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In Hybrid sittings, [V] after a Member's name indicates that they contributed by video call.

The following abbreviations are used to show a Member's 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

Wednesday 18 November 2020

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Salisbury.

Arrangement of Business

Announcement

12.06 pm

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, respecting social distancing, and others are participating remotely, but all Members will be treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

Death of a Member: Lord Stoddart of Swindon

Announcement

12.06 pm

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): My Lords, I regret to inform the House of the death of the noble Lord, Lord Stoddart of Swindon, on Saturday 14 November. On behalf of the House, I extend our condolences to the noble Lord's family and friends.

Arrangement of Business

Announcement

12.07 pm

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): My Lords, Oral Questions will now commence. Please can those asking supplementary questions keep them no longer than 30 seconds and confined to two points, and I ask that Ministers' answers are also brief.

Asylum Seekers: Croatia and Bosnia-Herzegovina

Question

12.07 pm

Asked by ***Baroness Helic***

To ask Her Majesty's Government what assessment they have made of reports about the treatment of migrants and asylum seekers at the border of Croatia and Bosnia-Herzegovina; and what representations they plan to make to the government of Croatia about such reports.

Lord Parkinson of Whitley Bay (Con): My Lords, we regularly engage with Croatia, its neighbours and other international partners on challenges posed by irregular and illegal migration. We are committed to the principle that asylum seekers are entitled to decent, humane and fair treatment. We remain concerned about allegations of mistreatment of people at the border. Our embassy in Zagreb has raised these allegations with senior representatives and the offices of the president and the Government, highlighting the recommendation of the Croatian ombudswoman for an independent investigation.

Baroness Helic (Con) [V]: I thank my noble friend for his Answer. It is appalling to see migrants shifted like cattle from Italy to Slovenia to Croatia, where alleged systemic violence and abuse by the Croatian border police eventually pushes them out of the EU into Bosnia. It is a vital national interest to work with the EU member states to ensure that migrants and asylum seekers are treated humanely, but, most of all, to address the root causes of the migration crisis. With that in mind, does my noble friend agree that it would be utterly counterproductive to water down our commitment to spend 0.7% of GNI on development assistance? If other countries follow the UK's example, we could see a race to the bottom in reducing development aid that will lead only to more desperate refugees on the move and more illegal migration.

Lord Parkinson of Whitley Bay (Con): My noble friend was absolutely right to set out at the beginning that people must be treated as human beings and with respect and dignity at all stages; that is something that Her Majesty's Government reinforce forcefully. On her point about aid, we are also very generous. We have provided £500,000 through our own Conflict, Stability and Security Fund to support communities and authorities in Bosnia-Herzegovina hosting migrants and refugees.

Lord Dubs (Lab) [V]: My Lords, the Minister has referred to the abuses of refugees and migrants on the Croatian border. Will the Government make representations to the European Commission, which has been using a small fund to keep under surveillance abuses at the border—a fund to which we contributed when we were a member of the EU? Will we please raise this issue internationally, as widely as possible? These abuses are quite shocking.

Lord Parkinson of Whitley Bay (Con): Yes, my Lords, we make these representations both bilaterally with the countries involved and through multilateral organisations—not just the EU but the International Organization for Migration, the UNHCR and other fora. The European Commission and the European Parliament are both taking an increasingly involved approach to this issue, which is welcome. Indeed, as part of the Croatian EU presidency in the first half of this year, there was a ministerial conference on the challenges of illegal migration, which is important in this regard.

Lord Blencathra (Con): Surely these appalling allegations show that the flow of illegal immigration across the European continent is certainly not good for the migrants concerned, nor the countries through which they pass. Does my noble friend agree that it shows the wisdom of the Government's policy of seeking to deter and discourage such illegal movement in the first place and trying to deal with the problem closer to home?

Lord Parkinson of Whitley Bay (Con): My noble friend is entirely right. That is why Her Majesty's Government have a whole-of-route approach, working, as he says, to deter people from making these dangerous and unnecessary journeys in the first place, and making sure that our protection is targeted at those people who most need it in areas of conflict.

Baroness Northover (LD): My Lords, what assistance, including protection against violence and family planning, is being provided for women and girls, who are particularly vulnerable in these circumstances? Will the UK have access to EU information on human traffickers who exploit such migrants after 31 December?

Lord Parkinson of Whitley Bay (Con): My Lords, we work with the UNFPA and the International Organization for Migration on just these issues, and we have seen some positive results from that work. Our aid is now helping 55 public health centres in Bosnia and Herzegovina, and more than 600 service providers, decision-makers and leaders from civil society.

