as drastic as the British Government's but, as the committee rightly spotted, the comprehensive air transport agreement is missing from the EU mandate and has now been rolled into an issue to be considered as part of the economic partnership.

Finally, although this is not a change from the political declaration, there is the issue of fishing. The wording on fishing in the political declaration was carefully chosen to mask the fact that the two parties were a long way apart. The EU has now stated very clearly its position that

"the provisions on fisheries should uphold existing reciprocal access conditions, quota shares and the traditional activity of the Union fleet."

I cannot begin to count the number of occasions when I sat next to the former Prime Minister in a room with Michel Barnier, and he told us that, given the decision of the British people, things had to change. In every area, we could not expect the same relationship that we had before—that is, it turns out, apart from fishing, where nothing must change at all. This is an area where the EU's position is clearly not reasonable.

I leave the House with two final thoughts. There has rightly been concern in this debate about whether a deal will be achieved. I gently put it to the House that, given the level of the Government's ambition for the economic relationship, either outcome will mean an end to frictionless trade between the UK and the EU. It will mean customs controls, regulatory checks and less access for service providers. The Government's own analysis shows that these non-tariff barriers are an order of magnitude more important than the imposition of tariffs. In other words, given the kind of deal we are now seeking as a country, and for which the Prime Minister has a clear mandate from the general election result, there is not a huge economic difference between the deal the Government are seeking and no deal.

The biggest single difference is in the security field where, during this transition period, we are maintaining the security co-operation that we had as members of

the union. If we could resolve this issue in relation to the ECHR, the two parties are not that far apart with respect to maintaining as many of the capabilities as possible. Therefore, I ask the Government to think carefully about how they proceed in that area in particular.

A final thought: my noble friend Lady Noakes accused the Government I had the honour to serve of servile acquiescence in the negotiations. I gently point out to the House that the deal that this Government now seek should prove easier to negotiate with the EU than the deal that the previous Government sought. The deal this Government seek is very close to what the EU wanted to offer UK if it was not prepared to stay in the single market and the customs union. Far from servile acquiescence, the previous Government were trying to create a unique model between a standard FTA and a single market and customs union.

For all the concerns that many will have about the change in our relationship—it is coming, whether we get a deal or not, on 1 January—the two parties are not as far apart as they would be if we were trying to pursue a more ambitious arrangement. I will not detain your Lordships any more and thank you for the opportunity to contribute.

6.20 pm

Lord Lea of Crondall: My Lords, if we were moving towards a love affair with Monsieur Barnier, this would be a funny way for us to go about it. If one was the proverbial man on the moon, one would say that the U-turn we have done since January is undoubtedly much more egregious than anything Monsieur Barnier and the Council of Ministers have done.

I begin with a remark made by the noble Lord, Lord Callanan, in this House on the withdrawal Act. He said that

"the Government's vision for the future relationship with the EU is already set out in detail in the political declaration".—[*Official Report*, 20/1/20; col. 1004.]

I do not know why the noble Lord is no longer with us but he was always very much on top of his brief, and he would not have said that if it had not been the policy at that time. Whether it is a U-turn or a 90-degree turn, there has certainly been a considerable change. I do not know whether the noble Lord who just spoke claims that it is cosmetic or fundamental, but it is pretty fundamental.

At present, we face a severe economic prospect. We have to step up to the plate as a country in the next few months in two or three obviously very difficult areas, and come together, as was said. However, we need to do so with a close understanding and good will with our neighbours in the European Union. Coronavirus has been mentioned, and it is fortuitous—of course it is. We did not invent it as some sort of political stunt to make it more likely that we would stay in the European Union. However, there has been an enormous change since 31 January. At that point, two things happened. There is an EU room with two doors in it. One is signed "Exit" and we walked out of it, while through the other one, signed "Enter", walked a big elephant. Its name is coronavirus. In the next few months, the political climate in this country will conflate these two questions, especially as the already forecast decline in GDP will become significant for people's living standards, whether or not they are affected by the virus per se. We can already see transport, restaurants and so on shutting down. We have not had this sort of mixture—rationing et cetera—in our lifetime, apart from those of us who were just about alive during the war. This will change the political psychology in Widnes, Wakefield, Wolverhampton and Walsall.

In December we had a change of Government. We are only beginning to recognise that this was a huge change. We are, at the same time, both becoming more nationalistic and starting to tear up the Union Jack. We will lose the cross of St Andrew and be left with a strange combination of Parliaments in the different parts of the British Isles—if we still call them that. People have to be careful about the sort of nationalism that they now say trumps every ace because they have a majority of 60, 70 or 80.

As a former TUC official, I want to explain something that has been happening in the European Union for many years. The Social Chapter has been there since 1990. Robin Cook signed it as Foreign Secretary when the Labour Government came in in 1997. I will read out a list of things that have been achieved, with the agreement of employers, through collective bargaining: equal pay; protection from discrimination; protection when a business changes hands; equal rights for part-time workers; maternity and paternity rights; equal rights for fixed-term workers; four weeks' paid holiday; eight hours in the working day; having a voice at work through information and consultation; European works councils; the posting of workers in Europe; and health and safety at work. No employers in this country are asking for the repeal of that lot. They know that it helps a modern labour market and we have to do more to deal with zero-hours contracts. This is the new agenda with which we are locking antlers in Brussels. The TUC will be part of the social negotiations because they are conducted with the European TUC and European employers. There is a notion that something is being imposed on us through qualified majority voting, but there was always a consensus on these things. There has been no voting on anything. It has been a huge step forward but we need to go further on the new labour market trends emerging, on new technology and so on, but I do not hear that speech from the Government at the moment.

As Philip Stephens pointed out in a very interesting article in the *Financial Times* last week, if one said, "Of course, there will be a Brexit trade deal, stupid", everyone would accept it. But he is not so sure, now that the conservatives have taken over the Conservative Party. For 200 or 300 years, they were hard-headed pragmatists; now they have become the champions of English nationalism. It is a totally different party, according to the article. Whether that will stand the test, with everything that is happening in the next six months, is another question. I think it probably will not. We will need as close co-operation with our EU neighbours as we can get in the next six months, in every possible way, not just because the elephant has entered the room, but because it has come in at a time when we are putting at risk a lot of the factors that determined our rate of economic growth.

[Lord Lea of Crondall]

I remember, again from the *Financial Times*, that four or five years ago a French person was wandering around London and he or she happened to be interviewed and said, "Of course everyone knows that London is the capital of Europe." This was in South Kensington. It is not said now—of course not, because we have just thrown it all away. I think there is something in the fact that we have a nationalistic media. The only part retaining its sanity, for the most part, is the BBC, on which we had a very interesting debate the other day.

We have to move to a position where we can find some construct to meet together as the European economic area—I say that without the capitals, necessarily. I cannot believe that we can do all the things that now need to be done in every sphere without being part of a forum, having left the European Union. No one in this Chamber is saying other than that we have left the European Union, but there is no reason why we cannot do some geometry with something like the European economic area, apart from what we might call the trade geometry. Instead of trying to negotiate 10,000 different agreements de novum, we have the option of buying a bundle that more or less suits.

I do not understand at all what to make of the Government's new negotiating strategy, apart from the fact that it began with a proto-Churchillian speech—"We will fight them on the beaches, we will fight them on the hills; we will never surrender." That sounded pretty good for a bit, but it will not sound as though it has a shelf life for more than two or three weeks from now. I very much hope that we can ask the Minister to bear in mind the opportunity for the Government to take up some of the ideas mentioned by my noble friend Lady Hayter at the beginning, instead of trying to override the very interesting remarks made over the last couple of hours with some ideological override. If the Labour Party were doing this, the very people on the other side who are doing it would say, "Marxist dogma." This is the equivalent of the Marxist dogma, and it is not like the Conservative Party we used to know. I can give some free advice to the Conservative Party: get real.

6.33 pm

Lord Cormack (Con): My Lords, I nearly did not put my name down to speak in this debate: I was under considerable domestic pressure not to come, and I understand why, although I just say to my noble friend who is going to reply—and even more importantly to my noble friend who is going to make a Statement shortly after—that while, in common with many of my age, I am happy to be advised and encouraged, I do not want to be dictated to. I draw the attention of noble Lords to an absolutely splendid article in today's *Daily Mail* by the noble Lord, Lord Blunkett.

We are talking about our relations with Europe and I take as my text, as it were, the quotation the noble Baroness, Lady Falkner of Margravine, gave from John Maynard Keynes: "When the facts change, I change my mind." Here, to a degree I join company with the noble Lord who has just spoken. The facts have changed in a way that no one could have foreseen on 12 December or even on 31 January. The world is changing around us. Those of us who know and love France are sad to realise that at the end of this year it is highly likely—indeed, almost certain—that a large number of those family-run restaurants that we have all enjoyed from time to time will have gone. The same will happen in Italy and Spain. In a changed world and a fundamentally changing Europe, we cannot stick to the text that we had on 13 December after the Government won a very handsome victory, in which, like my noble friend Lord Barwell, I was very glad to rejoice.

Before the election, the Prime Minister made it plain time and again that he wanted to have as close and constructive a relationship as possible with our European friends and neighbours once we had left the European Union. Of course, it cannot be the same but we have left, and I was one of those who from the very beginning accepted, with sadness, the result of the referendum. That is why I gave strong support to the deal that Prime Minister Theresa May drew up with the assistance of my noble friend Lord Barwell—I thought that it offered a way forward. However, all that is history.

We are out, but it is absolutely essential that we have a friendly and constructive relationship with nations with which we have shared a great deal of our history over the last 500 and more years. It is extremely sad that, where co-operation has worked, as in the European Medicines Agency, Europol and Euratom, it should just be discarded. I appeal to my noble friend on the Front Bench, Lord True, who was on the opposite side of the argument before Brexit, to recognise that we are now in a wholly different national and international situation.

We, and the Government in particular, owe the British people a great debt, and we have to satisfy that debt. The Prime Minister referred to the votes that he had been given on trust in what used to be known as the red wall. We owe a debt to those people who looked to our Government, having felt, for reasons that I completely understand—I always lamented the decline of a powerful Opposition—that they could not trust a Labour Party led by Jeremy Corbyn. Our debt is manifest and manifold, and it is to ensure that they do not suffer any more than is absolutely necessary with this dreadful pestilence raging around us. Therefore, I say to my noble friend Lord True: please, there is nothing sacrosanct about the date 31 December. There is nothing sacrosanct about bringing negotiations to a head in the summer, because we and all our European friends and neighbours will doubtless still be grappling with this pestilence right through this year. What was perhaps difficult but entirely practical on 31 January is now probably insuperably difficult and not very practical. Of course, if the Government can negotiate a deal that is fair on both sides, we would all rejoice, but I beg them to realise that it is no more realistic to stick to the 31 December deadline than it would have been to have stuck to any absolute deadline in 1939.

I was born just shortly before the Second World War. My memories of it are those of an infant, but this country has not faced any crisis as potentially difficult and dire as this one since that war. It is crucial that we recognise this and, above all, it is crucial that the Government who have responsibility for this country and the Prime Minister who leads this country recognise

that fully and properly. If they do not, they will be letting down those who created that majority on 12 December. The Government have a tremendous challenge, but also a tremendous opportunity to provide national leadership. I very much hope that after 3 April, we will have a coherent, strong and able Opposition to challenge the Government wherever necessary and to co-operate with them if they provide the leadership that we so desperately need. The greatest achievement—apart from dealing with the pestilence—would be a constructive and mutually beneficial relationship with the nations of the European Union, of which we are certainly now not one. I beg my noble friend to reflect on those things when he comes to reply.

6.43 pm

Baroness Wheatcroft (Non-Afl): My Lords, I am delighted to follow the noble Lord, Lord Cormack, because as I listened to the speeches this afternoon, I have been amazed by the determined intention to keep calm and carry on. I admire a degree of sanguinity, but it seems to me that this is not the time to display it. I was delighted to hear the noble Lord, Lord Lea of Crondall. It is true that he does not always keep calm and carry on, and this afternoon he most certainly was not. I do not think that we should and I do not intend to. As the noble Lord, Lord Cormack, has said, we are in an extraordinary time. The Prime Minister's broadcast this afternoon has made that clear. The stock market could not make it clearer: it is now lower than it has been since 2011 and who knows where it is going. That is people's pensions and their futures.

When the referendum took place, coronavirus was unheard of. When the general election took place in December, it was not in sight; indeed, had it been, that election might not have taken place. Let me reassure the noble Lord, Lord Hamilton of Epsom, that I will not dwell on what might have been: we have left the EU. What is now to be determined is the future relationship. I support the amendment in the name of the noble Baroness, Lady Hayter—that Parliament should have appropriate scrutiny of those negotiations—and the Motion in the name of the noble Earl, Lord Kinnoull, whose committee's report highlights the fact that it will be more difficult to negotiate a deal now that the parties, particularly our Government, have moved so much further away from a political declaration.

Right now, the 27 countries of the EU have a far more pressing concern than their future relationship with the UK. They are trying to protect their public, their country and their economy from the ravages of this virus. Our Government, in their own way, are doing the same. This will be the case for many months. This does not seem to be the background against which to insist on a timetable for negotiations, which was always seen as demanding. The Command Paper states:

> "The Government will not extend the transition period provided for in the Withdrawal Agreement. This leaves a limited, but sufficient, time for the UK and the EU to reach agreement."

It may have been a limited, but sufficient, time back at the beginning of the year, but it is certainly not so now. Given how the UK has moved away from the political declaration, that timetable looks even more optimistic now than it did then—and that was before the virus hit. The Government's priority now must be to concentrate all their efforts on protecting the people, the country and the economy from the previously unforeseen threat of the virus. Just as the Government have asked industry to turn its efforts to creating more vital appliances for our hospitals, so Ministers must redirect their efforts to looking to the country's future under this virus.

I have just one question for the Minister: can he categorically assure the House that, in the Government's efforts to cope with the virus, absolutely nothing will be off the table, including considering asking for an extension to the transition period? If that will help the country and the rest of the EU through this extraordinarily difficult period, the Government absolutely should do it. The EU and the UK now have a common enemy; it is, as the noble Lord, Lord Lea, put it, the elephant in the room. It would be unforgivable for many future generations if this Government, in pursuit of an ideological Brexit, were allowed to distract themselves and the countries of the EU in any way from what is now truly a life-or-death battle.

6.48 pm

Lord Liddle (Lab): My Lords, I apologise to the House for not being present for what I am sure were excellent speeches at the start of the debate; I was on the HS2 committee, under the chairmanship of the noble and learned Lord, Lord Hope, and in order for it to be quorate, I had to stay. I asked our Whips to put me down for the end of the debate. The trouble is that an excellent debate such as this leaves you with very little new to say. I will try not to repeat what others have said, even if it means jumping about in the speech I prepared.

I did not hear the previous speeches, but the report before us is absolutely admirable, in the great traditions of the EU Select Committee. To my mind, it demonstrates beyond all doubt that the Government are now pursuing not just a much harder Brexit than Mrs May tried to achieve but a harder Brexit than was outlined in the political declaration, which the Prime Minister signed in October and which was ratified as part of an international treaty at the end of January. That was the basis on which he fought the election. As the noble Lord, Lord Barwell, said, he solemnly promised that he had this oven-ready deal, and it is now clear that he is going for something different.

I want to make clear that I fought Brexit very hard. I think that it is absolutely the wrong direction for the country. However, I now accept that it is done. Having said that, that does not mean that those of us on these Benches have to accept that the only option is the hardest Brexit imaginable. We in the Labour Party have a responsibility to vigorously oppose what the Government is now trying to do. Plenty of changes could be sought. If they are not, Labour should go into the next election saying that it wants to achieve a closer relationship with the EU.

On the question of a hard Brexit, many noble Lords have drawn attention to the retreat from the paragraph of the political declaration that made it clear that there is a difference between the United Kingdom's position and other nations' positions on concluding a free trade agreement. Because of our geographical

[Lord Liddle]
proximity and economic interdependence, these are the words—I say to the noble Lord, Lord Hamilton—that the Prime Minister signed up to. The noble Lord has to accept that.

Lord Hamilton of Epsom: I thank the noble Lord for giving way. The issue that I was raising was why this was not considered in the report. It first came to light on 18 February and the report went to bed and to the printers on 3 March. There was plenty of time to consider these issues. It is remiss of the report that it did not consider whether our closeness to the EU and the size of the trade that we were doing were material issues.

Lord Liddle: I take the point—but at least the committee has drawn this crucial point to our attention. If we had not had this Select Committee report, what kind of debates would we have had, either here or in the other place, on the Government's new policy? The fact is that we had nothing. There was no explanation of how what the Government were proposing was different from what they had previously proposed. Mr Johnson was going for a sleight of hand in going for this hard Brexit, and it was right that our committee should have exposed it.

The shift in our position on this particular point about the level playing field for open and fair competition will undermine confidence in our good faith. That will have very practical and real consequences for jobs and livelihoods in Britain. Even if we reach a trade agreement, I think that it is now likely that the EU will say that, if we make any move that it interprets as a move away from a level playing field, it will have a legal right to impose trade defence instruments in short order and we will not be able to stop them. These could be very damaging to sectors of our economy such as the car industry, where the non-existence of tariffs is of crucial importance.

We have already damaged ourselves very considerably. We will end up with a treaty that will not provide a stable investment climate for companies in Britain because they will always be under the threat of EU sanctions being imposed because of our attempts to break the rules.

However, that is not the only issue on which the position has changed. It is scandalous that we have thrown away just like that our participation in the European arrest warrant. Where has the big debate about that and what it means for our security been? Where has the Home Office statement been—the explanation by the Minister of what alternatives will be put in place that will be as effective in defending our interests? I feel that something fundamental such as this should not have been done in the way that it has.

As for the rest of the security agenda, the Government say that they are aiming for what they call "pragmatic co-operation", but then go on to say:

"The agreement must not constrain the autonomy of the UK's legal system in any way."

So they will not sign up for our continued participation in not just the European Court of Justice but the European Convention on Human Rights. It is incredible that a Government believe that our European friends will agree to some system of administrative co-operation between the police and intelligence agencies without there being in place a binding framework of legal oversight that both parties judge to be acceptable. That has to be that, or co-operation will not work.

My third point relates to co-operation on foreign policy. The Government dismiss the prospect of a joint institutional framework; all they promise is friendly dialogue and co-operation and they do not want an agreement about this. Yet anyone who knows anything about how relations between countries work knows that institutions are incredibly important. One of the lessons I took away from my time in Brussels was that the framework it provided for regular meetings and policy discussions between senior officials, day by day and week by week, is absolutely fundamental to trying to create a convergence of approach between countries. If we say we do not want any of that kind of institutional co-operation on foreign affairs and defence, it will put us in a much weaker position.

I also think it is wrong for the Government's new policy to reject the possibility of an overarching framework for the EU-UK relationship that was held open in the political declaration. What has happened to the deep and special partnership that Mrs May used to talk about? Do we no longer believe in that? Without such an overarching partnership, our relationship with Europe runs the risk of being characterised, and indeed poisoned, by interminable trade disputes when these are in fact of secondary importance. What matters is that we should work with our European friends to promote our shared values of democracy, human rights and the rule of law. Without that overarching partnership, I think we will lose that.

I have come to the regrettable conclusion—and I do regret it—that this Government do not really want a close relationship with our European friends. The thing that convinces me of that is the attempt that I think is being planned to rewrite the Northern Ireland protocol, which the noble Lord, Lord Kerr, explained to us in great detail. If that is what happens, the relationship is going to be one of betrayal and resentment, and I think it is an absolute tragedy that that is the route down which we are going.

Somebody referred to Philip Stephens' article in the *Financial Times* last week. Many of us, probably including myself, in the next few days are going to go into self-isolation because we want to survive. Well, a lot of us will survive but I do not think that the policy of the country should be one of self-isolation—but that is what we are getting with this Government.

7 pm

Baroness Bennett of Manor Castle (GP): My Lords, I thank your Lordships' House for its forbearance in allowing me to speak into the gap. I echo many noble Lords in congratulating the noble Earl, Lord Kinnoull, on the excellence of his report and to offer the Green group's support to the amendment tabled by the noble Baroness, Lady Hayter, in the interests of democracy.

I will not repeat the many concerns expressed by noble Lords about what is happening with aviation, chemical regulation, Euratom, the ideologically driven direction that the Government are taking, or indeed the concerns others have rightly expressed about the lack of consultation with the nations. I join the noble Lord, Lord Barwell, and many others in congratulating

the noble Lord, Lord Kerr, on his excellent explanation of the Northern Ireland situation and I am sure I will be linking to that on *Hansard* many times in the future.

I want to draw attention to two issues in the report, particularly paragraphs 114 and 115, which highlight the disturbing divergence on the climate emergency and more broadly on sustainable development. The Government keep telling us that they want to lead the world on tackling the climate emergency; in which case, we have yet to hear an explanation of why signing up to a level playing field, presumably a level much lower than we are aiming for, is a problem. I also draw attention to paragraph 104, which highlights the fact that the EU decision has a very specific and strong focus on small and medium-sized enterprises and how the arrangements will work for them. It is unfortunate that there is nothing in the Government's statements along those lines.

However, the main part of my speech has another focus. I compliment the House on its extremely strong concentration, in the circumstances, on the topic which we are debating. I think we know, however, that the country is perhaps somewhat less focused than usual on the deliberations in this Chamber at this moment. Your Lordships may not know that, as we have been debating, the Prime Minister apparently said—I am paraphrasing—that noble Lords and MPs over 70 must stay away from Parliament. That really brings us to the words of the noble Lord, Lord Cormack, and of the noble Lady, Baroness Wheatcroft. Every government resource, every official attention, every bit of funding is going to have to go to managing the coronavirus. There is no capacity to deal with the huge questions we have been covering today. It would be a dereliction of duty to take attention away from the focus on the coronavirus.

To be dismantling more than 40 years of close interrelationship with the EU and to establish new national rules on everything from aviation to trade, agricultural rules and workers' rights with the entire country distracted would be profoundly undemocratic and dangerous. The process has to be put on hold. We have already postponed the local government elections in May. If we cannot manage to deliver basic democracy, having acknowledged that business as usual is not an option, we need to do the same with Brexit. I conclude by agreeing with the noble Baroness, Lady Noakes. She said that this House should reflect the opinion of the country at large as currently constituted. I think the country wants us and the Government to focus on the coronavirus.

7.04 pm

Baroness Smith of Newnham: My Lords, like the noble Lord, Lord Liddle, I need to apologise for having been temporarily absent during this debate. I was in my place for all the opening speeches, but I was absent because I am being double-hatted today. In normal circumstances, my noble friend Lord Wallace of Saltaire would have been winding for the Liberal Democrats and I was going to play a bit part. Unfortunately, for various reasons associated with the coronavirus, he is not able to be in his place and, as I also do defence things, I was in Grand Committee, but the fact that I was in Grand Committee will shortly be relevant to my remarks.

As so often, the report of your Lordships' European Union Committee is timely and insightful. As other noble Lords have said, we are most grateful to the noble Earl, Lord Kinnoull, for bringing it to the House. Unlike the noble Baroness, Lady Noakes, these Benches believe that many of the issues raised in the report and in the Government's negotiating strategy are of national interest. It therefore seems wholly relevant that the report should come to the Chamber and that the Government's Command Paper has also been brought.

Like many other noble Lords, we on these Benches have considerable concerns about the timing of not the Command Paper but the Government's attempts to negotiate and ensure that the future relationship is agreed by 31 December 2020. It is clear that the Government won a mandate on 12 December with the clarion cry "Get Brexit done", but on 31 January that first stage of the withdrawal agreement was reached. The UK has left the European Union. The future relationship does not have to be agreed by 31 December.

Several noble Lords, starting with my noble friend—she is a friend—Lady Falkner of Margravine, talked about John Maynard Keynes's remark that when the facts changed, he changed his mind; what do you do? The facts that have changed since 12 December and since the Command Paper was published are precisely that Covid-19 may potentially have a catastrophic effect on this country and the EU 27. The international context has changed fundamentally. As the noble Baroness, Lady Bennett, pointed out, the country expects us to be focused on dealing with that crisis. It is not only the country that thinks that. When I asked the Minister, the noble Baroness, Lady Goldie, in Grand Committee about the future of the integrated security and defence review, she pointed out that the country wanted and expected the Government to focus on the crisis, and that is what they are doing. If the Government are rightly focused on the Covid-19 crisis, do they have the bandwidth to engage in the appropriate negotiations to ensure that by the end of June we have reached a situation where we have a future trade deal?

I will not rehearse the Brexit debate. I do not wish to do that, or to test the patience of the House by rehearsing the views for or against being in or out of European Union. We have very clearly left. But it is surely in the national interest to get the best deal that we can. It is well known that the Prime Minister is of the view that if you cannot get the deal you want, you should walk away. He made that absolutely clear writing in the *Daily Telegraph* before Prime Minister David Cameron tried to renegotiate the UK's terms of membership.

Lord Hamilton of Epsom: Does the noble Baroness agree that if you threaten to walk away, you strengthen your negotiating position?

Baroness Smith of Newnham: My Lords, as has happened so often this evening when there has been an intervention, I will say: "Ah, if the noble Lord will only wait just a moment, I might get to that point." What I wanted to say was that when Boris Johnson was writing in the *Telegraph* he was always clear in his advice to David Cameron and Theresa May that they had to be able to walk away from the table. That is clearly something that as Prime Minister we expect him to do.

[Baroness Smith of Newnham]
If we get to late June and he does not feel the deal is appropriate, we expect him to be willing to walk away, and that is certainly a negotiating strategy. But there is a huge difference between the Government negotiating with the 27 as equal sovereigns, as the Command Paper suggests, in our current situation and in normal times, when the focus of negotiations can be week in, week out. We have already seen the second phase of negotiations postponed because of the current crisis that affects not just this country but the EU 27. We are not going to be focused for the next three and a half months on negotiating the future relationship; nobody would expect us do that. In that context, can the Minister confirm either that it would be appropriate to extend the deadline or give the House some indication that the Government are acting in good faith in negotiations?

As my noble friend Lady Ludford pointed out earlier, there is a question of trust. It is not always clear that Her Majesty's Government are trusted in Europe on the question of our relationship. Issues in the Command Paper, as we have heard in so many speeches this evening, have raised questions about the Government moving from the political declaration. Could the Minister reassure the House that the negotiations will take place in an appropriate timeframe—that 31 December does not have to be do or die? After all, the Prime Minister won his election on 12 December; he has a five-year term of office, unless and until the Fixed-term Parliaments Act is repealed.

There is every opportunity for the Government to do the right thing, act in the national interest and postpone the deadline for withdrawal—not least because we do not simply have to negotiate and ratify the withdrawal agreement in your Lordships' House and the other place, but the other 27 member states have to ratify. The noble Lord, Lord Kerr of Kinlochard, suggested that perhaps it would be a very simple agreement; if we go low, it will be simple. In that case, the 27 might not have to ratify through their national capitals. But, if we have a mixed agreement, which is what we might have expected, it will have to be ratified through all the national parliaments of the 27, including Flanders and Wallonia, and the Canadians can tell you what that might mean in practice.

We are faced with a very tight timetable, and the potential for serious divergence from the political declaration and from the future of the European Union on a whole range of areas. We have had questions about financial services. I want to raise another set of areas of participation in Union programmes, and at this point declare an interest: in my day job, I am reader in European politics at Cambridge University, where I have project funding from Horizon 2020, and I am linked to the Erasmus+ programme. So I would like to know a little bit about the Government's thoughts on future integration in those areas, particularly because on Erasmus+ the Command Paper says that the Government might look at some possible time-limited arrangement,

"provided the terms are in the UK's interests."

Can the Minister explain what that might mean? Similarly, and more importantly for the research community at large, under what conditions might the Government wish to participate further in Horizon Europe?

On security questions, we have heard from the noble Earl, Lord Kinnoull, and the noble Lord, Lord Liddle, particularly the concerns about security and foreign policy. The former Prime Minister, the MP for Maidenhead, seemed to be rather keen on the idea of close security and foreign policy co-operation with the EU 27. That seems to have disappeared from the Command Paper. Will the Minister reassure us that the Government still believe and understand that our security interests and those of the EU 27 remain as one? If anything demonstrates that, it is surely the Covid-19 crisis, which affects all of us and in which we are benefiting from the links to the European Union for ventilators and so on.

On these Benches, we strongly support the amendment from the noble Baroness, Lady Hayter. Some of us listened with some incredulity to the noble Baroness, Lady Noakes, who, I believe, said, "Parliamentary scrutiny is neither necessary nor desirable." She may wish to correct me if I have misheard. I thought that that was what your Lordships were here for. Regarding the future relationship with the European Union, we believe that parliamentary scrutiny is both necessary and desirable. We may not be involved in the day-to-day negotiations, but we should certainly be kept abreast of what is going on to the extent that it is possible in the context of whatever limited arrangements Parliament might face in the context of the current crisis.

We are in a situation in which time is of the essence. We have seen months of negotiations with the European Union sometimes leading to the outcomes that we want and sometimes not. We are currently faced with a three-and-a-half-month window of opportunity for the future relationship unless the Government are willing to demonstrate some flexibility. In the context of the dire straits that the Prime Minister has just been telling us that we are facing and the fact that so many Members of your Lordships' House will self-isolate and not be here, it is surely appropriate for the Government to look again at their timing and talk to the EU 27 about changing the timetable for our future relationship.

7.17 pm

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, I rise to respond to what has been a typically incisive and insightful debate. I say to the noble Baroness, Lady Smith, that there is no reason to be concerned that she was not present during the whole debate, because the Liberal Democrat Front Bench was covered all through the debate. I do not take offence, and I am sure that the House did not.

I should declare an interest as a part-time resident in Italy—someone currently not permitted to return home to cut the grass. I am acutely conscious of the state of affairs occurring across Europe at the moment. I would also like to make another personal comment about how sad I was to read of the death of Lord Wright of Richmond. We are here in a debate on international affairs, and he was an outstanding servant of his country who always enlightened this House when he spoke. He was a very good citizen of Richmond as well. All our hearts go out to his family.

The debate started off in a not very pleasant tone, and rather a political one. I will address that point in a moment. It then evolved into an extremely measured

debate. Perhaps I should take this point at the start: at the end of the debate, a number of speakers who were perhaps able to look on their iPhones—as I have not been able to during the debate, as I have been trying to listen to it—suddenly came up with this new line that the Government should not proceed any more with the pursuit of negotiations with the European Union because of the coronavirus crisis. The plea was put by the noble Lords, Lord Lea of Crondall and Lord Liddle, my noble friends Lord Cormack and Lady Wheatcroft, and the noble Baroness, Lady Smith—the last five speakers. Your Lordships will very shortly hear a Statement on coronavirus so I will not go there but, without diminishing the gravity of that matter at all, I say that, in the blast of the Second World War—using the resources of William Beveridge, who would have been on the Benches on that side of the House—the Government thought about designing and redesigning the welfare state for the future and made arrangements that lasted for two lifetimes.

Lord Cormack: I do not think that any of us who talked about coronavirus said that the negotiations should be abandoned. We said that the deadline should be abandoned.

Lord True: All right—I shall accept the timetable. However, I maintain the point. In the middle of the Second World War, when Winston Churchill sent for Rab Butler—who my noble friend will remember very well—to look into the future of education in this country, he did not suddenly, when some news came in, say, "Rab, you must drop this." The Government went on and, in the 1944 Education Act, laid the foundations to the education system in this country despite the enormous crisis of the Second World War. Everything is possible and nothing is impossible in life, but I do not think—

Baroness Ludford: My Lords, the Minister has just been advised by the noble Lord, Lord Cormack—and I support what he said—that nobody has suggested that the negotiations be abandoned. People have talked about the Government not being ideological about requesting an extension, so that we possibly go beyond December. There were murmurs of support for the noble Lord, Lord Cormack. The Minister should surely have got the message: this House does not accept his interpretation of what he is claiming was said, but he is going on with the same theme.

Lord True: My Lords, it is an unfortunate condition of democratic life that not everybody accepts the contention that is put forward by somebody on the other side. When I hear a plea being made for indefinite open-ended deferment—if I may go that far—that might or might not be a move towards abandonment. Let us not argue about that. My contention is that, in so far as possible, the business of this Government should go on. Until instructed otherwise, my view is that the central promise made by this Government to the electorate at the recent general election was that they would accomplish the completion of this process—and by the date agreed by both the European Union and the British Government: 31 December 2020. As I stand here, the position of the Government is that we should seek to conclude the arrangements on the timetable set out.

Having been diverted by those last few speeches, I should perhaps get back to the central response to the outstanding report put forward by your Lordships' Select Committee and the noble Earl, Lord Kinnoull. I do not agree with all the strictures or necessarily all the rapture that attaches to that report, but I do think that it was outstanding and timely. That he, his committee and their clerks have achieved this report so swiftly and ably is a tribute, as many have said, to the work of your Lordships' House. To the noble Baroness, Lady Donaghy, I say that I would certainly be interested to see the report of her sub-committee when it comes out; I am sure that that would be widely shared.

In a tight timeframe, the committee has produced a detailed and informative report. I believe that everyone who has spoken would agree, at least on this: that it has facilitated the debate that we have had today on negotiations. I salute the continued dedication of your Lordships' committee and I say clearly to the noble Earl that, certainly while I stand at this Dispatch Box, I will wish to have the closest co-operation with him and the committee and that is the position, I think, of all my colleagues on the Front Bench. He asked me some specific questions about engagement and methodologies—these were also put forward in the amendment in the name of the noble Baroness, Lady Hayter. I will come to those, but in general terms, without setting out a specific structure for engagement, of course the Government wish to engage with and hear the opinions of your Lordships' committee.

I was struck by the tone at the start of the debate, when, with the greatest respect to her, the noble Baroness, Lady Hayter, spoke of a mean-spirited tone and of extremism—it is a fact; *Hansard* will record it—and went on to talk about our hard line. She actually ended her speech saying that the Government's policy was "demented" in trying to put into effect the central proposal of our manifesto and the central request twice made by the British people. I reject that. I do not accept it and I think it was a tone that luckily we moved away from after the first few speeches, when we moved to the normal tone of your Lordships' House.

I was asked about the current negotiations—not just about the timeframe, but whether negotiations would actually continue this week. As noble Lords will know, the EU and UK negotiators have today jointly decided not to hold this week's round of negotiations in London in the form originally decided, but both sides remain fully committed to continuing negotiations and are currently exploring alternative ways to continue discussions. That must be right, and it must and does include the possibility of video conferencing or conference calls and exploring flexibility in the structure over the coming weeks. If we are asking the people of this country to do ever more indirectly—by video, remotely—then surely the Government of this country and the negotiators for the European Union can seek to advance policy in the same way.

Today's debate also covered the UK's approach to negotiations with the European Union as set out in our Command Paper. That remains, although I know it does not please everybody, that by the end of this year—I have to repeat it again—we will be fully independent and a sovereign country. The Command Paper is also

[LORD TRUE]

clear that we are not asking for a special or bespoke relationship with the European Union: in our proposals, which are based on the political declaration, we are looking for a relationship grounded in precedent. Even the noble Lord, Lord Hannay, acknowledged in his speech that the UK proposals were grounded in precedent. The relationship that we are suggesting is aligned with the parameters for our relationship as agreed in the political declaration.

Points have been made, including by your Lordships' Select Committee, about the political declaration—who has moved away from it, who has not moved away from it and so on. I thought that, in an outstanding speech, my noble friend Lord Barwell set out a point also made in the Select Committee report: that the wording is not aligned in every respect with the wording of the political declaration. Both sides are making new asks—no, that is not the right phrase: both sides have set out their objectives. As was explained in another outstanding speech by the noble Lord, Lord Kerr of Kinlochard, there are differences in the positions, and the British position is as has been set out before your Lordships.

Our view, that our future relationship must be based on sovereignty, and that autonomy of decision-making must be respected as a principle on both sides, is not incompatible with having a close relationship with the EU. Our outline for negotiations, which noble Lords have heard before, builds on precedent and the EU's offer of a Canada-style agreement. It reflects the type of free trade agreement that should be entirely achievable between sovereign states, as the EU has done previously. We continue to see the EU as our neighbour and friend and want our future relationship to be as wide-ranging as precedent allows. I do not accept that this is a doctrinaire Government who do not want good relations with the European Union; the opposite is true. However, it is a Government who believe that the relationship must be one of sovereign equals. That is what the British people have required and requested of us. We believe that our economic and political independence is a matter of vital national interest.

I will now address the specific points raised by the report. From my reading, there were three specific areas that the noble Earl asked the Government to address. The first was on an association agreement. It invited the Government to comment on the structure of the relationship and whether it would take the form of an association agreement. It is not fruitful to parse the political declaration, but my noble friend Lord Barwell quoted from the relevant part of it, which said that it could take the form of an association agreement, but, as the noble Lord, Lord Liddle, said, the parties may also decide that an agreement should sit outside an overarching framework and in a series of linked agreements. We strongly believe that the content of discussions should drive the structure of the agreement, not the other way around. As my Prime Minister set out, we will seek to negotiate a free trade agreement as well as a separate fisheries agreement, an internal security agreement and other more technical agreements, which I hope will include one on aviation, where points have been made about the move in the European Union's position.

The report also invited the Government to explain the extent to which the general principles and core values in the political declaration should form part of our future relationship with the EU. This has been the theme of a number of opening speeches on the other side. The noble Lord, Lord Hannay, said that there was "blithe disregard" for the political declaration. I certainly do not agree with that. The UK and the European Union signed up to the political declaration. All the areas of policy set out in the political declaration will be relevant to the UK's future co-operation with the European Union. However, not all need form part of a negotiated treaty. Many can be developed in a spirit of friendly dialogue between the UK and the EU, which is what we seek. This vision is fully compatible with the political declaration and based on the principles of precedent and reciprocity.

The noble Earl also asked whether the Government would publish a comparative analysis of the political declaration and the Government's Command Paper. There has been a great deal of debate on the political declaration. The document has been on public record since last October. As the noble Lord, Lord Liddle, I think, said, the Select Committee's own document provides what the Select Committee asked for.

The report notes Parliament's role. The noble Baroness, Lady Hayter, has tabled an amendment on this topic, and a number of noble Lords have touched on this point. This House and Parliament as a whole was given a chance to vote on a potential statutory role for the House when they approved the Government's approach to negotiations and the agreements during the passage of the withdrawal agreement Bill. As noble Lord will recall, and as my noble friend Lady Noakes reminded us, the other place voted decisively against giving a statutory role to Parliament in these matters. Indeed, the noble Baroness, Lady Hayter, withdrew her amendments on this matter during the passage of the Bill. Nevertheless, as the Prime Minister said at the Second Reading of the withdrawal agreement Bill:

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

In meeting that commitment, I ask noble Lords to note that the publication of the Government's approach was supported by Oral Statements in both Houses and it is being debated today. A Written Ministerial Statement was also made on 9 March, and the Chancellor of the Duchy of Lancaster has appeared before a Select Committee in the other place.

I was asked about the role of the devolved Administrations by the noble Lord, Lord Hain, and others. Throughout the negotiations, the United Kingdom has acted on behalf of the whole of the union. That is the constitutional position and it is consonant with the UK's constitutional responsibilities—in particular, for the international conduct of the UK's interests. However, on 28 January in Cardiff there was a ministerial conference on future relationship negotiations, and we stand ready to hold more such meetings. We shared a draft of our approach to the negotiations with the devolved Administrations in advance of publication, and UK government officials and Ministers have been in regular contact with their counterparts throughout this process. That must be the correct position.

I was asked about the Northern Ireland protocol. The Government will hear what has been said in many of the distinguished speeches made today but, as noble Lords will know, a discussion is to take place on this issue at the first meeting of the Joint Committee, and I would not wish to anticipate that.

In conclusion, of course there are areas of divergence between the UK and the EU, and those have been highlighted by many in this debate. However, I like to travel in hope and we must not forget that the Government's intention is to get a good deal with the European Union. There are many areas where there is convergence. The very act of highlighting the areas where there is divergence draws attention to the silence on the areas where there is not divergence, and that illustrates the fact that both sides want a comprehensive, friendly relationship based on free trade. We will continue to approach these conversations in that way.

We are committed to doing everything we can to ensure that both sides see reasonable progress by June, so there is a clear point in keeping the negotiations going with a view to completing ratification this year. However, under no circumstances will the Government accept an extension. We firmly believe that there is ample time to strike an agreement based on free trade and friendly co-operation.

Again, I thank the committee of your Lordships' House for its important and insightful work. I look forward to engaging with it in the future and indeed with other Select Committees of this House throughout our negotiations with the EU.

7.38 pm

Baroness Hayter of Kentish Town: My Lords, I shall not respond to the debate—that is for the noble Earl, Lord Kinnoull, to do. I shall speak only about my amendment. There were some elements of my speech, such as on competition law, to which the Minister could not respond due to a lack of time, but I am sure that he will write to everyone who raised points that he was not able to answer.

Lord True: Yes indeed, and on the customs agent point that the noble Baroness raised.

Baroness Hayter of Kentish Town: I found the Minister's response on my amendment much more positive than that of the noble Baroness, Lady Noakes. However, because of that, I must say something on the issue.

The noble Baroness, Lady Falkner, must have misread the amendment. We are asking not for a veto but for documents. I gave the example of the negotiations with America, where a parliamentary committee was specifically involved. I talked about the documents for both Houses of Parliament, not only the non-elected House. The fact that we are not elected and the European Parliament is seems irrelevant because the documents are for the Commons as well. So let us put that to one side. As my noble friend Lord Whitty said, it is more the principle of scrutiny that matters and less the detail of how it is done.

More seriously, I have to respond to the argument of the noble Baroness, Lady Noakes—not to the Minister because his reply was more helpful—who said that the general election and the huge majority to get Brexit done somehow means, as the noble Baroness, Lady Smith of Newnham, highlighted, that parliamentary scrutiny is neither necessary nor desirable. The noble Lord, Lord Hamilton, thought that, with a decent majority in the other place, this Government would not listen. That is scary stuff: "We have a majority of 80 and therefore we will do what we like—don't trouble us."

But Parliament matters and must not be shut out for two reasons: first, we do not want to reach a situation, when this treaty is ready to be ratified, where Parliament says, "Oh, we don't like that now that we've seen it." That would put the country in a difficult position. We have got to the negotiations and the dialogue is necessary now so that we do not find the Government taking us down a road that would be unacceptable not only to this House but to the other House. It is also wrong in itself. The idea that because you have an overall majority—we had a much bigger one in 1997—you do not listen to Parliament is highly dangerous.

Perhaps it is different and this is not about the big majority but a fear that the new deal would not stand up to scrutiny. That is just as serious. It is obvious that it has been heard and responded to by the Minister but we will keep talking. Some of us will be sent away because of our age but there will be enough people on these Benches to make sure that if he does not come here, we will bring him back to answer more questions. He is younger than me, so he will have to be here even when I am not. For the moment, I beg leave to withdraw the amendment to the Motion.

Amendment to the Motion withdrawn.

7.43 pm

The Earl of Kinnoull: My Lords, very briefly, I thank the staff of the committee. As I tried to explain in an obviously unsatisfactory answer to the noble Lord, Lord Hamilton, this was done in a tremendous rush, with lots of late-night oil being burned, because we got the Command Paper on 27 February and the staff and the whole committee had agreed to our report by 3 March. I hope the House feels that we performed our duty in trying to do that.

Secondly, I thank everyone who has spoken in our four and a half hours of debate, which I found fascinating. New points and new thoughts have been put to me—I live in this world 24/7 and enjoy everything—and it has been rich in content.

One gypsy's warning was given. About half the membership mentioned Northern Ireland and I hope the Minister will reread the excellent speech of the noble Lord, Lord Kerr of Kinlochard, which summarised the issues and got to the nub of them. I should say, as a minor piece of advertising, that we worked together in Northern Ireland and have taken evidence both there and here. Our next work will focus in that direction, and I hope we will have the opportunity to consider what we have found out today on the Floor of the House. This is definitely something that needs attention. It is not an unwinnable position at all, but it needs attention; it is a gypsy's warning.

I will comment finally on whether our report answers our own question on divergence. I am afraid it does not. There are two elements that one is asking for

[The Earl of Kinnoull]
with divergence: an explanation as to what has diverged, and the justification for why it is right to diverge. In our report, through burning the midnight oil, we have been able to do a reasonable job of explaining what has diverged. We will ask Europeans why they are diverging—I tried to point out that there were divergences on both sides. As scrutineers, we will also need to ask the Government to explain and justify why the divergence is taking place, assuming that there will be future divergence. I am afraid that our question on that is still live. I hope that, when the Government respond to our report, we will get some clues.

Lord Hain: I very much welcome the committee's intention to look at Northern Ireland. For some time, the Government said of the Irish border that it would all be all right on the night and we should not worry about it. They then conceded that there was something to worry about—and the agreement protects the open border, provided it is maintained. But there is still considerable denial about de facto checks and a virtual border in the Irish Sea. I very much welcome the committee's intention to look at that.