Baroness Warsi (Con) [V]: My Lords, could my noble friend inform the House of the Government's understanding of the Bosnian Government's capability and capacity to support migrants who have been turned into a political football by Italy, Slovenia and Croatia? What impact is such behaviour by EU states breaching their legal obligations towards refugees having on the political stability of Bosnia-Herzegovina?

Lord Parkinson of Whitley Bay (Con): My noble friend is right—as I said, we want people to be treated with the respect and dignity that should be accorded to our fellow humans, not as political footballs, as she says. Along with our other international partners, the UK has urged Bosnian politicians to work together to address these challenges. We are working with the authorities in Bosnia and Herzegovina, providing £500,000 of aid through the Conflict, Stability and Security Fund, and engaging at all levels, including with the Minister of Security in Bosnia and Herzegovina.

Viscount Waverley (CB) [V]: My Lords, what additional endeavour can we apply to win the peace by creating an environment so as to stem the flow of those in need, given that much of the inward immigrant flow is as a direct—and indirect, in the case of sanctions—consequence of western intervention? In addressing the question in hand, should the UK lead by example by not being overly critical of the humanitarian challenges at the Croatia-Bosnia-Herzegovina border when we draw censure in reacting to the situation in the channel?

Lord Parkinson of Whitley Bay (Con): My Lords, the noble Viscount is right: we need to address these problems at source. That is why schemes such as our vulnerable persons relocation scheme are working in areas of conflict to try to make sure that our help and protection is offered to those who need it, and to deter people from making dangerous journeys, whether that is across the European continent or, as he says, across the English Channel.

Lord Collins of Highbury (Lab): My Lords, can I return to the issue that the Minister raised in his original response, about an independent assessment of these claims? The UNCHR is backing this. In raising this with the Croatian Government, what sort of response have the Government received and how are we pursuing this matter?

Lord Parkinson of Whitley Bay (Con): My Lords, the noble Lord is absolutely right to talk about the work of the UN special rapporteurs, which followed the arrest of two Croatian police officers this summer. The UN has urged the country to immediately and thoroughly investigate these allegations, and we have been impressing this on the Croatian authorities at every level as well, to reinforce that important point.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, in 2016, Amnesty International found that the British people were the second most welcoming of refugees in the world, with 83% saying they would welcome them in their household and neighbourhood. Does the Minister think the British people are deeply concerned about reports of the abuses on the Croatia-Bosnia-Herzegovina border? Does he not think that people want the Government to do more to secure safe, orderly routes for some of these refugees to come to the UK?

Lord Parkinson of Whitley Bay (Con): My Lords, yes, I think the British people do take great concern at the reports we have seen, and we have seen that in questions from all corners of your Lordships' House today. This is a matter of human dignity. That is a point that Her Majesty's Government are making to the Croatian Government and others, and we are working with international organisations to reinforce that.

Lord Randall of Uxbridge (Con) [V]: Does my noble friend agree that these border tensions only increase the serious problems of gender-based violence and human trafficking? What can Her Majesty's Government do to assist with this problem at the moment?

Lord Parkinson of Whitley Bay (Con): My noble friend is entirely right, and I commend his work in this area. Our work in countering gender-based violence in Bosnia and Herzegovina and more widely has had a significant impact. We have seen positive improvements, for instance, in the collection of evidence, the protection of witnesses, providing safe spaces for people to testify and making sure that survivors and victims are treated with the respect that they deserve.

Lord Touhig (Lab) [V]: My Lords, across Europe, including in Britain, unaccompanied migrant children are being abused and trafficked, and are self-harming. A year ago, the Committee of Ministers of the Council of Europe agreed that member states should ensure they provide effective care for unaccompanied children. British Ministers were at that meeting. Can the Minister tell the House what the Government are doing to protect these children in the United Kingdom?

Lord Parkinson of Whitley Bay (Con): My Lords, we are working to ensure the safety and dignity of migrants of every age—we had discussions on asylum-seeking children as part of the immigration Bill, which we debated recently in your Lordships' House—work that we are continuing on our own and through international organisations, such as those I have mentioned.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): My Lords, the time allowed for this Question has elapsed. We now come to the second Oral Question.

COP 26

Question

12.17 pm

Asked by ***Baroness Boycott***

To ask Her Majesty's Government, further to the response by Lord Callanan on 20 October (HL Deb, col 1414), what plans they have for the campaigns taking place before COP 26 relating to behaviour change and the environment.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): In preparation for COP 26, the Cabinet Office set up a dedicated engagement team to facilitate engagement with businesses, wider civil society, cities and regions on COP 26. The brand, Together for Our Planet, was unveiled this month, marking the milestone of one year to COP 26. Many people from all over the UK are already doing their bit on climate change. The Together for Our Planet campaign will inspire more to join them.