The Earl of Kinnoull: I thank the noble Lord for that. Here, I point to the very important intervention on that issue by the noble Lord, Lord Lamont of Lerwick. He pointed out that the situation is quite dynamic. If a free trade agreement results, it will greatly reduce, although not eliminate, the list of problems.

This has been an excellent debate and I thank everyone again. I commend the report to the House.

Motion agreed.

The Future Relationship with the EU: The UK's Approach to Negotiations

Motion to Take Note

7.46 pm

Moved by ***Lord True***

That this House takes note of the Command Paper *The Future Relationship with the EU: The UK's Approach to Negotiations* (CP 211).

Motion agreed.

Covid-19 Update

Statement

7.47 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, with the leave of the House, I will now repeat a Statement made in the House of Commons by the Secretary of State for Health. The Statement is as follows:

"Mr Speaker, thank you for allowing me to make a Statement at this time. The coronavirus pandemic is the most serious public health emergency that our nation has faced for a generation. Our goal is to protect life. Our actions have meant that the spread of the virus has slowed in the UK. I pay tribute to the officials at Public Health England and the NHS for their exemplary approach to contact tracing and their work so far. However, the disease is accelerating, and 53 people have sadly now died. Across the whole House, our hearts go out to their families. Our policy is to fight this virus with everything we have.

Last week, my right honourable friend the Chancellor confirmed a £30 billion package of financial firepower, including a £5 billion contingency fund to ensure that the NHS and social care system have the resources that they need. We will give the NHS whatever it needs and we will do whatever it takes. We will get through this by working through our action plan to contain, delay, research and mitigate the virus. That plan has two overriding aims: to protect the NHS by building it up and flattening the curve, and to protect life by safeguarding those who are most vulnerable. We will do the right thing at the right time, based on the best scientific advice.

Earlier, I attended a COBRA meeting, chaired by the Prime Minister, to decide on the next steps in our plan. I can report to the House that we have agreed a very significant step in the actions we are taking from within our plan to control the spread of the disease. These actions will change the ordinary lives of everyone in the country. We appreciate that they are very significant and I understand that people will be concerned. But we have come to the view that they are necessary to save lives and to stop this disease.

First, based on the updated scientific advice, we are today advising that if you or anyone in your home has a high temperature or a new and continuous cough, then you should stay at home for 14 days. If at all possible, you should not go out even to buy food and essentials. Instead you should ask others for assistance with your daily necessities. The exception to this is for exercise. Even then, you should keep at a safe distance from others.

If it is not possible to receive deliveries at home, then you should do what you can to limit your social contact when you leave the house to get supplies. Even if neither you nor anyone in your household have symptoms, there is more that we ask of you. Today we are advising people against all unnecessary social contact with others and all unnecessary travel. We need people to start working from home if they possibly can. We should steer clear of pubs, clubs, cinemas and restaurants. We should only use the NHS when we really need to. This advice is directed at everyone, but it is particularly important for the over-70s, pregnant women and those with some health conditions. It is especially true of London, which the evidence suggests is several weeks ahead of the rest of the country. These measures will be disruptive, but they will save lives.

In a few days' time—by this coming weekend—we will need to go even further to ensure that those with the most serious health conditions are largely shielded from social contact for around 12 weeks. We want to ensure that this period of maximum shielding coincides with the peak of maximum transmission; and while the risks of transmission at mass gatherings such as sporting events are relatively low, from tomorrow we will be withdrawing our support for mass gatherings. This will free up critical workers we need to deal with the emergency and ensure a consistent approach to social contact.

Secondly, we are increasing our testing capabilities yet further. The UK has tested more people than almost any other major economy outside of China, South Korea and Italy. We have already increased the number of tests to 5,000 a day. This is now on its way up to 10,000 and then radically further.

Thirdly, we are boosting the NHS. Ventilation is mission-critical to treating this disease and we have been buying up ventilation equipment since the start of this crisis, but we need more. Today the Prime Minister hosted a call with the nation's advanced manufacturers, asking them to join a national effort to produce the ventilators we need. We have set up a dedicated team to do this, and we are hugely encouraged by the scale of the response so far. Later today, the NHS itself will set out the very significant steps it is taking to prepare.

Fourthly, on Thursday, we will introduce to the House the coronavirus emergency Bill. This Bill will give us the powers to keep essential services running at a time when large parts of the workforce may be off sick. Some of these measures will be a very significant departure from the way we do things in peacetime. These are strictly temporary and proportionate, and I hope that many will not have to be used at all. They will only be activated on the basis of scientific advice and will only be in place for as long as is clinically necessary.

Finally, we are ramping up our communications efforts so that people know what steps they need to take to protect themselves, others and the NHS. Tackling coronavirus is a national effort and everyone has a part to play. The more people follow the public health advice, the less need there is to bring in the draconian actions which I am keen to avoid. Of course, we must not forget the simple things we can all do: washing your hands; following the public health advice if you have symptoms; and looking out for the most vulnerable in the community.

The measures I have just outlined are unprecedented in peacetime. We will fight this virus with everything we have. We are in a war against an invisible killer and we have to do everything we can to stop it. I commend this Statement to the House."

My Lords, that concludes the Statement.

7.55 pm

Baroness Thornton (Lab): My Lords, I am very grateful to the Minister for repeating the Statement made by the Secretary of State in another place today. Our thoughts are of course with those affected by coronavirus and the families of the 35 people who have died in the UK and the British citizens who have died overseas.

We understand that the Government's commitment to ensure the UK's response to the Covid-19 pandemic is driven by evidence and science, but the Minister must have realised that the public are confused and concerned about the advice that has been given, especially when Governments around the world appear to be receiving and giving their citizens different advice. Surely the answer to this lies with the Government publishing the scientific advice and modelling behind their coronavirus action plan, which would enable experts to analyse, peer review and stress test it.

The Covid-19 pandemic is a global problem that requires Governments to work together. Can the Minister confirm that the UK has access to the evidence and data collected by other affected countries? Does he agree that a global response would give more public confidence? I am not suggesting that the UK is not doing the right thing from our point of view, but it is very important that the public understand why we are doing the things we are doing.

We welcome the update that the Government have already increased the number of tests to 5,000 a day and hope to double this to 10,000. Experts have advised that the most effective way to prevent infections and save lives is breaking the chain of transmission. To do that, you have to test and isolate. The head of the World Health Organization has implored Governments to "test, test, test" and check every suspected case, warning that Governments cannot fight the pandemic blindfolded. Therefore, we are concerned by the Government's decision that only patients who require hospital admission will be tested for coronavirus. This will mean that only a subset of cases, the most severe, will be identified and we will not know how widespread the infection really is. If our approach is to be science-led, surely data is the key.

The Minister will be aware that NHS workers have also expressed concern about this policy, given that it could lead to staff who do not have coronavirus needlessly self-isolating for seven or 14 days, which would put a further strain on NHS staffing. It could also lead to asymptomatic staff with coronavirus treating frail and vulnerable patients, putting them at further risk. Indeed, there is a petition calling for the prioritisation of testing for NHS staff which currently has over 15,000 signatures. Does the Minister agree that mass testing will allow for valuable insights into the behaviour of this virus? Once testing capacity is increased, will the Government reinstate testing for those suspected of having the virus, prioritising NHS workers, including the cleaners, porters and other essential staff who are needed to keep a hospital running and who play a vital role in infection control? If the Government want to keep key workers at work, they have to make testing available to them. That applies to not only nurses and doctors but teachers and head teachers. It is a nonsense not to do so. Will the Government make tests available to key workers?

Public anxiety has been heightened by Britain seeming to take weaker measures than other countries, confusion over things such as herd immunity and anonymous speculative briefing to the media from government sources. It is unimpressive for the Secretary of State to publish a newspaper article updating us on Covid-19 behind a paywall. It does not smack of a firm communication strategy led by the need for clarity, honesty and reassurance. The Government must provide clear and transparent communication to the public about the steps they are taking to mitigate the impact of this outbreak. This is especially important as the coronavirus curve enters a steeper trajectory, with advice changing rapidly. Just today, the advice has changed for those displaying symptoms to stay at home for 14 days rather that seven. Can the Minister advise us on why the length of time has increased?

[Baroness Thornton]

We certainly welcome the decision to introduce daily briefings to keep the public informed about what action is being taken to fight the spread of this virus, when certain protocols will be implemented and, perhaps most importantly, why. Will the Government commit to providing clearer guidance for people, including specifying the conditions that may indicate that someone is more susceptible to the effects of Covid-19? The phrase "underlying health conditions" is far too vague and misleading to be helpful, and may cause unnecessary panic and confusion. The NHS website is providing information but I am concerned about how those who are digitally excluded will access it, especially now that they are being advised to socially distance themselves. Will the Government launch a dedicated coronavirus telephone advice line for people? This would be an important source of up-to-date information for many people and would help to alleviate pressure on the 111 service.

Many low and middle-income families will be severely hit by a reduction in income if workplaces shut and they have to take time off sick or need money to respond to the crisis. This morning, Virgin Atlantic asked staff to take eight weeks of unpaid leave over the next three months to help the airline to cope during the pandemic, but that means that those staff will not be eligible for sick pay.

The Prime Minister has now advised everyone to stop non-essential contact with other people by working from home where possible and avoiding pubs, clubs and theatres. Experts have warned that this could push 14 million people who live in poverty into hunger and homelessness, which is why we on these Benches call on the Government to bring forward a package of emergency financial security measures to give people the security and confidence that they need to follow public health advice as part of our collective national endeavour.

The Government have confirmed that the NHS has insufficient ventilators to cope with the number of people who may be admitted to hospital. We certainly welcome the announcement that car makers and defence contractors will be asked to switch production to make medical equipment a national priority. Can the Minister confirm whether it is true that the European Union has passed a regulation so that medical equipment can be exported outside the EU only with special regulatory authority? If true, that would cut us off from a huge number of ventilator manufacturers. What action are the Government taking to increase the number of medical staff who will be trained to deal with respiratory care?

Baroness Brinton (LD): I too thank the Secretary of State and the Minister for the Statement. I also thank the Prime Minister, the Chief Medical Officer and the Chief Scientific Adviser for the press conference earlier, which laid out the new advice that we will have to take into account. I will come to this at the end of my comments, but I note in particular the advice to people over 70 and with underlying health conditions; I have been asking in your Lordships' House for specific advice for about six weeks now—at last, it is here. A couple of points of clarification would be useful but it is extremely helpful.

I also thank all NHS and social care staff, public health officials in our local communities and other public servants who are all now working above and beyond even the emergency duty. We on these Benches recognise them across the country in everything they do. Our thoughts are with those who are currently ill and the families of those who have died.

I will not repeat much of what the noble Baroness, Lady Thornton, said, but I want to make the point that the past week has seen a big sea change in attitude among not just the public but many experts who may not be epidemiologists but certainly have an understanding of modelling. It is important to keep them onside by making sure that the modelling is published; I echo the concerns that that has not happened yet, although I note that Chris Whitty said that it would become available in due course.

I share the horror at the *Daily Telegraph* article being behind a paywall. Notably, some of the largest American newspapers are making every single article on coronavirus free so that the public can access it; I wonder whether we could encourage our newspapers to do the same.

On testing, which seems to be the big issue of the day, I had an email from a friend who has been in a hospital in London with a severe case of coronavirus. That person is recovering now, but it was noticeable that there was an astonishing lack of knowledge on the part of paramedics, NHS 111 and others that breathing difficulties were a symptom. It was assumed that she was having a panic attack, although she had never had one in her life before. It was clear that A&E was completely overwhelmed. There was not enough protective equipment, and the doctor who saw her said that when doctors themselves became sick at their hospitals they were told to self-isolate for seven days but were not being tested, so they did not know whether they were immune or infectious.

The doctor concerned was desperate, and said that testing seemed to be happening only in care homes and in hospital outbreaks. The whole system had been overwhelmed. According to the *Health Service Journal*, the Department of Health and Social Care has said that the regime is set up to provide testing, but at the moment it is unclear how it will be applied. More and more of the people we are asking to go on to the front line are feeling very exposed.

Moving on to some workforce issues, various airline companies have announced that they are in real trouble; I think everybody understands why. And they are not alone. From these Benches, I express real concern about the Prime Minister's announcement today, in which he encouraged people not to go to clubs, cinemas, restaurants and theatres. That is likely to mean that many of those businesses will not be able to claim on their insurance, as they could if this was an instruction, as opposed to a guide. Can the Minister tell us why the Prime Minister used that framing? It will cause serious problems for many small businesses.

As for other money issues, it is reported that there is a very large drop in donations to food banks. What will the Government do to ensure that the many thousands of people who rely on food banks will continue to

get the support they need, when most people are no longer dropping two or three items into the boxes as they leave the supermarket?

There was some debate recently, involving the House of Commons Library, about sanctions for those attending jobcentres. According to the Library report, Will Quince MP had said that there would be discretion, and that people would not be sanctioned as long as they let the jobcentre know before the appointment. There are two problems there. First, if someone is sick they may not be able to call in and spend the hours it takes on the phone to do that. Secondly, if staff at the DWP are ill, there may not be enough people available to take those messages. Surely during this crisis—the Prime Minister has made it plain how severe it is—sanctions should be stopped for everybody.

Finally, on the advice to the over-70s, I am grateful that Chris Whitty said this afternoon that anybody, adult or child, with an underlying condition, including anybody who had had to have a flu jab, should consider taking action, especially if they have respiratory problems. Can the Minister confirm that and make it clear? I understand that the message about flu jabs has just come down from the website, so I am concerned that there will be confusion. There is no doubt about people who are immunosuppressed, but will he please reassure people who use inhalers—that is certainly one of the categories on the Department of Health and Social Care website—that they will be included?

Lord Bethell: My Lords, I thank the noble Baronesses, Lady Thornton and Lady Brinton, for their testing but important questions. Let me go through them systematically. As there were quite a few, I will do it at pace.

I can reassure the Chamber that the CMO has committed to publishing advice. It is extremely complicated, because the models used by SAGE are the result of many different collaborators submitting papers to a central committee, so publishing something simple and robust that can be used by third parties is not as easy as it might initially seem. But that commitment has been made, and we support the commitment to transparency.

In answer to the question from the noble Baroness, Lady Thornton, about other countries' data, I reassure the Chamber that there is an extremely strong spirit of collaboration between the countries of the world in fighting this virus. The Prime Minister had a G7 call over the weekend, in which there was a very strong commitment by those countries. That will begin a cascade of inclusion to other countries around the world in order to launch a real commitment to combating the virus. That spirit of collaboration is a powerful and encouraging dimension of an otherwise very difficult situation.

Both the noble Baronesses asked about tests: this is a really important question. The tests that we have are, rightly, being concentrated—as the noble Baroness, Lady Brinton, alluded to—on ICU units and care homes. The reason is that it is likely that those who show the most symptoms are also the most infectious. Therefore, the people who are most likely to catch the virus are those who are nearest those who have the strongest symptoms. Those include our healthcare workers, who not only deserve to be protected but need to be, in order to keep our health and social care system working. That is, therefore, where the tests are being focused.

It is also worth saying that, until the end of this week or next week, we are at the very tail end of the winter flu cycle when, if you have a cough or a cold, it could be any number of viruses. However, that is likely to change and, as we go forward, if you do have a cough and a temperature, it will be most likely that you have coronavirus and so the relevance of testing diminishes. None the less, we are working extremely hard to increase the number of tests available and the way in which we test will move to bedside instead of central testing. We hope to be able to develop an at-home test. I believe that there is news of that on the horizon.

The noble Baronesses, Lady Thornton and Lady Brinton, both asked about the media. I reassure the House that the article in the *Telegraph* was not behind a paywall; it was freely available from 11.20 pm last night. I can confirm that, if any noble Lord has any concerns about it. The Prime Minister has made a commitment to daily updates, in the company of his medical advisers. The public have clearly found that approach reassuring, and it will continue during this important phase of the virus.

The noble Baroness, Lady Thornton, asked about those with underlying health conditions and whether the definitions were clear. The noble Baroness, Lady Brinton, asked about flu jabs and whether those on the flu jab list would be contacted. I reassure both noble Baronesses that those on the flu jab list will be contacted by their GPs within the next few days. Advice will be given and, where necessary, health and care packages put in place for them. Those with underlying health conditions will be contacted by local GPs in order to clarify exactly what kind of risks individuals face.

Both noble Baronesses rightly brought up the question of the economy. This is an area of massive concern, not only to the Government but to everyone whose job and livelihood are threatened by a slowdown in the economy. Without doubt, the recommendation to close clubs, pubs, theatres and all manner of social gatherings will have a profound effect on the economy. The Chancellor has already committed billions of pounds to an economic fund to try to support those industries. Further work is being put into place to ensure that businesses can see this epidemic through.

Those who are homeless or in the gig economy will be the particular focus of measures. We are working extremely hard to change the system of statutory sick pay to include those who would not necessarily be captured by the usual arrangements. That work is still in progress, but we look forward to providing an update when the coronavirus emergency Bill is brought to Parliament on Thursday.

The noble Baronesses, Lady Thornton and Lady Brinton, asked about ventilators. These are clearly the key pieces of equipment that we need to combat the most profound effects of the virus. We have 5,000 in our stock and are working extremely hard to increase that number dramatically. Industry has responded

[Lord Bethell]
extremely positively. We have been overwhelmed by the response from all parts of industry, from big, established companies to innovators, academics and those with good ideas for how to increase the number of ventilators. We were already in the market many weeks ago and have done a lot to shore up our supplies.

It is entirely right that any number of ventilators will not be any good if you do not have the staff to man them, so we are going about retraining existing clinical staff in how to use them. To give an example, on Saturday I sat next to a surgeon who has found that his operating theatre has been turned into a respiratory support unit. He and his anaesthetist are learning how to work the respirator.

The NHS undoubtedly faces a period of enormous pressure. There is no amount of special pleading that I can do from this Dispatch Box to hide the fact that front-line clinicians and support staff will be under huge pressure. They will take profound personal risks and they are being asked to deliver an important national duty. As I am sure that everyone in the Chamber does, I pay tribute to the work that they have already done and to the work in prospect on the horizon.

Lastly, the noble Baroness, Lady Brinton, asked about food banks. I reassure her that we have a full understanding of the challenge faced by charities—the collapse of not only food donations but financial donations. That is why special provision has been given to DCMS to provide funds for charities, which will play an incredibly important part in many aspects of this national effort, particularly in providing the kind of support to social care needed for those who face an extremely difficult time of loneliness and exclusion as they take the correct decision to socially distance themselves from this virus.

8.17 pm

Lord Lamont of Lerwick (Con): My Lords, could my noble friend clarify some of the stories about possible future steps that the Government might take, particularly regarding those over 70? There have been some stories about a relatively draconian policy of self-isolation for a very long time that might itself promote certain health problems in those people if the isolation were carried out to that extent. This story appeared in newspapers. On the other hand, we have had the statement by the Chief Medical Officer of Scotland saying that Scotland would not follow such a policy but would be more limited in calling on elderly people to cut back their social contacts by 20% or something like that. Do I take it from today's Statement that the latter version of the policy is the direction in which we are going?

Lord Bethell: My noble friend is entirely right to ask about the exact guidance. I will be clear: everyone in the country is being asked to cut out non-essential social intercourse and to work from home where possible. In the case of over-70s, that is particularly true. If you are over 70, the guidance is very clear: you should take great care of yourself because you are in a very difficult position. Those who have underlying conditions, whether they are over 70 or not, must take particular care of themselves.

As the CMO explained very clearly earlier today, the advice is moving towards those people distancing themselves or even shielding themselves completely from social intercourse. My noble friend Lord Lamont is entirely right that that comes at an enormous cost. Isolation and loneliness will be extremely difficult challenges for those involved. There is a massive mental health issue on the horizon. As a community and as a country, we are going to have to figure out how we come together to provide support for those who have made the entirely right and responsible decision to stay away from society.

Lord Hain (Lab): My Lords, can I press the Minister on the question of financial support? In 2013, a parliamentary report stated that taxpayer outlays direct to the banks were £133 billion. People were not told then not to fly or not to go to restaurants, theatres or any kind of hospitality outlets. Now, we hear from the Chancellor that there will be £12 billion: £7 billion support for businesses and £5 billion for the NHS. This is nothing like the scale of financial support that is needed from Governments, either globally or particularly in Britain, to meet the challenge that he has described so eloquently.

Lord Bethell: The Government are under no illusions about the size of the challenge. The package announced in the Budget was an initial commitment. Whatever funds are needed will be made available, in particular to support the NHS and our social care but also to support hard-working businesses and those that provide employment and sustenance to the country.

Lord Berkeley of Knighton: My Lords, could I tempt the Minister to say a little bit about the antibodies test? Obviously, the test being used at the moment to tell you if you have coronavirus is a swab test. But the one that could make a huge difference to NHS staff would be an antibody test, particularly if it gave one immunity. This could completely transform the workforce and people's ability to get to work if they had been exposed in the past. Could he say a little more about that?

Lord Bethell: The noble Lord has hit upon an essential conundrum of the testing framework. I am not the expert who can give chapter and verse, but my layman's understanding is that the antibodies test on which he rightly focuses is some way away. The biggest difficulty for testing is knowing who has had the virus but never shown the symptoms. Unfortunately, one of the difficult challenges for our response is not yet having that test; it holds us back, but we are working on it very hard indeed.

Lord Scriven (LD): My Lords, my question follows on from the noble Lord's question on testing. The reason why mass testing is important is that data aids the science, and science aids the response. There are two types of test. One is the PCR—swab—test, which tells you whether you have the coronavirus. On that test, what is the stock level within the NHS and how many more are on order so that rationing will not have to be as narrow as it is at the moment? If the Minister cannot answer that question, could he write to me to let me know? Secondly, on antibody testing, it has

been trialled in Singapore, there are certain licences in China and I am aware of at least one biomedical company in Belfast that is producing 20,000 a day. Which companies are the Government in contact with on the antibody test, and when do they expect this test to be available within the NHS? Again, if the Minister cannot answer directly, could he write to me please?

Lord Bethell: The noble Lord, Lord Scriven, asks all the right questions. The honest answer is that it is a changing situation. The information that I had on this a week ago has changed even to today. What I can tell you is that there is an enormous global effort going into research in this area. The noble Lord, Lord Scriven, rightly cites the Singapore test, about which we are in touch and keen to find out more. A huge number of offers are incoming to the central co-ordinating committee. An enormous amount of funding and money is coming not just from the UK but from America, Europe and all the major nations trying to crack this. I live in hope that we will be able to do mass testing within the near horizon.