Baroness Boycott (CB) [V]: I thank the Minister very much for that reply, but I would like to press a bit more for some details. Some 62% of the emission cuts needed to reach net zero require societal or behavioural change, so I would really like to know what areas this initiative will cover. Have the Government done any assessments of the areas likely to have the most impact? For example, will one of them be related to diet and, in particular, to a reduction of meat and dairy intake, which was recommended by the climate change committee? Of course, these are really ambitious proposals, which we are all very grateful for, but can the Minister tell me whether we have a big enough budget in order to deliver them over the course of the next 12 months?

Lord Callanan (Con): The noble Baroness makes some valid points, but, as I am sure she is aware, all campaign spend will be released in line with the usual Cabinet Office spend data publications. The idea of the campaign is to work through partnerships where possible, but further support may be needed working with other groups, and we will endeavour to take the campaign forward in as many different areas as possible.

Lord Lilley (Con): My Lords, I refer to my interests in the register. Before your Lordships' House is submerged in a tsunami of uncosted virtue signalling, can the Minister confirm that zero carbon will cost trillions of pounds? In the privacy of this Chamber, may I raise the politics of this? The further north you go, the cooler it is and the higher people's heating bills are. People's incomes are lower, so more is absorbed by energy costs and more jobs depend on energy. If they are less receptive to campaigns telling them to become vegetarians, ride bikes and forgo foreign holidays while being unable to sell their cars in 10 years' time, will this help retain the blue-wall seats?

Lord Callanan (Con): I thank my noble friend for his question; I know he takes a close interest in these matters. The important thing to do is to convince people across the country that there are an awful lot of jobs riding on this as well, and that pursuing green initiatives, as we are doing with the 10-point plan that was announced today, will enable thousands of jobs to be created in many of the communities that he is talking about.

Lord Bird (CB): My Lords, I am really pleased to hear that we are tying the green issue into the problems of today, with possibly 1.5 million people unemployed. I would like to see the Government grasp this moment and expand completely the green job market. That is the most practical thing we can do. The other practical thing we should do is convince most people that plastic and rubbish and the general environment that we live in need to be bought into by everybody, so we need much more vigorous education. We need schools to teach our children from the very beginning that we are in this perilous world, and it is all to do with nature. I agree with the noble Lord, Lord Lilley, that there are too many tick-boxing, simple things that do not really change people's consciousness.

Lord Callanan (Con): The noble Lord, then, will have welcomed our announcement today that will generate the tens of thousands of jobs to which he refers. The idea of the campaign, of course, is to try to educate and change behaviour.

Lord Reid of Cardowan (Lab): My Lords, will the Minister not accept that the Prime Minister's new 10-point plan is not a plan but a wish list of future developments based on undeveloped technology? It is not new, because it is largely recycled commitments and resources. Will he confirm that the actual new, additional amount is £4 billion—not £12 billion—which does not begin to address the scale of the problem and does not bear comparison with our colleagues in France, Germany and elsewhere?

Lord Callanan (Con): I am not sure that the noble Lord is being entirely fair with his critique of the announcement. Many of the initiatives are based on new and existing technologies. We are building on many of the initiatives that we already have going, for instance the green homes grants system, which is proving so successful and popular and is building on an existing scheme. I think that noble Lords in many parts of the House would accept that we should go further on things such as hydrogen and elsewhere.

Baroness Sheehan (LD): My Lords, the catastrophes of climate change are already with us. We need urgent action and must pull all available levers to stop putting

[Baroness Sheehan]
even more greenhouse gases into the atmosphere. Will the Minister say why proven, here-today technologies, such as solar PV and onshore wind, have been ignored altogether in the 10-point plan?

Lord Callanan (Con): Solar PV has made immense progress in this country and we are looking to see how we can build on that further. Onshore wind has, of course, been controversial in some cases, but with existing turbines it has proved to be successful. The main gains to be made, however, are through offshore wind, the costs of which have fallen dramatically.

Lord Grantchester (Lab): My Lords, under the Paris Agreement, the nationally determined contributions outlining the UK's commitment to reduce greenhouse gas emissions have focused on announcements to end the sale of new diesel and petrol cars by 2030. However, can the Minister explain how the scatter-gun approach of the 10-point plan will lead to effective behavioural change without a comprehensive transport strategy within an overall energy White Paper—both of which have yet to be published?

Lord Callanan (Con): Well, the energy White Paper is forthcoming shortly; the noble Lord will have to have a little bit of patience on that. I think we have a Private Notice Question on the 10-point plan tomorrow, so that might be a more appropriate time to debate these matters.