Lord Bridges of Headley (Con): My Lords, with regard to the preparedness of the NHS, what is the occupancy rate at the moment for adult critical care beds? I understand that figures published on Thursday last week showed them at 83%. What is it now? Secondly, would my noble friend please heed the words of the secretary-general of the Independent Health Professionals Association, who has pointed out the burden and costs of the current IR35 rules on bringing consultants who are currently freelancers back into the NHS, and points to the need for these rules to be suspended at a time when the NHS is going to need to attract these workers back in to provide the care that we need?

Lord Bethell: Occupancy rates are changing all the time as we cascade patients from one class of bed to another in order to make room and prioritise those who are hit by the virus. We are doing an enormous amount to expand the capacity of beds—for instance, converting operating theatres into respiratory support units and moving patients into beds where they may be more comfortable. Provisions for IR35 will be made in the coronavirus emergency Bill later this week.

Lord Boateng (Lab): My Lords, I want to raise the issue of two groups who are particularly vulnerable in terms of social isolation: the deaf elderly and the black and minority ethnic elderly. What assurance can the Minister give the House and the wider community that, in their communication strategy, the Government will take the needs of those two groups into account by signing, in terms of verbal and oral communication, and translation in terms of written?

Lord Bethell: The noble Lord is entirely right to ask about this. I am pleased to say that, thanks in part to the advocacy by the deaf community, a signing translator was provided for the briefing from No. 10 Downing Street earlier today. That is a sign that we are listening to those who advocate on behalf of these groups. However, I have to be honest with the Chamber: there are a large number of groups who deserve special treatment, and although we are moving as fast as we can in order to provide the best possible care and service that we can, I cannot pretend that there are going to be tailored packages for each and every vulnerable group in the land. We are just going to have to pull together and do the best that we can under extremely difficult circumstances.

Baroness Bennett of Manor Castle (GP): My Lords, I applaud the fact that the Statement focused on the need to protect the most vulnerable, but many people are hugely financially vulnerable. Does the Minister agree that we need national solidarity to ensure that no one needs to fear losing their roof over their head, having their gas or electricity cut off or not being able to buy the food that they need? Will the proposed Bill include: an end to all benefits sanctions, as the noble Baroness, Lady Brinton, referred to; a suspension of all evictions; an end to the five-week delay for housing benefit; and ensuring that no one's utility is cut off because they cannot pay the bill? The Minister made particular reference to the homeless. Will provision be made if they need to isolate? If they are ill, will they have safe and appropriate provision? Asylum seekers are people in our community who are very vulnerable with little money. They could contribute if allowed to work. I think we have just seen the first case of the virus in a prison. Will the Bill include special provision to make sure that prisons are safe places in the coronavirus epidemic?

Lord Bethell: On prisons, which are clearly an area of grave concern, I reassure the Chamber that guidelines were published earlier today for the management of prison populations and the introduction of cohorting in order to divide those with the virus from the rest of the prison population. On the other questions, I reassure the House that we are alive to the desperate circumstances that some people find themselves in. The financial arrangements being put behind the handling of coronavirus will be generous, and we will not stop supporting those who we love and care for.

Lord Campbell of Pittenweem (LD): My Lords, I would like to raise with the Minister the question of government language. The second last paragraph of the Statement begins, "We are in a war against an invisible killer". I understand that a balance has to be struck in ensuring that the public understand the importance of what we are engaged in, but language of that kind can have the effect of causing panic. In particular, may we have an end to the unofficial and unattributed briefings taking place at weekends that give rise to melodramatic headlines, which can only damage public confidence?

Lord Bethell: In defence of both the Prime Minister and the Chief Medical Officer, I pay tribute in particular to the Chief Medical Officer and the Government Chief Scientific Adviser for the incredibly measured, considered and transparent way in which they have gone about communications. I bear testimony to the calm and thoughtful advice that has been given to us by the scientific community. We are seeking to share that advice as openly and transparently as we can by having daily briefings from Downing Street, at which both the CMO and GCSA are present.

Lord Forsyth of Drumlean (Con): My Lords, following the comment of my noble friend Lord Bridges on IR35, which will impose huge costs and burdens on small businesses and entrepreneurs, would it not be sensible for the Government to defer its implementation? More importantly, it is obvious that these measures are going to result in a deep recession in this country. Many good businesses are going to go to the wall, unless they are helped with their cash flow. Declaring an interest as a banker, I know that the banks will want to extend credit to those businesses, but the regulatory rules and the senior managers regime prevent them from doing so. Of course public health is the most important thing, but it is of the utmost importance that the Government enable the banks to provide support for those businesses, and that they recognise that the Budget package, welcome as it is, is a mere flea-bite compared to what is required—and required now.

Lord Bethell: My noble friend is entirely right; it is a point well understood in Government. But he does slightly answer his own question, because our priority at this stage is to ensure that the medical and clinical response is right, and that the message gets across to the public about what they can and should do to protect themselves and delay the spread of this virus. I reassure him and the House that the economic impact of this virus is fully understood, and that there will be a full package of measures announced at a later date, once we have got this initial response out of the way.

Lord Davies of Stamford (Lab): My Lords, the UK has withdrawn from the European Medicines Agency without putting anything in its place. This means that no new compound can be registered, licensed and made available for prescription in this country. The new compound might be an antiviral agent effective against coronavirus, or could equally be the vaccine which we are all waiting for. Can the Government tell the House, with urgency, what they are doing about this major gap in the provision of public health in this country?

Lord Bethell: I reassure the noble Lord that, as with the response to HIV some years ago, we will not allow any lacuna or gaps in the regulatory arrangements or any delays of the regulatory kind to stand in the way of our response to the virus.

Baroness Hamwee (LD): My Lords, the Minister referred to a recommendation about people not going to pubs, clubs, and theatres. The Society of London Theatre has been instructed to close all theatres by DCMS tonight, and that is now happening. Is it a recommendation, or an instruction? This is important, not just because of behaviour but for insurance purposes in particular.

Lord Bethell: The noble Baroness makes an important point. I have received numerous, moving and important communications from those who own, run or support pubs, clubs, theatres and venues in this country. In response, I say that we have moved quickly, as the scientific evidence of this virus has developed quickly. This needs to be addressed by the DCMS; it is not within my purview, but I understand that it will address it.

Lord Cormack (Con): Will my noble friend say a word or two about the Bill that is going to come before both Houses of Parliament? Is he effectively saying that those of us who happen to be in our 70s or 80s will not be allowed to take part in that debate, or is this merely advice? Could he also tell me whether there are testing facilities within the Palace of Westminster?

Lord Bethell: The Bill will arrive on Thursday and the plan will be published then. In terms of those who wish to attend the House, all I can do is share the advice of the CMO, which is very simple and very clear, but it is down to the choices and decisions of those here as to how they wish to conduct their travel and attendance arrangements.

Lord Howarth of Newport (Lab): My Lords, my noble friend Lady Thornton alluded to some confusion in the Government's communications over the weekend as to their policy in regard to herd immunity. No doubt the policy is a nuanced one but is it possible for the Minister to state succinctly and definitively what it is? Also, I think the public are finding it hard to understand the Government's new provisions on eligibility for sick pay and social security. In particular, will he explain what support the Government are giving to self-employed people in low-paid and insecure work who are now being told by the people they normally work for not to come into work and that they will not be paid? How are the Government going to protect them?

Lord Bethell: On government priorities I will be really simple and clear. The Government's priorities are to save lives and to support the NHS. That is our objective and that is what we are throwing our energies into. In terms of sick pay and support for the self-employed, provisions for those have yet to be published, but when they are I look forward to them being discussed.

Baroness Ludford (LD): My noble friends Lady Brinton and Lady Hamwee have tried to get an answer from the Minister on this question of enabling businesses to claim on their insurance. If they are just advised to close, as I understand it, most of them would not be able to do so, but now we hear from my noble friend Lady Hamwee that DCMS has actually instructed theatres to close—but only theatres. What about restaurants, bars, clubs and everybody else? It does not seem to be a very coherent situation and for the Minister just to say that it is not within his purview to answer this question is frankly not good enough. Could he please give a clear answer as to whether not only theatres but other businesses will be instructed by the Government to close, so as to enable them to claim on their insurance policies?

Lord Bethell: As the noble Baroness will be aware, this is a fast-changing situation. I cannot come to this House, in all honesty, and give an account for every single element of the strategy since we have turned around some of these decisions in very quick time. Our focus is on health and on our clinical decisions. When I am able to deliver an answer to that question, I will do it. As soon as I can, I will be glad to write to the noble Baroness.

Lord Barwell (Con): I welcome the Prime Minister's commitment to a daily press conference. It is vital over the difficult weeks and months ahead that people hear directly from him and from the Chief Medical Officer what the Government's position is. If large numbers of people are either going to have to self-isolate because one of their family is symptomatic or going to have to effectively withdraw from society for four months, a lot more people will need their food delivered to their home. What can the Government do, first to encourage people not to panic and hoard things when it is not necessary to do so, and secondly to allow the supermarkets to scale up their at-home delivery? At the moment, if you register as a new customer, you cannot get a booking for three or four weeks.

Lord Bethell: My noble friend Lord Barwell is entirely right. The question of deliveries is an acute concern. There are intense conversations going on on a daily basis between Defra and the food retailers. I understand that there are assurances that there are significant stocks of food and that these are going to be made more available. It is not something that we are currently deeply concerned about. The belief is that as people fill their larders, they will reach a certain point when they will begin backing off the kind of stocking up that they are doing at the moment and it will be possible for those who need it to get those deliveries.

Baroness McIntosh of Hudnall (Lab): I am sorry to ask the Minister to return to the issue of closing theatres—and I declare an interest as the deputy chairman of the Royal Shakespeare Company—but reassurance is needed that, by following the instructions or the advice or whatever it is that has been issued, theatres and no doubt other businesses as well are not inadvertently invalidating their insurance arrangements. I understand that the noble Lord finds it difficult to give assurances but I think that one is particularly necessary, not least because it might save the Government some money in the long run.

Lord Bethell: The noble Baroness is entirely right. As a trustee of Sadler's Wells, I understand completely the implications of what she is saying, her point about insurance, and the confusion there might be about what the current status is. I simply cannot answer the question right now. I am not trying to avoid a difficult question; I simply do not have the information. When I do, I will be very happy to write to her and to others who have asked about this.

Baroness Smith of Newnham (LD): My Lords, the Minister has told us several times that the key government priority is to deal with the health crisis of Covid-19. But what work are the Government doing to ensure that the other issues that have been raised, for the self-employed and for small businesses, do not lead to such severe crises that we see an outbreak of suicide because people simply cannot cope and think they do not have a future? It is not only the virus: there needs to be a whole series of decisions around questions that have been raised this evening, to which we have not yet had any answers.

Lord Bethell: The noble Baroness is entirely right to be concerned about the holistic challenge we face. We are working hard in different areas to answer each one of those issues as they come along, whether in the area of mental health, social care or the economy and the entertainment sector. Today's announcement is focused on the clinical response, but I will be glad to answer any questions on specific subjects as they arise.

Baroness Hooper (Con): My Lords, would driving in a private motor vehicle between one point of self-isolation and another still be within the definition of self-isolation?

Lord Bethell: Yes, it would.

Lord Mann (Non-Afl): My Lords, will the Government be giving precise advice to agencies dealing with the homeless? Will care workers on zero-hours contracts who need to go into self-isolation be paid by anybody? Are the Government relying on the House of Lords to set the best example in following the Chief Medical Officer's advice?

Lord Bethell: On the provisions for those on zero-hours contracts, that is an area that is particularly knotty and difficult. It is absolutely the focus of the current negotiations on statutory sick pay and other provisions; it is one we care very much about getting right. As for the advice for those in the House of Lords, I cannot repeat the advice of the CMO more times than I have already. I very much hope that everyone will follow it.

Baroness Barker (LD): My Lords, based on the models that the Government are using, can the Minister say when he thinks we will reach the peak transmission spike?

Lord Bethell: The situation is fluid. The CMO spoke about this in detail at the press conference. He is not speculating or giving an exact date, because the modelling is not as clear as one would hope it to be. However, it will certainly be within weeks, rather than months.

Lord Adonis (Lab): My Lords, there is a gaping black hole in the economic package announced in response to this crisis. I hope that the Minister has picked up from the repeated questions of noble Lords on all sides that there is acute concern about this. I do not think it is possible to separate the public health emergency from the wider social and economic emergency. People will not go off sick and companies will not be able to give clear guidance to their employees until the Government can answer the questions which have been asked around the Chamber. There is an absence of a clear government policy on sick pay, which is after all the means by which people will survive if they self-diagnose or are diagnosed with this virus. Each day that the Government cannot answer this will lead to more needless spreading of the disease. I know that the noble Lord is the Health Minister and not an Economy Minister, but it is totally unsatisfactory that the Statement gives no clear guidance to the country on the economic aspects. He talked about this being published on Thursday, with the Bill, but that is three days' time. We are in a massive national emergency; that statement should come tomorrow. Every hour

[Lord Adonis]
that the Government delay will see the disease spread further, cause needless distress and lead to people going out of business.

Lord Bethell: The noble Lord is entirely right in his analysis that getting the social and economic package right is imperative for delivering the social behaviour response to the virus. It is completely understood by the Government that, to get people to abide by the kinds of provisions and recommendations coming from the CMO, there has to be a whole-person solution, and that includes figuring out the money. We understand that and are working on it. We have already altered some of the provisions for statutory sick pay so that people can claim after one day instead of four, which is an important change. We are negotiating with the Treasury, the DWP and other parties on making further changes.

Lord Davies of Gower (Con): My Lords, Swansea University today announced its first case of Covid-19. Given that students travel from all other countries to universities—perhaps in greater numbers than to some sporting events—what particular advice will the Government give to universities?

Lord Bethell: My noble friend will be reassured to know that guidance for education settings was published a couple of hours ago. This includes advice to universities both on travel and on what to do when someone develops the symptoms of coronavirus. I would be glad to place a copy of this in the Library or send it to any noble Lords who would like to see it.

Lord Cormack: My noble friend did not answer the question about the testing facility within the Palace of Westminster.

Lord Bethell: The noble Lord is entirely right. To be honest, I do not know the answer to that question, but I would be glad to find it out and write to him with the details.

Baroness Hamwee: As there are five seconds left, may I apologise to the House for having failed to declare my interest as a trustee of a theatre when I asked my question?

House adjourned at 8.47 pm.

Grand Committee

Monday 16 March 2020

Arrangement of Business

Announcement

3.30 pm

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): My Lords, if there is a Division in the House, the Committee will adjourn for 10 minutes.

National Minimum Wage (Amendment) (No. 2) Regulations 2020

Considered in Grand Committee

3.31 pm

Moved by

The Earl of Courtown

That the Grand Committee do consider the National Minimum Wage (Amendment) (No. 2) Regulations 2020.

Relevant document: 7th Report from the Secondary Legislation Scrutiny Committee

The Earl of Courtown (Con): My Lords, on behalf of my noble friend Lord Callanan, I beg to move these draft regulations. The Government are committed to making the UK the best place in the world to work and grow a business. At the turn of the decade, we confirmed that 2 million low-paid workers will receive the biggest ever cash increase to the national living wage. We have pledged to take the national living wage further, with a target of two-thirds of median earnings by 2024, making the UK the first major economy to set such an ambition.

We are also committed to ensuring that all those who are entitled to the national living wage or national minimum wage receive it. The Government take tough action against the minority of employers who underpay their workers, and we have doubled the budget for minimum wage compliance and enforcement since 2015; it is now at a record high of £27.4 million. However, we are acutely aware of the burden that the regulations, including the minimum wage, can place upon business. As the level of the national living wage enters new territory, we want to make sure that the rules are as straightforward as possible.

As long as workers are getting the wages that they are entitled to, we want to make it easier for businesses to comply with the law. That is why we are bringing forward these regulations. Their purpose is to amend the national minimum wage rules relating to salaried hours work and pay reductions. We have worked closely with stakeholders to identify the areas of the national minimum wage rules that add complexity for employers without providing clear protections or benefits for workers. Employers, particularly in the retail sector, told us that some aspects of the rules can be unnecessarily difficult to comply with. We have listened to these views. Following a review of evidence from the consultation on salaried workers and salary sacrifice schemes, these changes to the regulations will support businesses which employ salaried hours workers.

The rules on salaried hours work provide a method of calculating minimum wage pay for workers who are paid a salary in equal instalments, including where the hours worked each week or month may vary. For example, this method can be used for some teachers who receive equal pay packets throughout the year, including through the holidays, or for chefs who may receive consistent pay packets throughout the year despite large variations in their working hours before and after the busy Christmas period.

Currently, low-paid salaried workers cannot be paid in fortnightly or four-weekly cycles without the risk of their employer breaching the regulations. Evidence tells us that this is a preferred method of payment for some workers and employers. Similarly, if companies were to pay such salaried staff extra for working a bank holiday shift, there is a risk of breaching the regulations as they stand. Evidence from the consultation and stakeholder engagement found that employers are removing premium payments for workers to reduce the risk of minimum wage non-compliance. These regulations widen the range of pay arrangements that are compatible with workers being treated as salaried hours workers, helping to preserve certain pay arrangements that are valued by many workers. As a result, any fixed payment cycle that is between one week and one month will meet the conditions for salaried hours work. Workers will also be able to be paid a premium in respect of their basic hours while meeting the same conditions.

To help employers monitor their own practices and make sure they are paying above the minimum wage, the regulations will also allow them to take steps to change the "calculation year" for salaried hours workers. The calculation year is the reference point to identify when in a year a salaried worker's basic hours, for which they are paid their salary, are exceeded. Employers may wish, for instance, to create a uniform calculation year for all their salaried hours workers to align with other annual business cycles.

The regulations also make a small change to the rules on workers making purchases from their employer, such as where a clothing retail worker buys a uniform from their employer. The change ensures that employers get credit for reimbursing the worker, as they currently do when the purchase is from a third party. The new rules will come into force on 6 April 2020.

These regulations provide greater flexibility to employers and show the Government's commitment to supporting compliance with the minimum wage rules while maintaining our world-leading employment rights. I commend them to the Committee.

Baroness Burt of Solihull (LD): My Lords, I thank the Minister for his explanations. He has gone some way to answering some of my questions. The amendments seem reasonably straightforward. They are very welcome in so far as they incorporate changing work patterns into the minimum wage regulations. Thinking about the current coronavirus situation that besets us, more and more of us will be working irregular work patterns, including, of course, working from home.

As long as the worker performs to the requirement of the contract, I am not sure why you would not measure the amount of work in total hours, or even,

[Baroness Burt of Solihull]
more radically, in outcomes achieved. However, outcomes might be a stretch too far away from what we are talking about today, except for those for whom performance bonuses comprise part of their remuneration. My understanding is that performance bonuses would be excluded from the basic minimum wage calculation. Can the Minister confirm that?

The instrument's main thrust is to accommodate the changing work payment cycles that people have today—for example, fortnightly or four-weekly—and ensure that their pay is fair and falls within the minimum wage regulations. Basic hours might indeed vary, as the Minister said, but the employer must ensure that when these are divided up by the number of pay periods, the average payment paid each month equals at least the minimum wage. For workers who work on, for example, bank holidays and receive premium payments, the rules currently do not allow for premium payment arrangements in respect of a worker's basic hours. As I understand it, the regulations rectify this.

Finally, could the Minister elaborate on the relevance of the calculation year? I fully understand the change from the worker's initial start date as a reference point for calculation to a point where the employer can specify when the year will be calculated from, but does that mean that a worker will need to wait nearly a year to determine whether they have worked any overtime? I am sure this cannot be the case. I would be very grateful if the Minister explained that a little further.

Lord McNicol of West Kilbride (Lab): My Lords, the Minister talked about being the best in the world. We on this side of the Committee obviously support that aim. Six countries pay a higher or better national minimum wage than the UK—Australia, Luxembourg, France, Germany, New Zealand and Belgium, according to the House of Commons briefing. We will happily work with Her Majesty's Government to leapfrog those countries. Could the Minister outline when he believes the UK will surpass those countries?

I gave a number of my questions to the Minister earlier so that we could try to get some answers on to the record. In fact, the noble Baroness has asked many of the technical questions, so I will not repeat them.

Since the introduction of the national minimum wage in 1999, the Government have ordered employers to repay more than £118 million to 835,000 workers. The Government have issued more than £40 million in financial penalties and completed more than 78,000 investigations. A large number of companies and businesses out there are obviously still not paying the national minimum wage. The SI touches on a number of specifics; the intention behind it is that the Government will be able to reduce non-compliance rates since companies will be able to monitor the hours worked by salaried workers and identify potential underpayments of wages. If that can be done, we obviously support it, but how will the Government enforce or monitor this compliance? Does HMRC require any additional resources to cope with these rule changes?

Before the SI was brought forward, a consultation by BEIS took place and of its 60 respondents, 43 agreed that the rules regarding the salaried hours worked—as touched on earlier by the noble Baroness, Lady Burt—caused difficulties when making premium payments. Of these 60 respondents, 23 suggested that salaried hours rules make the national minimum wage calculations complex and increase the risk of non-compliance. If these rules can help to reduce that complication, without penalising the workers, we would obviously be happy to support them. Will the Government be monitoring this to ensure that there are no detriments to the workers?

The SI widens the range of pay arrangements that are compatible with the rules on the national minimum wage. Again, I will not repeat the questions we have heard on the payment cycles, so I look forward to the Minister's answer. The SI also proposes to enable employers to specify the calculation year for their salaried workers. Currently, the calculation year depends on the individual's starting date. Again, does the Minister see the possibility of any detriment? How will the Government protect against any detriment to individual workers if the calculation year could change?

In April 2019, the Low Pay Commission estimated that 424,000 people were paid the national minimum wage, the national living wage or less. Do the Government have any separate departmental figures, or are the figures we are working from the LPC's? Those 424,000 people are about 1.5% of those aged 16 and older in the UK job market—an awful lot of people. What activity is going to be involved with the expenditure of funds that the department will use to monitor any abuses in the enforcement of the national minimum wage?

On businesses themselves, the Government have stated that HMRC will visit selected new, small businesses to educate them on the national minimum wage and support them in getting the process right. How many businesses have been selected and how many will HMRC visit before April?

I finish by noting that the Government have stated that a new single enforcement body to crack down on employment law breaches will be part of a new employment Bill. Can the Minister say when that Bill will be laid before Parliament?

3.45 pm

The Earl of Courtown: My Lords, I thank noble Lords for their valuable contributions and for supporting our ambitions in respect of the national minimum wage. I shall respond to the queries in the order in which they were posed. I shall try to answer them as best I can, but if further information becomes available, I will of course write to both the noble Baroness and the noble Lord.