The Earl of Caithness (Con): My Lords, in order to obtain behavioural change, people need to understand what the problem is and how it should be tackled. Is the Minister aware of the recent survey that showed that more than 50% of Britons still do not understand recycling labels, despite some of them having been in existence for nearly 40 years?

Lord Callanan (Con): My noble friend makes a very good point. I struggle to understand some of the labels myself, and have to look up the table to find out what has to go where—so his point is well made.

The Lord Bishop of Salisbury: My Lords, Ban Ki-moon, then General Secretary of the UN, said that the Paris climate change talks were the largest and most complex talks he had ever been part of. Some 12,000 people were in the discussions, with another nearly 50,000 gathered around them. What steps are the Government taking to ratchet up the engagement of the faith communities and other NGOs around the climate change talks that will take place in Glasgow, and what steps are they taking to strengthen the diplomatic efforts to make the talks more successful?

Lord Callanan (Con): There is a huge diplomatic effort ongoing with all parts of the world to try to ensure the maximum success of those talks. I am sure that we will be very keen to involve faith communities and others in the run-up to the summit.

Baroness Blackstone (Ind Lab): My Lords, Article 12 of the Paris Agreement says that signatories must

"co-operate in taking measures … to enhance climate change education … public awareness … participation and … access to information".

What action have the Government taken, in particular with the Department for Education, to fulfil this, and to ensure that all signatories will have acted on it before COP 26 in Glasgow later next year?

Lord Callanan (Con): That is the purpose of the campaign that we discussed earlier, and the Department for Education is fully on board with all of these campaigns.

Lord Teverson (LD) [V]: My Lords, the success of COP 26 is absolutely vital for the reputation of this country. One of the ways in which we could, perhaps, reinforce those efforts is by using parliamentarians to help get the message out, abroad and at home, of how important this conference is, and to help make it a success. We have almost 1,500 parliamentarians, but I do not see the Government trying to involve us. The majority of us believe that climate change is a crisis and that we need to solve it. How are parliamentarians going to be involved in the process of making COP 26 a success?

Lord Callanan (Con): I am sorry if the noble Lord does not feel involved in the campaign, but parliamentarians, alongside members of the public, are all very welcome to get involved in all of these campaigns, because they require all of us to work together to achieve our aims.

Lord Lucas (Con) [V]: My Lords, as the original Question said, at the root of this there is a need to change our behaviours. Can the Minister tell me more about the Government's plans to help us spend more of our holidays within the United Kingdom, rather than flying abroad? Much of our hospitality infrastructure has been gathering dust, to put it mildly, over the past 50 years as people have got used to Mediterranean and further-afield holidays. I am sure that the Government could find constructive ways to rapidly improve the level of our domestic tourism offering and ways of promoting it to our people.

Lord Callanan (Con): My noble friend is tempting me on to dangerous ground with this question. I agree with him that it would be great if more people took their holidays using some of the excellent facilities that are provided for in this country. Of course, however, people should also be free to go on foreign holidays if they wish to do so. One of the purposes of the plan is to see how we can spend more on areas such as decarbonising jet fuel so that aeroplanes in the future will not be so polluting. Hopefully, when we get to our ambitious targets, people will be able to take advantage of excellent holidays either in the UK or, if they wish to do so, abroad.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): My Lords, all supplementary questions have now been asked and we shall now move on to the next Question.

Cross-Government Policy to Strengthen Families

Question

12.29 pm

Asked by ***Lord Farmer***

To ask Her Majesty's Government whether a Cabinet-level minister has been appointed to coordinate cross-Government policy to strengthen families; and if so, (1) who is that minister, (2) when they were appointed, and (3) what policies they have coordinated to date.

Baroness Penn (Con): My Lords, families have a critical role in caring for and educating their children. The right honourable Gavin Williamson has therefore been asked to drive forward family policy. He aims to use this role to protect vulnerable children and give children the best start in life. To work towards this, the Government have announced £2.5 million to research and develop best practice on how best to integrate family services and support vulnerable children.

Lord Farmer (Con) [V]: I thank the Minister for her Answer and for its clarity. Our high levels of family breakdown require a strategic approach to strengthening families and therefore cross-government policy co-ordination. My review on strengthening female offenders' family relationships required several departments to work together to implement recommendations. Co-ordination requires resource. The Cabinet-level family lead is modelled on the Equalities Minister. Will that family lead therefore have a dedicated budget and Civil Service team per the Government Equalities Office?

Baroness Penn (Con): My Lords, the Government are grateful to my noble friend for his work in this area. He is of course correct that the Government's policy on families requires co-ordination and resource. That is why the Prime Minister has entrusted the family policy brief to the Secretary of State for Education to reflect the need for cross-government collaboration on this issue. On resources, I reassure my noble friend that they are there from investment in free childcare and early education to the troubled families and reducing parental conflict programmes, and of course our commitment to the family hub model, where next month we will start the procurement for research and development of best practice on the integration of services for families.

Lord Polak (Con): A Question about the centrality of the family gives me my first opportunity in this House to pay tribute to my noble teacher, the extraordinary man and leader, Rabbi Lord Sacks. Zichrono livracha—may his memory be for a blessing. His death is a huge loss to us all. He wrote and spoke extensively on spiritual and family issues. Does the Minister agree with the sentiments written by Lord Sacks in his book *Faith in The Future*? He wrote:

"It is within the family that the three great ethical concerns arise: welfare, or the care of dependents; education, or the handing on of accumulated wisdom to the next generation; and ecology, or concern with the fate of the world after our own lifetime."

Baroness Penn (Con): I take the opportunity to agree wholeheartedly with the sentiments expressed by my noble friend and indeed with those written by Lord Sacks. Indeed, as he said in another of his works:

"If we care about the common good, the cohesion of society and the support it gives to individuals, the family must be at the very heart of our concern."

Baroness Deech (CB) [V]: I associate myself with those remarks. If the late and much-missed Lord Sacks were here, he would have spoken out about the huge financial and emotional costs of family breakdown and the rising divorce rate reported this morning. We have a real crisis now of children and money amid fears that the system will collapse under the huge weight of cases and lack of legal aid. Will the Minister heed the recommendations of the Family Solutions Group report *What About Me?* It highlighted the need to reduce aggressive litigation over money after divorce, which it said harms children's welfare, by progressing the reform of our financial provision law to make it focus on support for children, less expensive and in line with nearly every other European country.

Baroness Penn (Con): My Lords, I will certainly go away and look at the findings of that report. Of course, the Government have introduced no-fault divorces to try to reduce conflict through that process and make it more constructive, particularly with regard to the position of children in those circumstances.

Lord Anderson of Swansea (Lab): My Lords, as the much-lamented Lord Sacks would have said, family, as broadly defined, is the bedrock of society. Will the Minister say that all Ministries, particularly the Treasury in terms of fiscal policy, should be at the forefront of promoting families? Will the Government consider relevant initiatives, such as attaching a family impact assessment to each Bill?

Baroness Penn (Con): My Lords, I agree wholeheartedly that support for family policy is a cross-government endeavour. I think the noble Lord will know that within government we have the family test, which is a resource that policymakers can use to ensure that the needs of families are considered at the heart of policy-making.

Lord Greaves (LD) [V]: My Lords, the noble Baroness, Lady Deech, referred to the state of crisis in many families, and that has been dramatically worsened for very many families during this year as a result of the Covid crisis. The Government's reaction and policies on Covid have tended to rely on three pillars: medical, economic and educational policy. Is it not now time to put much more emphasis on social policy, and in particular on the health, welfare and well-being of families of all kinds and their members of all ages?

Baroness Penn (Con): My Lords, the Government have put a huge amount of support into health policy during this crisis and policy to support the well-being of families. That has included additional support towards mental health, making sure that social services have the resources they need to continue their important work during this time and ensuring that both schools and early years settings have the resources they need to provide support to children and young people.

Lord McColl of Dulwich (Con) [V]: My Lords, I, too, endorse the comments made about the late Lord Sacks. What a wonderful man he was. Will the Minister say how the Government plan to help parents whose children's development has been negatively impacted by the recent closure of nurseries and schools, as evidenced in Ofsted's national inspection report?

Baroness Penn (Con): My Lords, the key thing has been to keep vulnerable children and young people in school or to get them back to school if they did not go there during the first lockdown. We kept those settings open for children, and the vast majority of children are back, but we are encouraging schools to reach out to parents who have not returned their children and to provide them with reassurance if they have concerns. We have also provided the catch-up fund, worth £1 billion, to include tutoring for disadvantaged pupils and £9 million specifically towards improving the language skills of reception-age children who need the most support.

Lord Watson of Invergowrie (Lab): My Lords, the Minister may have seen research by Action for Children that was published in September and showed that the pandemic caused financial pressures on more than one-third of all families due to the associated additional household costs of having the whole family at home full time. The Government's reluctant U-turn, which has produced the continuation of holiday activities and the food fund until May next year, was welcome. However, it was an admission that disadvantaged families indeed need additional support during school holidays. What assessment have the Government made of the number of families that were pushed further into poverty as the result of the Government's determination not to give free school meals during the recent October half-term holiday—a decision I am absolutely certain Lord Sacks would not have approved of?