The noble Baroness, Lady Burt, asked whether a worker needs to wait a year to work out whether they have been paid overtime. The answer is no. The flexibility to change the calculation year is technical only. We do not anticipate any detriment to the worker in that area. The noble Baroness also asked whether performance bonuses are excluded from the calculation of minimum wage pay. No, they are included.

I thank the noble Lord, Lord McNicol, for giving me prior notice of some of the questions he was going to pose—it certainly makes my life a little easier. He asked when the UK would surpass other countries'

minimum wage. As he pointed out, we are already in the leading pack internationally on the minimum wage, but the United Kingdom's ambition to reach 66% of median earnings is unique. The noble Lord will be glad to hear that the increased rates in the living wage will affect more than 2 million workers.

The noble Lord asked whether HMRC would need extra resources to enforce the regulations. As I said earlier, we are committed to cracking down on employers who pay below the national minimum wage or national living wage. The doubling of funding to £27.4 million for 2019-20 for the Government's minimum wage enforcement compliance centres allows us to do just that, while helping employers to ensure compliance without the need for enforcement. Not only does HMRC follow up on every worker complaint that it receives but it undertakes targeted enforcement for businesses and sectors with a high risk of non-compliance. Such targeting is really important. Additional funding allows HMRC also to undertake activities to educate employers into compliance—from proactively visiting new small businesses to delivering webinars on issues where employers commonly trip up. In 2018-19, HMRC used additional funding to recruit an extra 124 staff deployed on minimum wage enforcement. In the same year, it identified a record £24.4 million in arrears owed to more than 220,000 workers who were underpaid in respect of the national minimum wage or the national living wage and issued £17 million in penalties.

The noble Lord, Lord McNicol, also asked how Her Majesty's Government are communicating the rule changes to small and medium-sized businesses across the UK, which is important and affects a great many workers. Alongside our annual campaign to raise awareness among employers and workers of the new minimum wage rates, we will continue to engage widely with small and medium-sized businesses. We are offering proactive support to new small businesses through HMRC, which will visit selected employers to educate them on the national minimum wage and help them get their practices right from the start. To improve understanding of the rules still further, we shall soon publish an improved guidance offer through GOV.UK. We have convened a guidance readership panel of employer groups, unions and relevant experts to make sure that we get these products right.

The noble Lord, Lord McNicol, also asked about enforcement. The Government have created a new single enforcement body. Cracking down on employment law breaches will be part of the new employment Bill. The noble Lord asked when this will be brought to Parliament. As announced in the Queen's Speech, we will bring forward an employment Bill to deliver the greatest reform of workers' rights in over 20 years. The legislation will make workplaces fairer by providing better support for working families and new protections for those in low-paid work and the gig economy, and by encouraging flexible working. We are making good progress and will lay this measure when parliamentary time allows.

The noble Lord also asked whether the Government will monitor to ensure that workers do not suffer detriments from these rules. The legislative changes have been specifically designed to address business concerns without causing detriment to workers; that is of prime importance. Employers seeking to make changes will have to inform their workers in writing before changing the calculation year. Workers must consent to this change.

We know that in the vast majority of cases, businesses want to do the right thing by their workers, including by paying them all at least a national living wage or national minimum wage. The Government's consultation on salaried-hours work found evidence that in some areas, regulations have not kept up with modern-day practices. These regulations bring minimum wage rules up to date, reducing the burden on employers trying to adhere to the law. These regulations and additional non-legislative measures announced last month show that we are committed to helping employers get the rules right at the first time of asking, while not reducing worker protections.

We are not changing the regulations relating to salary sacrifice schemes. However, we recognise that in some instances, employers are penalised by offering benefits to workers through these arrangements and by misunderstanding the rules. That is why we have established a helpline for employers who operate pay deduction on salary sacrifice schemes to access support and information directly from HMRC. We are also offering proactive support to new small businesses. HMRC will proactively visit selected employers, as I mentioned before. To further improve understanding of the rules, we will soon publish improved guidance through GOV.UK.

These regulations are just one of the ways in which we are making the UK the best place in the world to work and grow a business.

Baroness Burt of Solihull: In response to one of my questions, the Minister said the performance bonus is included in the minimum wage calculation. If a worker does not earn a bonus, does this mean they could earn less than the minimum wage? Surely the point of a bonus is that it is in addition to the minimum wage.

The Earl of Courtown: No, they could not earn less than the minimum wage.

I commend these regulations to the Committee.

Motion agreed.

Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Considered in Grand Committee

3.53 pm

Moved by ***The Earl of Courtown***

That the Grand Committee do consider the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

Relevant document: 4th Report from the Secondary Legislation Scrutiny Committee

The Earl of Courtown (Con): My Lords, this Government are committed to ensuring that all tenants live in safe, secure and high-quality properties. These important regulations help deliver that commitment for private tenants. Private landlords make an extremely

[The Earl of Courtown]
valuable contribution to the housing market. The majority of landlords in England provide well-maintained and safe accommodation for their tenants, allowing them to put down roots, work and thrive in their communities. However, some landlords wilfully flout their responsibilities and put their tenants at a significant risk of harm as a result. This is not acceptable. These regulations will target those irresponsible and unscrupulous landlords and will help to level the playing field for the majority of good landlords who already meet this requirement. As a result, the regulations will help to drive up safety and standards across the private rented sector and reduce deaths and injuries caused by electrical faults.

The numbers are telling. In 2016-17, 16 people died and 871 were injured in England as a result of electrical fires in the home. In a five-year period, the London Fire Brigade dealt with 748 fires caused by electrics. In the same period, only 97 fires it dealt with in London were caused by gas. Only 60% of homes in the private rented sector have all the recommended electrical safety features installed, compared with 75% of homes in the social rented sector. This amounts to a compelling case for change.

These regulations will require all landlords to have the electrical installations in their properties inspected and tested by a qualified and competent person at least every five years. Good landlords already keep the electrics in their properties safe, but there are those who avoid doing this and undercut the good ones. They will now have to comply and better protect the safety of their tenants. If they do not like it, they can leave the business. The regulations will also require landlords to provide a copy of the electrical safety report to their tenants, and to their local authority if requested, to give tenants the information they need for their peace of mind and to support local authority enforcement.

But what about those landlords who decide to continue to flout the law and put their tenants at risk of electrocution and perhaps even fire? These regulations will provide local authorities with strong enforcement powers to tackle this minority of landlords. Local authorities will be able legally to require landlords to carry out vital remedial works. If landlords still do not comply, the council will be able to arrange the works and recover the cost from the landlord.

Local authorities will also be able to request proof from landlords that the electrical installations in their property are in fact safe. If a landlord has to carry out essential remedial work, they must let their local authority know. There will be a serious penalty for landlords who do not comply with the requirements—requirements that they should already be meeting. Local authorities will have the power to issue financial penalties of up to £30,000; it will be for them to decide the level of penalty. They can see the severity of the issue and will know best how to tackle irresponsible landlords in their areas.

Our local authorities are working hard to enforce standards in privately rented properties, so we are mindful of the risks of putting new burdens on them. That is why we have legislated that they may retain the proceeds of these financial penalties for enforcement purposes, allowing councils to keep up the good work and drive up standards further. This will contribute to the long-term financial stability of housing enforcement teams. These regulations form part of the Government's comprehensive programme of work to improve safety in all buildings and conditions in the private rented sector in particular, where overall standards are significantly worse than in other tenures.

We took decisive action to address the risks identified following the Grenfell Tower tragedy and accepted in principle all recommendations in the Grenfell Tower inquiry phase one report. My right honourable friend the Home Secretary will introduce a fire safety Bill which will clarify that, under the Regulatory Reform (Fire Safety) Order 2005, building owners and managers of multioccupied residential buildings must ensure they assess fire risks linked to external walls, including cladding, and the entrance doors to individual flats. We also accepted the recommendations from Dame Judith Hackitt's independent review of building safety and will publish a building safety Bill as soon as possible.

This is all in addition to the renters' reform Bill, which will deliver a better deal for renters. I look forward to sharing the details of this Bill with Members of the House over the coming months. However, I can tell noble Lords now that it will improve security and affordability for tenants and professionalise the sector. It will include measures to drive criminal landlords out of the sector while strengthening the rights of landlords who have a valid reason for regaining possession of their property.

I appreciate the opportunity to set out all this exciting new work and thank noble Lords for their interest in this important matter. These regulations will help drive up standards and reduce injuries and deaths due to electric shocks and fires caused by electrical faults in residential premises within the private rented sector. As I said at the start, the majority of landlords are proactive in ensuring the safety of their tenants, so these requirements will not put an additional burden on those landlords who make a welcome contribution to the housing market.

It is reasonable to expect all landlords to make sure their tenants are safe from the risk of electrocution or fire. Ultimately, these regulations will help ensure that tenants are kept safe. I beg to move.

Lord Tope (LD): My Lords, I thank the Minister for his thorough introduction to these long-overdue regulations, which I welcome. Before I go any further, I declare an interest as a patron of the charity Electrical Safety First. It has been campaigning for many years—longer than I have been involved with it—for these regulations, which they too very much welcome.

4 pm

I have a few questions and points of concern, the first of which relates to the current state that the country—indeed, the world—is in. The regulations are due to come into effect for new tenancies, as I understand it, from 1 July, with guidance to local authorities being issued during June. As I said, the regulations are long overdue; it is very important that they go ahead. However, given the crisis affecting everybody in the country—not least local authorities—how confident

can the Minister and his department be that we will be able to stick to the implementation dates, particularly 1 July, but also the later date for existing tenancies? I urge the Government to do everything possible to ensure that they stick to those implementation dates and that proper guidance is issued beforehand.

My principal concern about these regulations relates to enforcement. Here, I again declare an interest as a vice-president of the Local Government Association. Also, although this is no longer a declarable interest, I was a London borough councillor for 40 years and a council leader for 13 years. My concern—I have much experience of this—is that Governments are sometimes good at giving power but no good at all at providing the resources necessary to enforce it. I am pleased that local authorities will have the enforcement power, but I hope the Minister can assure me they will have the financing and capacity to carry out that enforcement effectively. What discussions have the Government had with the Local Government Association, and particularly with the professional bodies, to ensure that local authorities have sufficient environmental health officers to carry out the enforcement duties effectively?

Do the Government recognise that this is an additional burden on local authorities—albeit a welcome one as far as I am concerned—and what additional finance is being provided to meet it? I am sure the answer will be the one I have heard many times over the years: that it is included in the general government settlement. However, we can never find any specific reference to that.

Of greater concern to me than finance—the financial position of local authorities is well known—is capacity. Will there be enough able and competent environmental health officers to carry out these necessary duties? Can the Minister confirm that local authorities will retain 100% of the fines they impose and collect? Experience has taught me that their ability to raise money acts as a considerable incentive to carry out enforcement, so I hope so.

I turn to a particular point that was raised with me. Although all the professional bodies, including Electrical Safety First, believe that this legislation is completely fit for purpose, I understand that some landlords are concerned about some of its language, particularly what is meant by

"the eighteenth edition of the Wiring Regulations".

Can the Minister explain why it mentions this standard, and can he assure landlords that this does not impose any further burdens on them, such as the need to rewire, so long as their properties are safe in the first place?

I am told that some landlords are concerned that the legislation may create a temporary loophole in safety legislation for houses in multiple occupation. Can the Minister clarify that there will be no such safety gaps for tenants in these properties and no reason, therefore, to delay the legislation's introduction?

Finally, in his letter to me, and no doubt to other Peers, of 17 January confirming that the regulations had been laid, the then Minister, the noble Viscount, Lord Younger of Leckie—who I am pleased to see is in his place, although I believe in a different role—said:

"I strongly believe that everyone deserves a decent and safe place to live, regardless of tenure."

We would all agree with that, but will the Minister tell us what plans the Government have to provide similar protection for tenants in the social rented sector?

That is all I have to say, other than to welcome these long-overdue regulations.

Baroness Grender (LD): My Lords, my party gives its full support to these regulations. Indeed, my noble friend Lord Tope and our former colleague, the noble Baroness, Lady Tonge, have been assiduous campaigners for this change over a long period. Their dogged persistence, alongside that of other opposition parties, has finally borne fruit. I also congratulate Electrical Safety First on its constant and unwavering focus on getting this done. These regulations will start to keep many people safe from electrical accidents and fires.

Every year, around 350,000 people are injured and 70 people are killed in the UK by electrical accidents. Compare that with, altogether, 300 injuries and 18 deaths per year due to fires, explosions, carbon monoxide poisoning and gas leaks. That leads to my first question: why has this taken so long? I looked back at some previous debates to find that, in April 2018, I raised the issue of the achingly slow pace with the then Minister, who promised something soon. The electrical safety working group completed its work in autumn 2016. Even then, regulations were promised by spring 2019. The people who have been injured in the interim period, and the families of those who have been killed, expect an answer now. I appreciate that it is not easy to answer that right here, right now, but I would like an undertaking to write to explain why these regulations have taken so long to come through.

As with the ban on tenant fees, the wheels of government appear to move slowly when it comes to people in the private rented sector, who, I believe, continue to be treated as second-class citizens. This extends to the current coronavirus pandemic. Much effort is being made to ensure that there are holidays for mortgage payments. Every time the Government make such a move, I ask them to ask themselves the following question: how do we mirror this now in the private rented sector, given that, even by the Government's own figures, which I believe to be a significant underestimate of 4.8 million households, over one-quarter of the population is excluded from something like a mortgage holiday? What is the equivalent in the private rented sector? Will the Minister urgently look at rental holidays, too, to help those who are often the poorest through this crisis?

Will the Minister also use this opportunity to revisit the issue of a central register for landlords to enable tenants and local authorities to ensure tenants' rights are enhanced and upheld? The Government originally said no to banning tenant fees, but rightly changed their mind. Again, they said no early on to mandatory checks, but again, they rightly changed their mind. Will the Government now change their mind about a central register of private rented sector landlords? This would help local authorities in particular. As the Minister will know, local authorities have had their funding reduced by 60p out of every pound, as my noble friend Lord Tope explained. The £30,000 financial penalty for a breach of regulations is very welcome, but will the Minister outline what additional support will go to local authorities in advance?

[Baroness Grender]

We always have a chicken-and-egg debate at this point. I urge the Minister to consider what funds are made available to the local authority to raise its first £30,000 penalty in breach, so that it can then pay to reinforce. It is exactly like the recent legislation on the prevention of homelessness. What is the up-front payment that goes to a local authority so that it can then start to enforce, as I believe it should? Paragraph 12.8 of the Explanatory Memorandum seems very similar to what exists for rogue landlords. What is the up-front payment to help ensure that it is upheld? Under paragraph 11, "Guidance", I notice that there is further information about how the guidance will come through and be explained to people. What resource will be placed behind explaining to people their new rights, and how they can assert them as tenants?

We are very grateful to the Minister for giving us a brief and most welcome update on progress towards a Bill on the private rented sector. If he would like to take a fast-track approach to dealing with no-fault evictions, I recommend my Private Member's Bill, which is currently in the Lords, as a way to ensure that we address this issue at a slightly faster pace than the Government are currently dealing with private rented sector issues.

I will touch briefly on the issue of property guardians, which I have also raised with the Government. Towards the end of Theresa May's premiership we were getting closer, as I understood it, to introducing greater rights for property guardians. I had a very useful meeting with Minister Wheeler and the noble Lord, Lord Bourne, about this. I felt that we were getting quite close to a solution; then there was a change at No. 10, since when it has gone very quiet. The property guardians issue is an increasing problem that we need to be ahead of, so I refer the Minister to a recent investigation by Vicky Spratt of the *i* newspaper of a former residential care home. Not untypically with property guardian issues, there were 31 residents, who are often older renters. Nothing has been tested. They have all had to sign NDAs, which are unenforceable—but how do they know that?—and the HMO licence is not an HMO licence. I point out to the Minister that recently, Colchester Council took Camelot Guardian Management Company Ltd to court on this very issue.

The property guardians issue is a growing problem that the Government could be well ahead of in legislation. It would be good, at the very least, to offer to sit down with interested parties and follow up the discussion held a year ago, when it felt as if we were getting close to something useful and helpful, because they are not included under any kind of assured shorthold tenancy rights. We now have teachers, NHS staff and low-income workers being housed in former care homes that are, frankly, dilapidated buildings. It is on the increase and being advertised in a lot of local authority areas.

Finally, will the Minister update us, as my noble friend Lord Tope asked, on any plans to include mandatory electrical checks in the social rented sector, and on what the Government are going to do to ensure home safety visits for vulnerable and older people, who are sometimes owner-occupiers? Again, this would be very useful. All those questions having been asked—for which, many apologies—I welcome this legislation. But it was achingly slow, and people deserve an answer on that.

4.15 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I first declare my interest as a vice-president of the Local Government Association and pay tribute to the work of Electrical Safety First. As we have heard, it has been assiduous in its campaigning over many years to get these regulations before us today, as have noble Lords on all Benches, including the noble Baroness, Lady Grender, the noble Lord, Lord Tope, and my noble friend Lady Hayter. I thank the Government for bringing them forward and offer them many congratulations. It is appreciated.

I am generally pleased that the regulations are here but, as has been outlined, this has taken years. It could not have been any slower; it has gone at a snail's pace. I remember the debates during the dreaded Housing and Planning Act, in which the noble Lord, Lord Tope, and I moved amendments yet could not get any action from the Government. Then, they finally moved forward. I have tried to write down how many people I have dealt with since then: when we first raised this issue in that Bill, the noble Baroness, Lady Williams of Trafford, was the Minister and the noble Baroness, Lady Evans of Bowes Park, was the Whip; we then had the noble Lord, Lord Bourne; then the noble Viscount, Lord Younger; then the noble Baroness, Lady Bloomfield; now we have the noble Earl, Lord Courtown. I am sure there were many other Whips, but that is five Ministers.

Frankly, the length of time this has taken is outrageous. The Minister listed the number of fires, injuries and fatalities. It is shocking that we have waited so long for this. It is unacceptable. As the noble Baroness, Lady Grender, said, people need answers. We discussed this five years ago and are finally getting some regulations; now we are worrying, in the present crisis, whether they will happen. We need an answer.

As the noble Baroness, Lady Grender, was mentioning other things that have not happened, she reminded me of discussions about the rogue landlords database. Again, we could not get the Government to agree to make it public. They were not having it and we lost votes. I remember meeting with Greg Clark from the other place; very nice man though he is, we could not make any progress whatever. Two years on, the Government decided that they wanted to make it public. The noble Lord, Lord Bourne, told me, "I want to do it, Roy, but I just can't find any parliamentary time to do it in." I thought, "Hang on, two years ago you had the vote and voted against it." I know he was sincere about it and wanted it made public, but it is very frustrating when you sit here, make the points, win the votes and the arguments, yet they will not budge—then, literally a year or so later, there is a complete about-turn by the Government. They told us, "We want to do it, but we can't get any time because of the pressure of legislation." Up until last December, we had not actually been very busy in this House; there were no huge swathes of legislation coming forward, so time could have been found if we had wanted to.

A number of questions have been raised that I was going to ask, so I look forward to getting answers to them. On the issue of communication, how will we get

this out to tenants so that they know what their new rights are? Equally, how will we get this out to landlords so that they know their new responsibilities? Will we use charities such as Electrical Safety First to get this information out, which will be very important? As the noble Baroness, Lady Grender, and the noble Lord, Lord Tope, said, what about electrical safety standards in the social rented sector? These questions need looking at, as does that of vulnerable people in the owner-occupied sector, who may not have the cash resources to get work done. We need to know about that.

I genuinely thank the Government for introducing these regulations—it is just regrettable that it has taken so long. I hope they have learned that they need to move at at least at a snail's pace—we have not even got that far—in future to get these things on board.

The Earl of Courtown: My Lords, as always, I thank all noble Lords who have taken part for their valuable contributions. I am really pleased to note the general support for the intention of these regulations and our work to improve the private rented sector. I also understand the Committee's concerns over the delay. I will come to that point later. If I do not cover everything in great detail or miss various points, I will ensure that I write to noble Lords on some of these issues.

The noble Baroness, Lady Grender, and the noble Lords, Lord Tope and Lord Kennedy, asked how we will ensure that landlords, tenants and local authorities understand these new requirements. We will ensure they understand them; officials have been working closely with landlords, letting agents and trade organisations, as well as the electrical safety industry, which is already disseminating information to its members. We are also publicising the regulations across social media. In addition, ahead of the regulations coming into force we will publish guidance for landlords, local authorities and tenants. The introduction of the regulations before Parliament has already attracted broadly positive and welcoming media attention, including from the national press. We will continue to publicise them, to ensure maximum possible coverage. We will also work closely with local authorities to ensure they have what they need. We are fully committed to bringing these provisions forward as soon as we can but, as the noble Lord commented, these are exceptional times.

The noble Lord, Lord Tope, also asked whether local authorities will be overburdened with these regulations and raised additional financial support. These regulations will not mean additional work for local authorities, because local authority environmental health departments are already responsible for enforcing electrical safety standards in the private rented sector. The new regulations will in fact make it simpler for local authorities to do this, because landlords will now have to provide them with proof that their electrics are safe. As I said before, local authorities will also be able to keep any money raised from financial penalties to fund their enforcement activities, helping to raise standards in the long run, and these penalties can be up to £30,000 for the most serious offenders.

The noble Lord, Lord Tope, also looked at compliance with, for example, the wiring regulations, even if the wiring was installed before the edition was in force. The regulations state that a landlord must

"ensure that the electrical safety standards are met"

and that

"investigative or remedial work is carried out"

if a report requires it. The electrical installation should be safe for continued use. In practice, if the report does not require investigative or remedial work, the landlord will not be required to carry out any further work.

The noble Lords, Lord Tope and Lord Kennedy, and the noble Baroness, Lady Grender, mentioned social housing. As I said in my opening speech, these regulations apply to the private rented sector. This is because that is where the standards were lower—in the private sector, as opposed to the social rented sector. These regulations target this sector. However, the Government are also separately considering safety measures for social rented properties.

The noble Baroness, Lady Grender, mentioned rent holidays taking account of a person's situation. The Government have always been clear that our priority here is to put people first, which is why support is in place to help affected people and minimise any social and economic disruption. We have announced a range of measures to support people and communities, including a £500 million fund for households experiencing financial hardship, while ensuring that statutory sick pay is available from the first day that people take off work. If I can add anything more in relation to the noble Baroness's speech, I will write to her on that.

I went over this in a slightly different area earlier, but the noble Lord, Lord Tope, asked about the 18th edition of the wiring regulations. In statutory instruments there are strict rules about making ambulatory references. In this case, when referring to an external publication such as a British Standard, a date or version number must be given. The national standard is set out in the current edition of the wiring regs—the 18th edition, published as a British Standard. If the wiring regulations are updated, we will have to consider carefully whether it is necessary and appropriate to update the electrical safety regulations. This depends on the level of update in the regulations.