Baroness Penn (Con): My Lords, as the noble Lord has recognised, the Government have taken action by introducing the Covid winter grant scheme for this winter holiday and then the holiday activities and food scheme. However, that is not the limit of the Government's support to the most vulnerable families during the period of this pandemic. We have increased universal credit by £20 a week and the value of local housing allowance, which is £9 billion more welfare into the system. The analysis shows that those on the lowest incomes have received the most government help as a proportion of their incomes because that is where our concern lies during this pandemic.

Baroness Butler-Sloss (CB) [V]: May I ask the Minister to ensure there are sufficient resources to give appropriate help to children in households where there is conflict between the parents, both for counselling and for mental health support?

Baroness Penn (Con): My Lords, I can reassure the noble and learned Baroness that the Government are putting in place this kind of support. We have put in place the Wellbeing for Education Return programme, which is backed by £8 million to support staff working in schools and colleges when responding to the additional pressures some children and young people may be facing during the pandemic, including spending time at home, where conflict may have been higher. We know that parental conflict is difficult for all involved, and that is why the Department for Work and Pensions has a £2.7 million fund to increase support for disadvantaged families at risk of parental conflict.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): My Lords, I regret that the time allowed for this Question has elapsed.

Covid-19: Conflicts of Interest

Question

12.40 pm

Asked by ***Lord Scriven***

To ask Her Majesty's Government what assessment they made of conflicts of interest before engaging specialist advisers to inform their response to the COVID-19 pandemic.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, in our nation's time of need we have been very fortunate to call on the talents of many, including colleagues old and new, some paid and some unpaid. Appointments are considered on merit and, when required, we ask candidates to declare any interests. We assess these on a case-by-case basis, but declaring an interest is not always a barrier to being appointed. There are, however, robust processes in place to manage any conflict. These ensure that no one gains unfairly from advising the Government.

Lord Scriven (LD): My Lords, can the Minister give a logical reason why a company with no history of supplying PPE that is introduced by a special adviser can be passed from a Minister's office, be fast-tracked and be 10 times more successful in getting a contract to supply PPE—which sometimes cannot be used because it does not meet the standards—than a company with a solid track record of supplying PPE that has no access to a special adviser or Minister?

Lord Bethell (Con): My Lords, we are enormously grateful for the very many people who stepped forward to offer help during this time. When the Prime Minister made his public call for help, 16,500 people contacted us with various offers. It was, of course, necessary to triage and prioritise that huge list. In that list there were a great many people who had extensive experience in their area; there were people who were new to the game; there were have-a-go heroes; there were multinational companies. There were also those whose intentions were not as pure as one would hope. We approached each and every one on their merit, and there were official guidelines to guide the procurement processes. We have stuck to those guidelines every step of the way.

Lord Harris of Haringey (Lab): Yesterday the Minister said that he had personally made 300 calls to potential suppliers of PPE earlier this year. Not surprisingly, given the report from the National Audit Office today, which the *Daily Mail* described as devastating, he did not tell us how the lucky recipients of all his calls were

chosen. Could the Minister tell us whether one of those calls was to the jewellery designer Michael Saiger, based in Miami, who received more £200 million in contracts from the Minister's department, paying £21 million to a Spanish fixer? How did Mr Saiger and his jewellery come to the attention of the department? Why were major British companies with well-established global supply chains, which offered to help, ignored?

Lord Bethell (Con): My Lords, I am grateful to the noble Lord for referring to my calls. I would have made a lot more than 300 calls then, because those were extremely difficult times. I would remind him that the NAO report says that we found Ministers had properly declared their interests, and we found no evidence of their involvement in procurement decisions or contract management. Ministers were not involved in procurement decisions; they facilitated the introduction of potential suppliers at a time when there was a massive global crisis. Supplies to this country were being abducted by other countries, supply chains had broken down, the channel tunnel was constrained and the Indian transport system had ground to a halt. Presidents were literally diverting planes in the air with supplies meant for one country and grabbing them for their own. In those circumstances, Ministers and their advisers intervened to get the right supplies to the front line to help those seeking PPE. Those were extremely energetic efforts. I am extremely proud of that work. Procurement decisions were left to civil servants.

Baroness Jolly (LD) [V]: My Lords, Ministers have many opportunities to meet a wide range of individuals and organisations in the course of their work, and they have to declare their interests. Is it the department's HR department or its Ministers who are responsible for ensuring that spads understand both their role and their boundaries, and that they stay within them?

Lord Bethell (Con): My Lords, there is a very clear code for special advisers. They have line management through the Secretary of State and often on to Downing Street. The role of spads during the pandemic has been exceptional. I pay tribute to the large number of spads who made a huge difference, and I am very proud of the work that they have done.

Lord Robathan (Con): My Lords, I have a certain sense of déjà vu, since this is almost exactly the same question that was asked yesterday, so I will try not to be repetitive. I know my noble friend is, like me, grateful to those who came forward and freely, pro bono, gave their time, expertise and experience to assist in this terrible crisis. I know he will also, like me, share the view that some people are grubbing around, looking for any dirt they can sling that will deter good public-spirited people from coming forward in future. I have one specific question: could the Minister tell me how long, typically, a procurement process would last if you are looking to get PPE through the Civil Service procurement procedures?

Lord Bethell (Con): My Lords, my noble friend makes a very good point. I cannot tell him how long it would typically take but I can tell him that if everything went as smoothly as possible, 25 days is the absolute minimum that a procurement process could take. That is why, on 18 March, new guidelines for procurement were put in place. The PPE team converted those into a very diligent eight-step process, the effectiveness of which the NAO has paid tribute to. We have put in place exactly the kind of reasonable processes necessary to respond to a pandemic like this, resulting in the purchase of billions of items of PPE to protect those on the front line of our healthcare.

Lord Berkeley of Knighton (CB) [V]: My Lords, I do not discount the many problems the Minister has talked about, but the displeasure—disgust, even—of the public often arises as a result of the National Audit Office uncovering information reactively, for example. What we need is a more proactive lookout for these problems, either in the Cabinet or the Cabinet Office. If the Minister says it is there, I would suggest that the National Audit Office is saying that it does not work very well.

Lord Bethell (Con): My Lords, I am not sure that that is what the National Audit Office has said. It has, very reasonably, alighted on the importance of transparency and the declaration of interests, values that any reasonable Minister or public servant would subscribe to. The Cabinet Office itself has played a very energetic role during the entire pandemic, providing the systems, support and people, including contract staff, to make sure those values are upheld.

Baroness Thornton (Lab): May I just say to the noble Lord, Lord Robathan, that we supported the Government having the emergency powers to allow them to act quickly but it is also important, even if people are giving their services for free, that they are held properly accountable.

It is rare to be able to return to a question that one feels was unanswered the day before. I asked the Minister if George Pascoe-Watson, the chair of the lobbying company Portland Communications, had signed a confidentiality agreement upon his appointment as a ministerial adviser. I would be grateful if the Minister could specifically answer that question: did George Pascoe-Watson sign a confidentiality agreement when he was appointed? Presumably, that is on the public record. Would the Minister also inform the House if he or any of his officials have had any contact, by any means of communication, with Mr Pascoe-Watson or anyone else at Portland Communications since the *Sunday Times* published its story online on Saturday evening?

Lord Bethell (Con): My Lords, the very large number of advisers, both paid and unpaid, were all processed by the department and their paperwork was then handed on to the Cabinet Office for approval. George Pascoe-Watson, as others, was sent both a declaration of interest form, which he filled in and is on record, and a volunteer agreement, which has the Official Secrets Act built into it. His work was covered by that.

Baroness Smith of Newnham (LD) [V]: My Lords, could the Minister tell the House whether the Government's anti-corruption champion, John Penrose

[Baroness Smith of Newnham]
MP, has been involved in looking at any conflicts of interest or whether he is in danger of having a conflict of interest himself?

Lord Bethell (Con): I am not aware of him being involved in the work to which the noble Baroness refers.

Lord Empey (UUP) [V]: My Lords, does my noble friend not accept that the arrival of battalions of advisers, both paid and unpaid, causes confusion within departments about the chain of command? Does he also agree that, as a general principle, the arrival of so many advisers in the Civil Service downgrades the role of the Permanent Secretary as the principal adviser to the Secretary of State?

Lord Bethell (Con): The noble Lord asks a reasonable question about the management of staff in an epidemic such as this. He is right that these were extremely confusing times that put a huge amount of pressure on civil servants and all those who contributed to our response. I am enormously grateful to civil servants for their work, in particular Sir Chris Wormald, our Permanent Secretary—he played an absolute blinder and is one of the top civil servants of his class—and David Williams, the Second Permanent Secretary of our department. Both were absolutely fantastic.

I am grateful to all who stepped forward, not just at a senior level—from noble Lords who worked with us to people who worked at other levels of our response. It made a huge impact. The arrival of military advisers, consultants, volunteers and business advisers lifted the spirits of the whole organisation and brought with it networks of expertise and energy, which saw a huge amount of collaboration. When I hear a debate such as this and the tone that is sometimes represented in the Chamber, I do not recognise the incredible spirit of energy and collaboration that characterised our response to the pandemic. I cannot help repeating myself: it is something that I am extremely proud of.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): My Lords, the time allowed for this Question has elapsed. I apologise to the three noble Lords who were unable to ask their supplementary questions.

12.53 pm

Sitting suspended.