The noble Lords, Lord Tope and Lord Kennedy, mentioned homes in multiple occupation. All existing houses in multiple occupation, both licensable and non-licensable, will need to comply until 1 June 2020 with the requirement in the 2006 HMO management regulations to have electrics tested. Any new tenancies created from this date will need to comply with the new electrical safety regulations from 1 July 2020.

In respect to existing tenancies in HMOs, all such properties should already have a certificate stating they have been inspected and tested in compliance with the 2006 regulations; this certification lasts for five years. In some HMOs, an electrical installation condition report may run out between the coming into force of the regulations on 1 June 2020 and 1 April 2021. However, during the familiarisation period, local authorities can rely on their enforcement powers under

[The Earl of Courtown]
Part 1 of the Housing Act 2004, which requires that electrical safety hazards are remedied, and tenant safety is protected. Local authorities use their housing health and safety rating system to assess electrical safety hazards, and they have a duty to take full enforcement action if they identify a hazard at category 1 level.

The noble Lord, Lord Kennedy and the noble Baroness, Lady Grender, also asked why this has taken so long. The Government announced in July 2018 that we would introduce a mandatory requirement on landlords in the private rented sector to ensure electrical installations in their properties are inspected every five years. Following that announcement, we worked closely with experts in the sector, considering this complex issue carefully to make sure the changes were proportionate and delivered real benefit to tenants without undue burden on landlords, inspectors and testers. I should emphasise that I note the comments made by the noble Lords, and I am sure the department will as well.

The noble Baroness, Lady Grender, also mentioned guidance. We will be publishing guidance for tenants, as well as for landlords and local authorities, before the regulations come into force in June 2020. This will ensure tenants are aware of their rights and will know to approach their local authority if they have concerns. We continue to have regular contact with local authorities and their enforcement officers, who will have regular interactions with tenants. When the regulations are made, subject to parliamentary approval, we will publish an update to the suite of "how to" guides, including *How to Rent,* which must be provided to all tenants by their landlords.

The noble Lord, Lord Kennedy, also asked why there is no landlord register. We want to strike the right balance between supporting good landlords and tackling criminals. We introduced the database of rogue landlords to target the worst offenders and better protect tenants. Our consultations on how to open up and extend information on the database to tenants closed on 12 October 2019. We are currently reviewing responses and will update the House soon.

The noble Baroness, Lady Grender, brought up the subject of property guardians. I was interested to hear what she said on this issue. The Government are committed to ensuring that all renters live in safe conditions. Many property guardians live in HMOs, to which these regulations will apply. More broadly, the Government will soon publish updated guidance to help guardians understand their rights. We are also undertaking research to understand the size of the sector and the severity of problems. This will inform future policy decisions, addressing the concerns raised by her.

This is a major step towards levelling up the private rented sector and making sure it will offer high-quality, safe and secure housing. Along with our social and owner-occupier sectors, this is housing that this country deserves. I commend the instrument to the Committee.

Motion agreed.

Client Money Protection for Property Agents (Approval and Designation of Schemes) (Amendment) Regulations 2020

Considered in Grand Committee

4.30pm

Moved by ***The Earl of Courtown***

That the Grand Committee do consider the Client Money Protection for Property Agents (Approval and Designation of Schemes) (Amendment) Regulations 2020.

Relevant document: 6th Report from the Secondary Legislation Scrutiny Committee

The Earl of Courtown (Con): My Lords, client money protection gives landlords and tenants confidence that their money is safe when it is being handled by an agent. The Government made it a mandatory requirement for all property agents in England holding private rented sector-related client money to obtain membership from an approved client money protection scheme on 1 April 2019. The client money held by agents primarily includes rent paid directly to the agent and funds provided by landlords to the agent for the purpose of making property repairs. The Government have approved six client money protection schemes protecting £3.4 billion of client money across schemes. Nearly 10,000 letting agents are now members of a scheme. Increasing the financial protections for landlords and tenants through mandatory client money protection is a positive step towards driving up standards in the private rented sector.

Before I go on to set out the detail of the regulations before the Committee, I want to establish the legislative context. The Housing and Planning Act 2016 provides powers for the introduction of mandatory client money protection. Following the passage of the Act, the Government invited the noble Baroness, Lady Hayter, and the noble Lord, Lord Palmer of Childs Hill, to chair a client money protection working group. The group reported in March 2017 and its recommendation to make client money protection mandatory was accepted by the Government

In late 2018 we reviewed the regulations, considering new concerns that had come to our attention. These included the difficulties that agents in Scotland were facing in obtaining a pooled client account following the introduction of client money protection there in January 2018. In addressing the issues highlighted in Scotland, we permitted client money protection schemes to accept as members agents who are making all reasonable efforts to obtain a client account but are unable to do so for reasons beyond their control. We applied this grace period for 12 months to 31 March this year. The amendments to the approval regulations were made and commenced on 14 February 2019, which allowed schemes and letting agents to comply with our regulations ahead of 1 April 2019, when the requirement for every agent to be a member of a client money protection scheme came into force.

The Client Money Protection for Property Agents (Approval and Designation of Schemes) (Amendment) Regulations 2020 simply extend the initial grace period

for letting agents struggling to obtain a pooled client account for a further 12 months to 1 April 2021. I should point out that an error was made in the Explanatory Notes to this statutory instrument when it was laid in Parliament on 3 February. They referred to a full impact assessment but as this measure falls within the de minimis exemption, we have not produced one. With the agreement of the statutory instrument registrar, we issued a correction slip to the Explanatory Notes, pointing out that the regulations have "no, or no significant impact".

Now that mandatory client money protection has been in place for several months, there is some evidence of UK banks being reluctant to offer pooled client accounts to agents. This issue requires attention because one of the requirements of the client money protection regulations is that letting agents must hold their client money in a client account. For the majority of letting agents, the only workable model is to hold this money in a pooled client account, thus avoiding the need for thousands of individual client accounts. However, this presents money laundering risks because funds from multiple different sources can be co-mingled and move rapidly through the account, presenting challenges in identifying the true owners of the funds in the account. To address these risks, anti-money laundering regulations place specific requirements on non-regulated firms, which includes the large majority of letting agents. These requirements include that banks should conduct due diligence on the customer holding the pooled account, the lettings agent and the customer's clients.

This enhanced consumer due diligence has made it difficult for some letting agents to obtain a pooled client account. We are aware that certain banks are reluctant to offer them, driven by a concern to ensure compliance with money laundering regulations as well as commercial factors. We continue to monitor on a quarterly basis the number of agents on whom this has an impact. I am happy to report that the number of agents reporting such difficulties to the client money protection schemes remains low. In the last quarter for which we have data, October to December 2019, 251 letting agents reported difficulties in obtaining a client account. This amounts to around 2.5% of agents who belong to a client money protection scheme.

Forthcoming guidance for banks from the Joint Money Laundering Steering Group on their obligations under the money laundering regulations will help address the need for proportionality when assessing the risk associated with non-regulated firms such as letting agents. We had expected final guidance to be published before the end of the grace period, but, due to its unexpected complexity, a draft of the consultation is not now expected till spring this year.

We have considered the case for ending or extending the grace period in consultation with the client money protection schemes. We have concluded that there is a strong case for offering a further 12-month extension. This will guard against the risk that some agents will be unable to comply with the regulations through no fault of their own, with attendant sanctions of up to £30,000 for non-compliance. This further extension allows the time needed for Joint Money Laundering Steering Group guidance to be published and to inform commercial decisions made by banks. We will also encourage the client money protection schemes to encourage those agents who report that they are struggling to secure a client money account to make exhaustive efforts to do so. The fact remains that most agents hold such accounts with banks. Agents must not assume that the grace period will be extended again beyond April 2021.

Mandatory client money protection is an important part of the Government's suite of existing and proposed policies to drive up standards in the private rented sector and give landlords and tenants the confidence they need when using an agent. I beg to move.

Lord Palmer of Childs Hill (LD): My Lords, I thank the Minister for the great detail in which he set out this statutory instrument, which is almost a one-line measure which moves a date. Behind that one line, however, is a bigger story.

I should declare my interest as set out in the register as the chairman of the advisory board of the Property Redress Scheme, one of the three ombudsman schemes. As the Minister noted, I also have a proprietary interest in this matter, having been the co-chair of the review group set up by the noble Lord, Lord Bourne, which worked incredibly well. We welcome the legislation.

The problem is: where are we now? As the Minister said, letting agents were told in the other place that this would be their last chance to comply with the CMP regulations, which have been a legal requirement for a year. Compliance was delayed to give letting agents more time to set up pooled client accounts for their landlord and vendor customers and to keep these separate from the turnover of their business.

The problem hidden by this short measure, which the Minister acknowledged in his introduction, is how the banks are helping or not helping the legislation. They take different views depending on the interpretation of the latest money laundering directive. Some do not even accept registration with HMRC as being satisfactory. I understand that government guidance will be published in the not-too-distant future which gives some banks more comfort that they can allow agents to have pooled client accounts. I hope that the Minister will confirm that such guidance is being given, although it seems that some banks have taken a commercial stance not to do so. Just to complete the picture, some forward-looking banks have offered accounts, but, naturally, the agent would have to move to those newer banks on the market.

Some banks claim that they need an individual client's account for each landlord, which the Minister did not mention. Others have refused to open a client's account without client money protection in place. However, to obtain client money protection, the agent needs a dedicated, ring-fenced client's account. Is the Minister aware—given what he said in his introduction, I rather think that he is—of the chicken-and-egg situation of banks requiring CMP to set up an account when a company is not able to obtain CMP without the right bank account being set up?

We pass the law here, but the banks are thwarting that law in how they are allowing these accounts to be set up. I have the figure of 251 agents saying that they

[Lord Palmer of Childs Hill]
are struggling to set up pooled clients' accounts. In a sense, it is a great achievement that only 251 or 253, whichever the figure is, are doing this—it is a great improvement in providing security for people's money that is left with letting agents—but it means that 250-odd people want to do this but cannot seem to because of the banks' attitude.

As a chartered accountant, I used to audit solicitors' accounts. They always had to have clients' accounts. They had a pooled clients' account and, within their ledgers, you separated out that account. There is no need for a separate client's account for each landlord or letting agent. It is possible to do that within the ledgers. I remember one solicitor who, sadly, I had to report to the Law Society and who was struck off, because he did not operate the system properly, but it exists—you can tie it down in solicitors' accounts. If they can do it, I do not see why banks are not being more helpful in this instance.

We need from the Minster not only this extra year, which I regret has had to happen—we have the extra year for the reasons explained, which is to be fair to people who would otherwise lose their livings—but some effort to make the banks understand what is necessary. The banks have to be assured that their worries about money laundering can be covered. The Government need to speak to the banks about why they are not co-operating in something that is a great benefit to the housing industry.

Lord Hodgson of Astley Abbotts (Con): My Lords, I thank the Minister for his explanation. I just want to intervene briefly. I should make it clear that although I am the Chairman of the Secondary Legislation Scrutiny Committee, which has considered this instrument, I am speaking here for myself.

I draw attention to the fact that this is what happens when an irresistible force meets an immovable object. As a result of the Government's policy, for a year people's deposits that otherwise would be covered will not be covered. It seems a shame that we have not been able to find a way to move forward. The noble Lord, Lord Palmer, has told the Committee in great detail about the problems of money laundering. Those of us who take an interest in the financial proceedings in the Chamber know of old that money laundering is the ace of trumps. You just have to say, "I'm doing this because of money laundering", and the argument is shut down. If someone says, "Hang on, let's just get some perspective on this", they are immediately told that they are the money launderers' friend.

The noble Lord, Lord Palmer, went through the background and what is known in the trade as the KYC—know your customer—regulations. We have all seen it: when we have tried to open a small account of £25 or £50 for a child or godchild, we are into the whole business of utility bills and identification. I raise this issue because I want once again to draw the Government's attention to the extent to which this thing has got completely out of control.

I have here a copy of the UK Financial Intelligence Unit's "Suspicious Activity Reports". The SARs, as they are known in the trade, are the meat and drink of the money laundering business.

If you believe that something suspicious is going on, you have to make an SAR. You are not allowed to tell the person you are making a report about that you are going to report them, because that would be an offence under the Act. In the year to March 2019, 478,437 SARs were reported. That is, on a 250-day working year, about 2,000 a day. It is vanishingly improbable that one in 10 of those is looked at. They just create a huge mountain of paper along the lines of the problems raised by the noble Lord, Lord Palmer, and about which nothing is done.

4.45 pm

Do these half a million SARs achieve a lot? During the same year they recovered £829,000. They managed to recover £7.9 million from HMRC and to distrain £122 million. Overall, at their most helpful and positive, £132 million was either seized or distrained. This is from an organisation which says that there are "billions" going through the City of London. Incidentally, £132 million is equivalent to £27 per SAR—probably rather less than it cost for the person to put the SAR in in the first place.

As part of this whole area we are discussing, somebody in the Government needs to step back and say, "Are we actually getting the focus right? Are we really spending all this money in the right place? Are we not getting an undesirable by-product by delaying protection to some people for a year because they cannot get the proper client money protection?" If we were to introduce a de minimis on a SAR of £500 or £1,000, you would find that about two-thirds of SARs would disappear. I find it hard to believe that you can launder money to buy a £19 million mansion in Mayfair on amounts of £1,000 or less.

This has nothing to do with my noble friend, who will say, "This is a lovely idea, but it has nothing to do with me." He is quite right; nothing will happen as a result of this, unless, from time to time, people say, "We need to think about how we are organising this. Actually, we are not catching the right people; we are catching and sweeping up a load of small people, most of whom are entirely law-abiding. The big fish seem to swim through the net in an extremely unattractive way."

Finally, I am not clear why, if you cannot get an account as an agent, you cannot join a deposit protection scheme. You might wish to leave that and have your own client account later; I understand you can do it on a custodial or an insured basis, but it seems to me that there is a way there for us to say, "From this moment on we will make sure that every tenant's deposit is protected. You may do it by getting a bank account, if you can; if you cannot, join a deposit protection scheme and, once the bank can help you, you will be in a position to move across and have your own account with the bank." My concern about these regulations is not that they are bad—they are not—but they would be unnecessary if we thought more clearly about what we are trying to achieve and more creatively about how we might move it all forward.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank the noble Earl, Lord Courtown, for presenting these regulations to the Committee and explaining their purpose to us. I understand why the Government

have had to table the regulations. In that sense, I fully support them. As the noble Lord, Lord Palmer of Childs Hill, set out, the problem here is that some banks do not offer client accounts, making it difficult for people who want to comply with the legislation and do the right thing to get the account to do what they need to do. That is very frustrating. I understand the point about needing the extra year and I fully support it.

The noble Lord, Lord Hodgson of Astley Abbotts, was absolutely right that some bigger organisations seem to be able to channel hundreds of billions of pounds through UK banks with no problem at all. That is fine, but when a small person trying to run a small business in the local area sets up a client account, they get caught by money laundering rules. I like the idea of maybe having de minimis rules. We need to find something to get over this. It seems ridiculous. Transparency International will talk to you about the amount of money going through some of these major UK banks; the money is from all sorts of jurisdictions around the world that certainly have less regulation—it may be more dubious where these funds are coming from. They can buy property all over London and elsewhere with no problem at all. They can do what they want.

However, for a small trader trying to run a business and do the right thing who comes up against the money laundering regulations, things are not done for you and you cannot run your business and serve your clients properly. That cannot be right. I hope the Government at least talk to these banks. It is unacceptable. You have to allow these businesses to do their job properly. They are required by law to have these accounts and protection; they need a way to actually have them or, if not, to be able to find some way forward—maybe the way suggested by the noble Lord, Lord Hodgson of Astley Abbotts—that they can enact themselves.

The Earl of Courtown: My Lords, all noble Lords commented on how important this issue is. Mandatory client money protection is an important part of the Government's suite of existing and proposed policies to drive up standards in the private rented sector and gives landlords and tenants the confidence they need when using an agent.

I thank my noble friend Lord Hodgson, and the noble Lords, Lord Kennedy and Lord Palmer, for their contributions. I will deal with the questions put. Should any more detail be required, I will of course write to noble Lords after I read *Hansard*.

The noble Lord, Lord Palmer, started off with an issue that all noble Lords referred to: how the banks are helping, or not, in this situation, and what they are doing to address these issues. These are the issues that we expect the guidance to pick up on and address. We must remember that this is a low-risk sector, hence the low level of problems in getting pooled accounts—I think some 2.5%. I repeat what I said in my opening speech: forthcoming guidance for banks from the Joint Money Laundering Steering Group on their obligations under money laundering regulations will help to address the need for proportionality—which is what I think all noble Lords were referring to—when assessing the risk of non-regulated firms, such as letting agents.

The noble Lord, Lord Palmer, referred to his days as an accountant and looking at solicitors' clients' accounts. I was an agricultural property manager, collecting rents for agricultural land and the let sector. I wholeheartedly agree with him on the importance of making sure that clients' accounts are tip-top and up to shape; it is so important for the client and the individuals involved.

My noble friend Lord Hodgson talked about the money laundering regulations. He was basically saying that they have got out of control. I will draw the attention of the responsible department to his views on that matter, which will of course write to him in due course. He went on to ask about client money and tenancy deposit protections. The client money protection and tenancy deposit protection are two separate matters. Agents can join a tenancy deposit protection scheme without being a member of a client money protection scheme. I hope that is clear to my noble friend. Finally, I thank all noble Lords for their contributions and commend the regulations to the Committee.

Lord Kennedy of Southwark: Could the noble Earl say a little more about where we are with what the banks are doing? It is unacceptable that hundreds of millions of pounds of illegal money goes through our banking institutions every year with no problem whatever, but they claim that they have strict money laundering procedures in place. We know that property is bought elsewhere using money gained from criminal activities, but nothing appears to be done about it. However, as the noble Lord, Lord Hodgson of Astley Abbott, has said, if you are the little person running a small firm and you want to open a client account, you cannot open one. That is ridiculous.

The Earl of Courtown: My Lords, I thank the noble Lord, Lord Kennedy, for asking that question. The banks have to comply with HMRC policy. There may be more that I can add in due course, so I will write to him and distribute the answer to all noble Lords attending the Committee.

Motion agreed.

Armed Forces Act (Continuation) Order 2020

Considered in Grand Committee

4.56 pm

Moved by ***Baroness Goldie***

That the Grand Committee do consider the Armed Forces Act (Continuation) Order 2020.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, we have before us a small, though crucial, piece of parliamentary business to conduct: our annual consideration of the legislation governing the Armed Forces—the Armed Forces Act 2006. Before I turn directly to the matter of the annual continuation of the Armed Forces Act, let us not forget that our Armed Forces are without doubt one of this country's foremost and most precious institutions, being held in the highest regard throughout

[Baroness Goldie]
the world as a benchmark of military excellence that other nations aspire to. Let us never forget, either, the men and women of the Armed Forces who serve and have served us so well, whether at home or further afield.

This nation owes much to our Armed Forces and the admirable qualities they espouse: bravery, discipline, professionalism, unflinching and steadfast loyalty to duty, and a strong moral compass to do all that we ask of them. These noble qualities and adherence to duty are all too frequently tested in the most challenging and varied of environments and circumstances. Therefore, our service men and women deserve our respect for the manner in which they continue to maintain such high standards and professionalism. We owe a huge debt of gratitude to our Armed Forces, who perform exceptional feats to protect this country in incredibly difficult circumstances. To support them, we shall shortly bring forward legislation to deal with vexatious claims. We will also further strengthen the basis of the Armed Forces covenant, because we are absolutely committed to supporting all in our Armed Forces community, but today we busy ourselves with the continuation of the Armed Forces themselves.

Therefore, the draft order we are considering is to continue in force the Armed Forces Act 2006 for a further year, until the end of 11 May 2021. As I shall explain, this reflects the constitutional requirement under the Bill of Rights of 1688 that a standing army, and by extension now the Royal Navy and the Royal Air Force, may not be maintained without the consent of Parliament. Let us not forget that the Armed Forces cannot exist without the annual consent of Parliament. Our consent is an opportunity for us in this Committee to record our thanks by permitting the Armed Forces to continue for another year. As I have indicated, yearly renewal is rooted in the 1688 Bill of Rights. This historical context forms the basis for why the legislation that provides for the Armed Forces to exist as disciplined bodies is renewed by Parliament every year.

5 pm

None the less, it is important that I explain the legislation that governs the renewal. Every five years, renewal is by Act of Parliament in an Armed Forces Act. The most recent was in 2016. There must be another before the end of 2021. Between each five-yearly Act, annual renewal is by Order in Council. The draft order that we are considering today is such an order.

The Armed Forces Act 2016 provides for the continuation in force of the Armed Forces Act 2006 until the end of 11 May 2017 and for further renewal thereafter by Order in Council for up to a year at a time, but not beyond 2021. If the Armed Forces Act 2006 is not renewed by this Order in Council before the end of 11 May 2020, it will automatically expire. If the 2006 Act expires, the legislation that governs the Armed Forces and the provisions necessary for their maintenance as disciplined bodies would cease to exist. This would have serious repercussions because the 2006 Act provides nearly all the provisions for the existence of a system of command, justice and, above all, discipline for the Armed Forces. It creates offences and provides for the investigation of alleged offences, for the arrest, holding in custody and charging of individuals accused of committing an offence, and for them to be dealt with summarily by their commanding officer or tried in the court martial.

Offences under the 2006 Act include any criminal offence under the law of England and Wales, and those which are peculiar to service, such as misconduct towards a superior officer and disobedience to lawful commands. If the 2006 Act were to expire, the duty of members of the Armed Forces to obey lawful commands, and the powers and procedures under which this duty is enforced, would no longer have effect—mayhem. In addition, commanding officers and the court martial would have no powers of punishment for failure to obey a lawful command or other disciplinary or criminal misconduct. That would be mayhem with impunity. Members of the Armed Forces would still owe allegiance to Her Majesty, but Parliament would have removed the power of enforcement, as, after all, service personnel do not have contracts of employment and so have no duties as employees. Their obligation is essentially a duty to obey lawful commands. The 2006 Act also provides for other important matters in relation to the Armed Forces, such as for their enlistment, pay and redress of complaints.

The continuation of the Armed Forces Act 2006 is essential for the maintenance of discipline wherever service personnel are serving in the world. Discipline in every sense is fundamental and underpins the existence of our Armed Forces as well as their success, whether that is in supporting emergency services and local communities at home, as demonstrated by the recent flooding in Yorkshire and other parts of the country; in protecting Britain's fishing fleet and industry, her waters as well as her shores; in actively safeguarding the world's main waterways and escorting ships to deter the scourge of modern piracy; in playing their part to counter terrorism or combat drug smuggling and people trafficking; in distributing vital humanitarian aid; in continuing the war on terror by assisting and building capacity with partner nations to defeat the likes of Daesh in Iraq and Syria, or Boko Haram in Nigeria; in maintaining our presence in the Baltic and northern Europe to strengthen Euro-Atlantic security; or in monitoring our sovereign airspace to identify any threatening presence.

In short, we owe the brave men and women of our Armed Forces a sound legal basis for them to continue to afford us their vital protection. I hope that noble Lords will support the draft continuation order, and I beg to move.

Lord Craig of Radley (CB): My Lords, I support this renewal of the Armed Forces Act. In previous debates on renewing the Act, I have taken the opportunity to raise the thorny issue of combat immunity and the failure of successive Administrations to provide clear statutory authority and legal guidance on how difficulties that arise are resolved and on how to avoid difficulties in future conflicts.

I and others have long forecast that such difficulties would arise from the incompatibility between the laws of armed conflict and human rights legislation. The ongoing ways in which human rights issues affecting the Armed Forces have been adjudicated have only added

to the problem. It took a considerable time, but the difficulties have been acknowledged by Governments. A variety of promises and even some tentative solutions have been aired, but there seem to be insoluble stumbling blocks. Progress has stalled, although I was interested to hear what the Minister has just said.

There is talk of providing for possible combat immunity if appropriate when conflict starts, but surely that is like a sticking plaster. It might cover the wound, but it will not stop the injury or a festering sore. Surely, we have seen enough examples of the problems that have arisen, whether in the course and aftermath of armed combat and military offensives or in the field of counterterrorism, as in Northern Ireland and Operation Banner there. We must demand resolution. Interestingly, a temporary fix to the Northern Ireland issue involving the Attorney-General was mooted in a weekend newspaper. What do the Government have in mind or was that just flying a kite?

The wider resolution should be to have pre-prepared statutory arrangements considered, thought out and enacted in peacetime so as to be ready to be applied immediately as necessary in conflict. Successive Defence Secretaries have expressed concern, along with their determination to put this right, so I am delighted to hear that a new Bill addressing the issue is on the stocks. Maybe the Minister will be able to give an update, or if not now, by a letter in the Library.

As I have pressed for before, whatever statutory solution is found, would it not best be incorporated into the Armed Forces Act to ensure that the incompatibilities between peacetime humanitarian law and those of armed conflict and the Geneva conventions are resolved, and future incompatibilities thus avoided? A target to do so might be by the next enactment of the Armed Forces Act.

Baroness Smith of Newnham (LD): My Lords, I welcome this statutory instrument which, as the Minister has pointed out, is a short but crucial piece of legislation. She has rightly highlighted the importance of our Armed Forces and the crucial role they play both in the United Kingdom and abroad, highlighted by their response to flooding, piracy, terrorism and challenges to fisheries. I realise that I might be going slightly beyond the remit of the legislation, but if we did not have any Armed Forces, they would not be able to do what I am about to ask. Might she be able to say a little about what the Armed Forces might be expected to do in the coming months and years?

We are now being asked to ensure that the Armed Forces can continue for a year. That is clearly important, but this is a year when we may, for example, see Parliament being prorogued. My one question is: given that the Minister said that the Armed Forces would essentially cease to exist if Parliament did not authorise their continuation, what would happen in the event that Parliament were prorogued at a time when such a statutory instrument was needed? Clearly, at the moment we are sitting and able to give our views, but this is an important issue for the longer term. I would be really interested to know to what extent the Government are assuming that the Armed Forces may be deployed domestically in the coming weeks and months. What provisions are in place for that?

Further, what do the Government have in mind for the integrated security and defence review? We were told that it was to take place ahead of the comprehensive spending review but that was all on the assumption that it was business as usual. However, the current situation is far from business as usual.

The Prime Minister has just announced that we should be suspending social contact, and, as far as possible, working from home. It is difficult to see how the Grand Committee could work from home. It is even more difficult to see how most of the Armed Forces could work from home. Obviously, civil servants and Ministers could work virtually when they are thinking about the integrated security review. Is that the plan or is there a possibility that the longer-term thinking about security and defence could be deferred so that Ministers and civil servants can give sufficient thought to what we might require? That is because what we might have expected to be the security challenges if we had been heading towards a review on 30 November 2019 will look quite different on 31 March this year. Are the Government thinking about any alternatives? However, we are obviously very supportive of this statutory instrument to make sure that the Armed Forces can continue at least for the next year.

Lord Tunnicliffe (Lab): My Lords, I too thank the Minister for introducing this continuation order. I think it is about the sixth or eighth time I have dealt with something like this order from these Benches. We tend to reflect on the Bill of Rights, and so on and so forth, and take a general view of the Armed Forces and how they are faring. But the order allows for the continuation of the Armed Forces Act 2006 and the service justice system, which I want to comment on in particular.

However, first I will say a few words about how the Armed Forces are working now. I lay no criticism at the feet of the men and women of the Armed Forces, and I join the Minister in praising them for what they do. My criticisms are, of course, about what the Government have done.

The Armed Forces represent some of this country's best of the best. Across the world, they work hard to liberate and keep civilians safe from terrorist organisations, serve on peacekeeping missions, and step in to provide humanitarian relief in the wake of hurricanes and other disasters. Therefore, Labour supports the Armed Forces Act (Continuation) Order. But we do not support the way the Government have been treating personnel and the recruitment process or providing housing to Armed Forces families over the last 10 years.

There has been an alarming downward trend in the number of personnel in the Armed Forces. In 2010, there were 102,000 regulars in the Army, 40,000 in the RAF and 35,500 in the Royal Navy. They are all substantially smaller now. The Army and the RAF have been cut by 25%, and the Navy is down nearly 20%. The trajectory is quite worrying: every single service has fallen over the last 10 years. It is no surprise that the Government have removed the 82,000 Regular Army personnel commitment from their manifesto. Will the integrated review set personnel targets like the 2015 SDSR?

[Lord Tunnicliffe]

The steady decline in satisfaction with service life is also a significant worry. The proportion of all personnel reporting satisfaction with service life in general was 60% in 2010. In 2019, it had fallen to 46%. Will the Minister set out what plans they have to improve morale and retention?

Labour remains concerned about the future accommodation model and the possibility that it may be used to push more personnel and their families into the private rented sector, with all the associated uncertainty and added cost. Research from the Army Families Federation has found a number of flaws in the information provided on the future accommodation model. Some 48% of respondents said they had received no information about it at all, with only 2% saying that they had received a great deal. We have not been updated on progress with the defence estate for more than a year. It is particularly urgent, given that troops will return from Afghanistan within 14 months, following the recent deal. Our troops and local communities need to be kept updated. Will the Minister update us on progress with the defence estate?

5.15 pm

Today's order renews the Armed Forces Act. This, in turn, is achieved through the renewal of the service justice system. The service justice system has been the subject of a review for several years—indeed, I would not have known about this if I had not researched it for this debate. The review is in three parts; the last part was delivered to the MoD in March 2019 and responded to in an MoD statement dated 27 February 2020. I shall quote part of that statement:

"The Service Justice System (SJS) review was carried out by HH Shaun Lyons, a retired senior Crown Court judge, who was supported by the former Chief Constable for Merseyside, Sir Jon Murphy. The review submitted 3 reports, part 1 on the need for the SJS and an overview of the system in March 2018 and a separate report on Service Policing, followed by part 2 on how the system can be improved in March 2019.

The Ministry of Defence welcomes the report from HH Lyons following his review of the SJS and is very grateful to him for his thorough and detailed examination of the SJS."

Later, the statement says, rather comfortably:

"The MoD welcomes HH Lyons' unequivocal endorsement of the continuing need for the SJS as the critical facilitator for discipline on operations which is key to operational effectiveness. The SJS supports and regulates disciplinary behaviour through the service offences set out in the Armed Forces Act 2006 and ensures wider criminal wrongdoing is dealt with.

The Review also found that the SJS was fair and the MOD agrees that the measures identified by the Review should be considered further to make the system more aligned with current practice in the civilian justice system."

However, further on the response states:

"The MOD believes that the SJS is a system capable of dealing with the most serious offences and should be able to continue to do so. It would not be appropriate to limit the jurisdiction of the Court Martial. Cases should be investigated and tried in the appropriate jurisdiction, civil or military, and the current legislation allows for this."

That is in direct contradiction to the report—at least, that is how I read it. Recommendation 1, in part 1 of the report, states:

"The Court Martial jurisdiction should no longer include murder, manslaughter and rape when these offences are committed in the UK, except when the consent of the Attorney General is given."

Recommendation 23, in part 2, states:

"Section 2 Sexual Offences Act 2003 (SOA) offences join Murder, Manslaughter and Rape as being cases that are tried in the CJS"

—the civil justice system—

"when they are committed within the UK. Section 3 3 SOA offences should continue to be dealt with in the SJS."

These offences carry very harsh, serious potential sentences. They are offences that, as I read out from the recommendation, are committed in the United Kingdom. We all believe that the civil justice system is the gold standard for trying serious cases. These cases are essentially civil crimes. Yes, all those civil crimes are put into the Armed Forces Act—but they are essentially civil crimes, and it is surely right to follow the recommendation of a former judge and a former chief constable. I would like the Minister to set out in some detail why this recommendation has been brushed aside.

Recommendation 4, in part 1, states:

"Court Martial Boards should consist of six lay members; verdicts should reach findings by unanimity or a majority of no less than 5:1; if a member is lost and the Board drops to five then unanimity is required; Boards should include OR5 Ranks (Chief Petty Officers and equivalent); in general discipline matters a Board need not be of single service composition."

Further recommendations are found in part 2. Recommendation 24 says:

"The qualified majority of five to one should be dealt with in a direction to the Board similar to that currently used for a simple majority. The Crown Court practice of two directions to the jury; first a unanimity direction and then a majority direction should not be followed."

Recommendation 25 is that:

"The Court Martial sits with both three-member and six-member boards and that the differentiation between the two levels of board should be on the basis of the sentencing powers of the boards. The three-member board should be limited to trying those cases where no defendant could be sentenced to more than two years imprisonment".

The response in the February statement is not exactly dismissive, but I will read it out and Members can decide for themselves:

"We are … considering the recommendations made on changes to the size and ranks available for Court Martial Boards and the move from a simple majority to the use of qualified majority verdicts."

The MoD has had nearly a year to consider these reports. Surely, such a simple requirement could have been determined by now and published reassuringly in this statement. The present situation is that if a serious case goes in front of a court martial, somebody can be sentenced to life imprisonment on the basis of a simple majority. That cannot be compatible with the standards of justice we expect in this country. In the year it has had these reports, why has the MoD not determined that this should be an objective? As the report points out, it could be done in an administrative order.

My final point is one I have raised before and not really got a satisfactory answer to. Where is the legal protection in the service justice system for a soldier who kills an enemy? It seems that that is an absolutely simple thing that, as a soldier, you would expect to be told: there is a law of the land that if you kill an enemy, you are protected in law. You almost certainly

are, because the Armed Forces have killed many enemies over the years, but that is a common-law basis. It is relatively rare that anybody is ordered to kill somebody—they normally lay down fire, drop bombs or whatever—but snipers have this particular duty. How can that individual be confident that he will not subsequently be prosecuted for murder, especially in view of so many actions these days taking place where war has not been declared? In particular, how can a member of the Special Forces who kills an enemy be sure that he will not subsequently be prosecuted?

Baroness Goldie: My Lords, I thank all noble Lords for their contributions, which have been very helpful. To some this might seem to be a routine and almost ritual debate, but underneath it are very important issues, as all contributors have indicated.

The points raised by the noble and gallant Lord, Lord Craig of Radley, were interestingly echoed by the noble Lord, Lord Tunnicliffe, in his final point. These are very important issues. Your Lordships will be aware that the Government have been concerned about the position in which members of our Armed Forces find themselves placed when in a situation of conflict. They take action that they deem to be proportionate and necessary, yet they have not been sure that they can return home without recriminations following, which might be either criminal law prosecution or civil law action for damages. The Government take that backdrop very seriously because when we ask men and women to undertake service in the name of the country, and frankly to expose themselves to situations and do things that many of us are not required to do, we are asking a very great deal of them. The least we can do is try to reassure our service men and women that when they act in the interest and under the orders of our national direction, we value what they are doing and we wish to try to protect them.

Your Lordships will be aware that last year we carried out an extensive consultation on overseas operations focused on three proposed measures that the Government want to take: a statutory presumption against prosecution; a proposal to consider the creation of a new partial defence to murder; and a proposal to restrict the court's discretion to extend the normal time limit for bringing civil claims for personal injury and/or death in relation to historical events outside the United Kingdom. I am pleased to inform your Lordships that the Government will very shortly introduce a legislative package to ensure that our service personnel and veterans have access to the legal protections that they deserve. That legislation will build on the consultation held last summer on proposed legal protections and measures for our Armed Forces personnel and veterans who have served in operations outside the United Kingdom.

The noble and gallant Lord, Lord Craig of Radley, specifically raised the issue of Northern Ireland. That will be dealt with in a separate Bill—a Stormont Bill—which will seek to replicate the same types of protections that we are trying to achieve. I hope that reassures your Lordships that something is likely to come before Parliament imminently.

Lord Craig of Radley: Just to be absolutely clear in my own mind, are we talking about legislation? The noble Baroness has talked about giving the Armed Forces assurances, but I think she just said that there will be legislation. I want to make sure that we will legislate and that this is not just about assurance.

Baroness Goldie: I can reassure the noble and gallant Lord that, yes, I said that we will introduce a legislative package and that is what we will do. The legislation has been drafted and will imminently come before Parliament. As I say, I hope that that offers reassurance.

The noble Baroness, Lady Smith of Newnham, raised a number of very interesting points. She specifically asked what will happen if Parliament is prorogued when, for example, an SI might be needed to renew the operation of our Armed Forces. We are dealing with extraordinary circumstances, the extent and impact of which are probably not yet quantifiable. There is an assumption that Parliament will sit. There is a recognition that the parliamentary process, particularly in a time of crisis, is extremely important. I want to reassure her that every effort will be made to ensure that the parliamentary process can continue in one form or another. She is absolutely right to say that there are consequences to Parliament being prorogued which could be very grave, and therefore every effort will be made to ensure that, whatever legislation is required for essential purposes, some mechanism will be found to make sure that that is addressed.

The noble Baroness also asked about the current pressures on the MoD, particularly in relation to the Covid-19 pandemic. I assure her that arrangements are in place for Defence to provide support to civil authorities if requested. We are working hard to identify where we can best provide support. At this time, there are no immediate plans for any large-scale deployments of the military to assist with public services, but we do stand ready to assist if requested to by other government departments. It goes without saying that we will continue to maintain the delivery of our key operations and outputs, such as the continuous at-sea deterrent and overseas operations.

5.30 pm

The noble Baroness also raised the matter of the integrated review and whether that might be subject to interruption or delay, because of the current situation. She will understand that the entire focus of the Government, in concert with all government departments and with the benefit of medical and scientific advisers, is on dealing with the current crisis in the country, and that has to be paramount. It is impossible to say whether it will impact on other aspects of government business. What we all understand is that we want and expect the focus of Government at this critical time to be on dealing with what is essentially a crisis for the country. That is what the Government are currently focusing on.

The noble Lord, Lord Tunnicliffe, raised a number of interesting points. He referred to the service justice review report. If I understood him correctly, he is concerned about the continuing jurisdiction of the court martial for certain crimes. He wondered if it would not be preferable to deal with these matters under the civil justice system. I wish to assure him on two counts. First, there is no evidence to suggest that defendants dealt with in the service justice system are

[Baroness Goldie]
not treated as well as they would be in the civil justice system. We recognise that there are areas in which we can do better. We are committed to making the service justice system more effective and efficient to provide a better service to those who use it, particularly victims and witnesses.

Lord Tunnicliffe: Can I address that point? These are not my conclusions. A High Court judge and a chief constable, working for the Government, have produced a report basically saying that it is not appropriate for these crimes to be tried by court martial because they are so serious. Surely if one is accused of murder, going in front of a civil court where the "beyond reasonable doubt" concept is reinforced by either a unanimous or significant majority jury decision is different from a military court where at the moment a guilty verdict in such a case could come about through a simple majority where one number is one greater than the other.

Baroness Goldie: I was coming to the point that is of concern to the noble Lord on the issue of which system of prosecution is used. As we say in our response to the review, we will adopt the alternative approach identified in the review of assessing the prosecutors protocol and relevant supporting documents to ensure that they support the principle that the service justice system should deal only with those cases where there are good reasons for doing so. In other words, cases will ordinarily be tried in the civilian system unless there are good reasons why they should be tried in the service justice system. The main principle in deciding who has primacy is whether the offence has any civilian context, especially a civilian victim.

The other aspect of the review which the noble Lord raised was recommendation 4. He had a number of questions about that, such as the five-to-one qualified majority. He asked why the MoD has had this report for over a year and yet still has not come to a decision on these recommendations. Again, I reassure him that we have been working with our stakeholders on all aspects of the review. Some of the changes will require primary legislation, so we must wait for an appropriate opportunity to deal with them. We are considering these matters for the next Armed Forces Bill, which must be passed by Parliament before the end of next year. I hope that has gone some way towards reassuring the noble Lord that matters are under consideration.

The noble Lord also raised the issue of recruitment. My understanding is that the recent Army recruitment figures contain some rather encouraging information which suggests that there has been a marked increase in uptake on investigating the Army as a career. However, the noble Lord is right that getting the application figures up is only part of it; retention is another major issue which the Government are well aware of. Everything is being done to ensure that if applicants are successful and subsequently recruited, they will be given a career prospect which is conducive to their wanting to remain in the Army.

The noble Lord is absolutely correct about the very important matter of accommodation, which is connected to this. An attractive and affordable accommodation offer helps to deliver military capability and contributes to attracting and retaining service personnel. He may be aware that the MoD has developed the future accommodation model to improve choice about where, with whom and how service personnel choose to live, reflecting modern family life with entitlement based on need, not rank. We very much hope that this model, which is being piloted at HM Naval Base Clyde, Aldershot Garrison and RAF Wittering—the latter from 31 May—will provide productive examples of what works and what does not. I can reassure him that efforts are being made to look at providing accommodation suitable to modern living; he is quite right that we should give reasons to people who join the Armed Forces why they should stay.

Lord Tunnicliffe: Before the Minister continues, perhaps I may record my concern about her answers. The MoD commissioned a report using the best people available. As far as I can see, the recommendations of that report will not come before Parliament unless a particular recommendation suits the Government and they bring it forward for primary legislation. The failure to act on the recommendations, as far as I can see, will not come into the public domain unless I find some way of raising it in Parliament in the future.

Baroness Goldie: I am sorry if I have failed to reassure the noble Lord. I have tried to cover the points he raised. I will certainly look at *Hansard* to see whether there is any more detailed information which I can provide for him. Any government review is always the subject of scrutiny by such vigilant observers as the noble Lord. It is always available to parliamentarians to look at what a review says and, where subsequent legislative proposals may not seem to reflect that, it is the right of parliamentarians to raise that with Government. I have tried to reassure him that the Armed Forces Bill will cover certain aspects of the matters he has raised, but I will look at *Hansard* and, if there are any areas where I can provide further information, I shall undertake to do so.

I am very grateful for the debate we have had. I have already moved the order and hope the Committee will agree that it should be passed.

Motion agreed.

Civil Liability (Information Requirements) and Risk Transformation (Amendment) Regulations 2020

Considered in Grand Committee

5.40 pm

Moved by ***Lord Parkinson of Whitley Bay***

That the Grand Committee do consider the Civil Liability (Information Requirements) and Risk Transformation (Amendment) Regulations 2020

Relevant document: 6th Report from the Secondary Legislation Scrutiny Committee

Lord Parkinson of Whitley Bay (Con): My Lords, the regulations before the Committee serve two important functions. First, they set out information reporting

requirements for motor insurers, which will allow Her Majesty's Treasury to evaluate the benefits to consumers from the reforms set out in the Civil Liability Act 2018. Secondly, they make a technical fix to the Risk Transformation Regulations 2017 to clarify an ambiguity concerning the nature of qualified investors in transactions in insurance-linked securities.

I begin by outlining the information reporting requirements under the Civil Liability Act, which constitute Part 2 of the instrument. The Civil Liability Act 2018 established a new compensation and claims system for whiplash injuries and introduced a new process for calculating the personal injury discount rate. These changes were expected to result in savings for insurers and lead to lower motor insurance premiums for consumers.

Indeed, when the Act was introduced, the Association of British Insurers published a letter from its members, comprising 86% of the ABI's motor and liability insurance businesses, in which it publicly committed to passing any savings from the reforms on to consumers. During the passage of the Civil Liability Act, noble Lords tabled an amendment intended to hold insurers to account for this commitment. This instrument flows from that. It obliges insurers to provide data that will allow the Treasury to report back to Parliament on whether motor insurers have passed on any cost benefits arising from the Act.

Insurers that issue 100,000 or more private motor insurance policies annually—these make up over 95% of the UK market—will be required to provide a one-off data submission to the Financial Conduct Authority showing their costs and premiums for the three years from April 2020. They will also be required to calculate counterfactual figures, demonstrating what their costs and premiums would have been had the Act not been implemented. The data must be accompanied by a statement from a qualified auditor verifying that it meets the standards set out in the regulations. Insurers may also provide relevant supplementary information to explain any figures provided. The Financial Conduct Authority will review and aggregate the data before passing it on to the Treasury. A report assessing the extent of any savings and whether these were passed on to consumers will be laid before Parliament after 1 April 2024.

The reporting requirements themselves have been designed to allow the Treasury to make a reasoned assessment of the Civil Liability Act's impact on motor insurance premiums, while not imposing a disproportionate regulatory burden on insurers. As such, they have been developed in close consultation with the Financial Conduct Authority and industry representatives.

I draw your Lordships' attention to the fact that the Secondary Legislation Scrutiny Committee described this instrument as an "instrument of interest" in its report of 26 February. I see that my noble friend Lord Hodgson of Astley Abbotts is in his place. The report notes that the date by which the Treasury must submit its final report before Parliament will be up to seven years from when the Civil Liability Act received Royal Assent, and that a tighter reporting timescale would have been preferable. I must beg to differ on that.

First, it is important to note that the Act's reforms were not put into effect immediately upon Royal Assent. Indeed, they will be fully implemented only later this year, with the whiplash reforms set to come into force in August. Secondly, the Government believe that the three-year reporting period and subsequent time for data processing are proportionate, allow for a thorough assessment of changes to costs and premiums over time, and avoid placing unnecessary burden on the industry and the regulator. The reporting requirements themselves have been designed to provide the Treasury with sufficiently robust data to make an accurate evaluation of the impact of the Civil Liability Act on motor insurance premiums while minimising the regulatory burden placed on insurers.

Part 3 of the instrument amends the UK's regulatory framework for insurance-linked securities. The Risk Transformation Regulations 2017 set in law a tax and regulatory regime designed to enable the UK to become an attractive jurisdiction in which to domicile insurance-linked securities special purpose vehicles. Insurance-linked securities allow insurers to transfer risk to capital markets with their value being linked to an insured loss event.

5.45 pm

Insurance-linked securities are complex investments. Regulation 11 of the 2017 regulations provides that only institutional or sophisticated investors can be offered insurance-linked securities in the UK. Regulation 157 prohibits offering insurance-linked securities to the public and Regulation 158 provides that an offer to the public includes any section of the public. These regulations, when read with the relevant case law, can be interpreted as including some qualified investors within the scope of prohibiting offers to the public. This was never the intention behind the legislation, and they generate unwelcome uncertainty for those looking to establish insurance-linked securities vehicles in the UK. The Government consider it important to remove any perceived ambiguity and clarify that insurance-linked securities most certainly can be offered to qualified investors. This was the intention when the regulations were passed.

The regulations before the Committee amend the 2017 regulations to clarify that the definition of an offer to the public does not include an offer made solely to qualified investors. This will put beyond doubt that insurance-linked securities can be offered to qualified investors. Removing this ambiguity in the 2017 regulations will provide increased legal certainty to those offering such products. We are not proposing to widen the legislation beyond what was initially intended and the prohibition on offering securities to retail investors will remain.

The global market for insurance-linked securities is significant in size, and growing. The Government are committed to ensuring that the UK framework attracts new forms of capital to the London insurance market, and that London remains at the forefront of global financial innovation. For that to happen, it is important that this legislation be clear and consistent.

To recap in summary, the Civil Liability Act reporting requirements will allow the Treasury to report to your Lordships' House and to the other place about the

[Lord Parkinson of Whitley Bay]
effect on consumers of the Civil Liability Act reforms and the technical amendment to the risk transformation regulations will ensure that insurance-linked securities transactions can be offered with greater certainty in the UK. I beg to move.

Lord Hodgson of Astley Abbotts (Con): My Lords, I congratulate my noble friend on his clear exposition on quite a technical matter. I think that this is the first time I have participated in a debate where he is on the Front Bench—in the pound seat, so to speak—and we look forward to hearing his summary after we have raised our questions.

As I did earlier, I declare an interest as the chairman of the SLSC, whose report is included in the papers my noble friend referred to, but I am now speaking in my own capacity, not as the chairman or indeed for any member of that committee. I am speaking because I took a considerable interest in the proceedings on the Civil Liability Bill as it then was, now the Civil Liability Act. On several occasions, the noble Baroness, Lady Kramer, and I, along with many others, laboured long into the night to get what I thought was a pretty good cross-party consensus as to the right way forward.

I was glad to do that because I was very supportive of the policy behind the Act; it sought to bring fairness to a very complex area that is also highly emotionally charged. When people suffer life-changing injuries, they and their families are inevitably extremely upset, as anyone would be because one's life has been completely wrecked. It is important to keep their position in mind, but we also had to remember that not all our fellow citizens are saints and there are people who might be inclined to push the envelope rather, so we had to make sure that their position was balanced.

There are essentially three interested parties in these cases: on the one hand is the injured party—or at least the allegedly injured person—while on the other are the other insured persons in the class covered. That is because this is not a risk-free, cost-free change. If insurance companies pay out on policies on which proper damages should not be paid, the costs fall in part on the other people in the insured class. For those Members of your Lordships' House who are of a greater age than my noble friend on the Front Bench, it is of course insured drivers aged over 60 who pay a particularly heavy premium on these things. Finally, there are the insurance companies, which have to satisfy their shareholders of a reasonable degree of profitability. As was hinted at in my noble friend's exposition, they are the least popular of the three parties.

I have two specific areas of concern about this to record with my noble friend. First is the way the discount rate applicable to sums awarded for personal injuries is calculated and set forward. This is a technical matter. If you are awarded a lump sum to look after your terrible injuries, it is not dead money; it will earn a return. The difficult issue is therefore to decide what rate should be applied to the sum to make sure it is fair to all parties. The Ogden rate, as it is called, is set by the Lord Chancellor, now the Secretary of State for Justice.

Consequential changes from changes in the rate are huge, and politicians are therefore understandably fearful. From 2001 to 2015, the Ogden rate was unchanged at 2.5%. In 2001 it was perfectly fair, but by 2015 it was patently unfair. The level of interest rates meant that you were quite unable to earn the return of 2.5% on the lump sum awarded to you. That was terribly unfair and wrong to people looking to it to look after their injuries incurred at work, on the road or wherever. In that latter year, the then Secretary of State for Justice suddenly, with a jerk on the tiller, moved the discount rate from 2.5% to minus 0.75%. That meant that the NHS had to find another £9 billion to compensate for the injuries expected actuarially out of its doing business; £9 billion was suddenly hoovered up and had to be put aside.

Such swings are clearly very unhelpful and the whole area needs more frequent reviews. It was not a matter of cross-party dispute; we all agreed that it needed a proper procedure. It needed a proper procedure also to provide the Ministers having to take this difficult decision—the Secretary of State for Justice, the Lord Chancellor—with some air cover. We needed a procedure so that every so often we had to go through the whole routine and ramifications of it and come up with an answer. That would then provide the Secretary of State for Justice, the Lord Chancellor, with a rationale for making a decision, instead of having to do it out of the blue on their own.

As a result of the final shape of the Act, the procedure was put in place and went to work. The Ministry of Justice guided the market as it would be, between 0% and 1% when the first review took place—but it never happened. It went to the Treasury, and when it came back another 1% had been taken off it, so all the work we had done—the way we had achieved cross-party consensus, not only in this building politically but externally with industry and all the interested parties—was set at naught. That seems a terrible waste and a terrible mistake, because once politicians of any party have to get involved in this, the numbers are so great that they are terrified and will not make a change, and we get into the position in which we found ourselves in the past.

If not this afternoon, perhaps my noble friend could illuminate people at the Committee today, such as my noble friend Lady Kramer—I think I can call her "my noble friend" on this matter—on some of the ways the Government reached the sudden decision not to accept the number recommended by the Committee. That is the first question.

The second question relates to the Civil Liability Act and the soft-tissue whiplash injuries. As my noble friend will be aware, this is not a medical condition that lends itself to easy diagnosis. People with malice aforethought can therefore ride the system. I discovered that at Runcorn railway station. I chair a company at Runcorn. I arrived there and took a taxi—a 10-minute ride—to the place where the company meets. The driver and I talked about whiplash. He said, "Oh, yes, it's called cash for crash." I said, "How does it work?" He said, "It's quite simple. Four or five people—maybe half a dozen—buy a banger for 150 quid and they arrange to crash it into a taxi." I asked, "Why do they crash into

a taxi?" He replied, "Oh, because they know it will be insured, otherwise the local authority would not give them a licence. They also know that if we make too much of a fuss and complain, we may not get our licence renewed by the local authority, because we are seen not to be helpful to people who have been injured." This is the other side of a situation where some people have terrible injuries: there are people who have been gaming the system in a terrible way.

It was clear that if the proposals under the Act were brought into effect there would be substantial savings. The question was where those savings would fall. As my noble friend Lord Parkinson pointed out, appropriately, there was a concern that too much would end up with the shareholders of insurance companies. My committee made the point about the time, and my noble friend has rebutted that by saying, "Of course, we haven't been able to begin collecting the data till August 2020." The Act took effect on 1 January 2019, so we will have had a year and a half. It is important from the point of view of how insurance companies present themselves that they should be able to show that they are clean-handed. By March 2025, when the report comes out, we will be eight years on from when this was a big issue. It is only fair that where people have done their stuff in the industry, they should be able to say so and show it in slightly less than seven years.

Perhaps I may raise one last technical question about the way in which these savings are going to be shown. It is about periodical payment orders. One does not have to be awarded all the money in a lump sum. One can be awarded it on a PPO, as it is called, where one gets an amount of money every month, every quarter or every year depending on one's circumstances. I have always felt that to be a sensible way to proceed. If you have a terrible crash at 25, the doctor will examine you and say, "I think you're probably going to die when you're 45". Therefore, the sum awarded to you by the court is for 20 years. You may be unlucky and die at 45, but you may be lucky and live on. That means that if you live to 50 or 55, the end of your life will be lived in much reduced financial circumstances because your award will have run out.

PPOs are an important way forward, but they are not liked by insurance companies because they cannot put a pink ribbon around the file and say, "We have paid out our £1 million, £2 million"—or whatever the number is—"and it is done." They are left with this tail of having to pay out so much every week, month, quarter or whatever and will therefore have to allow for that, and account for it, in how they set up their financial statements. There is therefore a bit of a temptation to push people towards a nice lump sum. The awful reality is that, if you say, "Here's 5 million quid, or here is what seems a smaller sum on a monthly basis", people will say, "Oh, I'll take the big number because it looks good". When we look at the way in which the calculations are done, to show how insurance companies have made the savings—and shared them—I hope that there will be no implicit bias in how they are drawn up to make it less likely that people can get periodical payment orders.

Before I close, could I go completely off-piste? We know about insurance companies being unpopular, so I want to ask my noble friend a Covid-19 question. I quite understand he probably will not be able to reply, but it would be helpful if I could put it on the record now. He might then be able to reply to me and the other members of the Committee shortly.

6 pm

I need to declare an interest, because a company in which I have a very small investment—but I am not a director of or anything—has brought this to my attention. This company is in the daycare and nurseries sector. It has taken out pandemic insurance, because it is a small but growing company and thought it a sensible thing to do. On its insurance policy, there is a list of specified diseases. There are 45 of them in alphabetical order, running from acute encephalitis to yellow fever; along the way, in the middle, there is plague and relapsing fever. It has now been told—or the rumour is that it is going to be told—that because Covid-19 is not listed, its policy is vitiated. I doubt if one person in 1,000 had heard of Covid-19 six months ago. This company is now faced with having no business interruption insurance as a result of Covid-19, because of the way the policy is being interpreted.

There are 27,000 nursery providers, providing over 1 million places. I am told that about 10,000 of them are single-proprietor operators—single units. They will certainly not have the financial strength to withstand interruption of business, if their insurance policy does not prove of value. This is the childcare sector; I am sure there are tens of other sectors in the same position. I accept I have pinned this quite unfairly on to this debate today. However, this is a matter of extreme urgency. If we go into lockdown later this week, as we may do for quite understandable reasons, which I am not arguing with, it will get more urgent still. I hope that when my noble friend goes back to the ministry, he will see what he can do to clarify this position.

The insurance industry began by saying: "We are highly solvent, and highly able to pay claims". Then, gradually, the message slightly shifted and became: "Are you sure that you insured yourself sufficiently and properly?" That carries some very difficult messages and implications for small businesses, which face these unprecedented conditions. I accept that my noble friend will not be briefed on this issue but, with our nation facing these difficulties, it is sufficiently important for him to be aware of and know something about it.

Baroness Kramer (LD): My Lords, it is a delight to follow the noble Lord, Lord Hodgson of Astley Abbotts, because I could probably just say, "I agree with Lord Hodgson", and sit down. I want to welcome the noble Lord, Lord Parkinson, to his new role, as this is my first opportunity to do so. He is getting to meet the geeks; he has several of them here in the Room today. I am afraid we are going to be part of his future.

I know that the last point the noble Lord, Lord Hodgson, made on coronavirus does not apply to this SI, but it underscores the significance of looking at the resilience of our insurance industry. Thanks to our success in being a hub for international insurance, an awful lot of liabilities are carried in the UK as a

[Baroness Kramer]

consequence of business done well outside the UK. The resilience of this sector will be absolutely critical to overall financial stability. I wish the Minister well in trying to work his way through what will be a very sensitive and difficult process. As the noble Lord, Lord Hodgson, has reminded us, it will impact not just at the macro scale; it will come down to sectors, businesses and small and large employers, which will be impacted.

In the many hours—all late at night, for reasons I can never quite remember—when we put together the Civil Liability Act, much of my focus was on trying to determine a way to deliver a personal injury discount rate that made some sort of sense. On the rate in play prior to the Act, I think someone had probably decided in 2001 what a sensible number to use was, and then looked around for a reference rate that would provide it. It was related to the yield in gilts at that point, as I remember.

Lord Hodgson of Astley Abbotts: It was the Wells v Wells case, in which the noble and learned Lord, Lord Hope of Craighead, was involved—the noble Baroness may recall that he interrupted us several times on it. That is how it was set; it was linked to the index-linked gilt rate.

Baroness Kramer: Of course, as the years went by it became evident that it no longer made sense. If I remember right—if I am wrong, the noble Lord, Lord Hodgson, will correct me—the way in which the lump sum is calculated is that award is made on an estimate of the length of time the individual will live, and the degree of injury and cost that will be consequent over that time. Therefore, the discount rate is the mechanism for bringing it back to a number which creates the lump sum. Even a very minor variation in that number creates a very different lump sum.

As we and the Treasury hunted around, it became impossible to find a reference rate that would work for all purposes: hence the move to say that the Lord Chancellor should make that decision, but with the advice of an expert panel. The expert panel was seen as an important part of it because there were so many changing and subjective elements that, in a constantly changing set of economies, would undoubtedly have play. All we were certain of was that 2.5%, the old rate, was not right and that minus 0.75%, which as I remember was the result of the Treasury finally going back and looking at its reference rate using the same methodology as in 2001, was obviously complete nonsense. It assumed that if you had a lump sum and were going to invest it, you would, first, do so on a risk-free basis and, secondly, look at such a narrow range of instruments into which to invest it that you would get only negative yield. None of us could think that even the most incompetent financial adviser would suggest investing money in that way, when there were plenty of secure ways. Even putting it into a bank savings account with a guarantee on it would have yielded far more, so it was clearly all wrong.

What has distressed all of us—I join the noble Lord, Lord Hodgson, in this—is that the advice of that expert panel was not taken. It was overridden, and instead of a number somewhere between 0% and 1%, which gave a lot of discretion to the Lord Chancellor, we ended up with minus 0.25%. That was not as bad as the minus 0.75%, which is obviously devastating as a discount rate, giving you a huge lump sum as a consequence. But it was still a number that most people felt could be justified only by someone looking at an ultra-conservative, unrealistically constrained investment strategy of that lump sum which would have to, as it were, deliver over the remaining life of the individual who had been injured.

We were all very concerned not to disadvantage someone who was being given a proper award for injuries they had sustained. That was never the purpose. Nor was it the purpose to be unfair in the way we treated insurance companies—less because we all love insurance companies and very much more because we know the cost is passed on. We heard a great deal from those who spoke up for young drivers, who often carry the highest premiums and, as a consequence of the original assessment of minus 0.75%, were going to see huge increases to their annual premiums, perhaps as high as £75 a year added on to the premium. We all knew that was completely inappropriate.

I ask the Minister as part of this—even though it is not within the language of the statutory instrument itself—to go back and try to understand why the recommendations of the expert panel were set aside. It seems we have never heard a sufficient explanation as to why it happened. If the expert panel is not going to be the answer, it seems we have to go back and look at some other system that everybody can rely on and have faith in.

As for the SI itself, I join the noble Lord, Lord Hodgson, in thinking, "Come on, guys—2025?" We are all slightly cynical and would like assurance a lot earlier that the revenue accrued, as a consequence of the change, is being passed through to the customer. That was an assurance given to us by the industry. I know that many of us who spoke up in favour of finding a new way to provide a personal injury discount rate did so only because we had that absolute assurance from the industry: that the money would be a pass-through and not a further distribution to shareholders.

I have no problem with the more technical aspects of this SI. It is just a good lesson that statutory instruments drafted in haste nearly always need to be changed sometime within the following 18 months. This is an introduction to that for this Minister. I am sure we will meet again around the table, changing statutory instruments—I seem to spend a large part of my life doing that. I thank again the noble Lord, Lord Hodgson, who covered all the issues. I support anything he said.

Lord Tunnicliffe (Lab): My Lords, I take it from conversation that this is the Minister's first appearance; I congratulate him on that. As he can now appreciate, Treasury SIs are somewhat intimate affairs. I thank the noble Lord, Lord Hodgson, and the noble Baroness, Lady Kramer, for their interesting speeches. Having done most bits of Treasury legislation over the last 10 years, I managed—uniquely—to dodge the bullet on this one and therefore was not part of these late-night parties, so my comments will be rather narrower.

We support this measure. Indeed, Part 2 deals with some of the concerns raised during the passage of the 2018 Act. I am generally not one for being overtly political, but I say to Ministers that exercises such as this should influence the Government's approach to primary legislation. There may now be a large majority in the Commons. However, members of the Opposition and outside organisations will continue to offer sensible suggestions as legislation goes through Parliament. Rather than resisting amendments and having to introduce changes later on, Ministers would be better advised to engage on key issues and ultimately pass better legislation.

Following the passage of the 2018 Act, this instrument seeks to ensure that insurers pass on to consumers any savings generated from the changing calculation of the personal discount rate. This is achieved by requiring insurance firms to provide figures on their premiums, as well as the total value of claims, to the FCA.

In the Commons, the honourable member for Oxford East, Anneliese Dodds, asked the Minister what would happen to firms if they chose not to comply with the directive. That was an eventuality she deemed realistic, given that the Government have decided to legislate rather than pursue this informally. In his response, the Economic Secretary to the Treasury asserted that both the FCA and the Competition and Markets Authority already have the relevant powers in this scenario. I hope the Minister can confirm where such powers reside, so consumer groups can be reassured.

6.15 pm

The Minister will be aware that this instrument was flagged as being of interest to the House by the Secondary Legislation Scrutiny Committee. In its sixth report of the Session, it noted that data does not have to be submitted until October 2023, with the Treasury's number-crunching only resulting in a parliamentary report before 31 March 2025. I cannot think of many other examples of Parliament being expected to wait seven years to assess the outcome of what is, in the grand scheme of things, straightforward legislation.

Part 3 of the measure, as the Minister has already explained, amends the Risk Transformation Regulations 2017 to tighten them up. The change is welcome, and I understand that the Minister provided some reassurance over the terminology used.

As I said before, we do not oppose this instrument, but I repeat that it is unfortunate the Government did not choose to take on board suggestions made by the Opposition and NGOs back in 2018.

Lord Parkinson of Whitley Bay: I am grateful to noble Lords for their words of welcome. It is a privilege to be intimate among the geeks, as the noble Baroness, Lady Kramer, said. This debate has illustrated the rigorous approach that your Lordships' House brings to legislation, including where it can be improved post facto. It was also helpful that in all their speeches, noble Lords referred to striking the important balance between providing help to people who have suffered an unpleasant accident and fairness to those who must bear the cost, which is what this boils down to fundamentally.

My noble friend Lord Hodgson and the noble Baroness, Lady Kramer, asked about the discount rate and how it is calculated. The current rate is, as was touched on, minus 0.25% as of August 2019, using calculations set out in the Civil Liability Act. That was set by the Lord Chancellor at the time, David Gauke, who had the benefit of expert advice and reached his decision on the rate, having taken this analysis and the requirements of the Act into account. He was assured that this was the fairest outcome for the claimants. That included expert advice from the Government Actuary's Department. Moving forward, an expert panel will be convened to review the rate. As the noble Baroness, Lady Kramer, said, panels such as that can form an important part of the process as we move forward.

Baroness Kramer: It might help the Minister to know that 0% to 1% was the recommendation of the Government Actuary's Department.

Lord Parkinson of Whitley Bay: I am grateful. Not having had the benefit of being here during the passage of the 2018 Act, I am not as au fait with it as other noble Lords.

My noble friend Lord Hodgson and the noble Lord, Lord Tunnicliffe, both touched on the gap between the Act receiving Royal Assent and the Treasury reporting back. There are some good reasons which contribute to the time period. The Treasury believes that the reporting period of three financial years is an appropriate time period to make a thorough assessment of insurers' costs and premiums, following reforms instigated by the 2018 Act, and to observe any trends which emerge over time. After the reporting period, firms will have six months to complete their actuarial and audit processes and to submit their data to the FCA. The FCA will then have six months to review and aggregate the data before passing it on to the Treasury to complete its evaluation.

We are confident that each stage of the reporting process has been allocated a fair and proportionate amount of time given the level of data processing and analysis required, but of course the report represents just one way in which the Treasury continues to ensure that the insurance market is working well for insurers and consumers alike. I can assure noble Lords that our objective of ensuring good consumer outcomes will be as relevant in 2025 as it was when the Act was passed.

My noble friend Lord Hodgson raised periodical payment orders, or PPOs. These are and will continue to be used in those cases where they are an appropriate remedy, but they are not suitable in all cases and the discount rate addresses this fact.

My noble friend also asked about coronavirus. I will certainly take away the points he has raised and discuss them in more detail, as he suggested would be useful. I can say to him and other noble Lords that the Government understand people's concerns about insurance cover in respect of coronavirus and are in close daily dialogue with the insurance sector, which I hope covers firms such as that which he mentioned, as well as with the Financial Conduct Authority and the Prudential Regulation Authority. In these difficult times, we encourage insurance companies to do everything

[Lord Parkinson of Whitley Bay]
they can to support other businesses and ensure open conversations with their clients. Government will continue that dialogue. Of course, the potential implications of Covid-19 for the wider UK economy and the economic response were addressed by my right honourable friend the Chancellor in his Budget Statement. We stand ready with a series of measures to support the public health response and the economy. These include financial support for small businesses in difficulty, which may be of some consolation to my noble friend's company.

The noble Lord, Lord Tunnicliffe, followed up an issue raised in the other place by his honourable friend: how we can make sure that insurers comply with the requirement and the penalties for non-compliance. The penalties are included in the Financial Services and Markets Act 2000. Section 11 of the Civil Liability Act makes the necessary changes to that Act, empowering the FCA to use its full suite of supervisory and enforcement powers to bring about compliance with the requirements of these regulations. I shall consult *Hansard* afterwards. If there are any other issues which I have missed, I shall certainly undertake to follow them up with the small but select group of noble Lords who are here.

The regulations will allow the Treasury and in turn Parliament to assess whether the cost benefits of the Civil Liability Act reforms have been passed on to motor insurance customers, and they will make a technical fix—which I am grateful to noble Lords for recognising—to the Risk Transformation Regulations 2017 to make it clear that insurance-linked securities can be offered to qualified investors. I therefore commend the regulations.

Motion agreed.

Committee adjourned at 6.24 pm.

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