Continuity Trade Agreements: Parliamentary Scrutiny

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Tuesday 17 November.

"In under two years, the UK Government have signed or agreed in principle trade agreements with 52 countries that account for £142 billion of UK bilateral trade. That accounts for 74% of the value of trade with non-European Union countries that we set out to secure agreements with at the start of the trade continuity programme. Since the transition period began, we have expanded the ambition of our programme above and beyond that original scope. In November we signed an enhanced deal with Japan, accounting for £30 billion of UK trade in 2019, and we expect to make significant progress in securing further deals before the end of the transition period. We believe that this is the largest set of parallel trade negotiations ever conducted by any country.

Parliamentary scrutiny is central to our continuity negotiations. All signed agreements would be subject to the statutory scrutiny process as set out in the Constitutional Reform and Governance Act 2010, providing a guaranteed period for Parliament to scrutinise and debate these agreements. Indeed, Parliament has held debates on six of our signed continuity agreements, and not one of those debates has carried a negative resolution. Further, we have voluntarily published parliamentary reports alongside all continuity agreements, explaining any differences from the predecessor EU agreements. I am pleased to see that our approach to scrutiny was praised in a recent report by the House of Lords EU International Agreements Sub-Committee, *Treaty Scrutiny: Working Practices*.

As we approach the end of the transition period, it is possible that the scrutiny window for remaining agreements will extend beyond 1 January into the new year. That means that we may need to use provisional application for a short period, in order to guarantee continuity of trade relationships and avoid any cliff edges. I thank the right honourable lady for her two letters on the subject to the Secretary of State last week. Provisional application is a well-established and widely used mechanism to give effect to treaties while domestic ratification procedures continue in parallel. Many EU trade agreements were or are being provisionally applied, including the Comprehensive Economic and Trade Agreement with Canada and the agreements with Ukraine and with the Caribbean Forum. I remind the right honourable lady that those EU agreements have already been comprehensively scrutinised at EU level and by this Parliament. In fact, the Government published a technical note in Parliament last year setting out our assessment of provisional application and the circumstances in which it might be used.

We will always take the time necessary to negotiate the right deals. Any agreement we sign must benefit British consumers and businesses, preserve our high food standards and protect the NHS, and they must share wealth across all our nations and regions as part of our levelling-up agenda. We look forward to submitting further continuity FTAs to Parliament for scrutiny once signed, and we welcome further debates on our independent trade policy."

1.01 pm

Lord Stevenson of Balmacara (Lab) [V]: My Lords, in the Commons, the Minister stated that parliamentary scrutiny was central to the ongoing continuity FTA rollovers. That was good to hear. He also said that nearly half these treaties will be agreed under the provisional agreement mechanism, which excludes parliamentary debate before the FTA is implemented. That is not so good. We have the opportunity to put things right when the Trade Bill returns to your Lordships' House in early December. Will the noble Lord the

Minister agree to continue our discussions to see if we can formalise a protocol for scrutiny, building on his good work in ensuring that the International Agreements Sub-Committee of this House has the papers and information it needs to carry out its valuable work?

The Minister of State, Department for Business, Energy and Industrial Strategy and Department for International Trade (Lord Grimstone of Boscobel) (Con): My Lords, I welcome the constructive exchanges which the noble Lord and I have had on this matter. We have a mutual interest in ensuring that Parliament is able to carry out its scrutiny processes effectively. I look forward to continuing our debate on this important topic during Report on the Trade Bill.

Lord Purvis of Tweed (LD): My Lords, the Government's statement on the potential benefits of the Japan agreement indicated growth of £15 billion. Any reasonable observer would have assumed that that meant growth of £15 billion for the British economy. As the impact assessment has shown, only 17.2%—£2.6 billion of exports—is UK growth. A massive 79.9%—£13 billion—is growth in Japanese exports to the UK. Scrutiny of any trade agreement must be full and allow Parliament a proper vote at the outset and at the end. I welcome the ongoing cross-party discussions with the Minister. Will he consider the amendment I have tabled to the Trade Bill, arguing the case for Parliament to have a vote on the agreement, as the Japanese Diet has done?

Lord Grimstone of Boscobel (Con): My Lords, I always consider carefully the points made by the noble Lord. Cheaper imports to the UK benefit the UK economy, so the FTA is not entirely one-sided. I agree that Parliament has to have the information available to allow its scrutiny processes to work effectively.

Baroness Hayman (CB) [V]: My Lords, I declare my interests as set out in the register. The scrutiny arrangements in the Trade Bill make no reference whatsoever to climate change or the environment, either in the economic impact assessments or in other reporting mechanisms. Yet the Government's green recovery plan today shows how a green industrial revolution is essential and how much the future economic health of the UK will depend on success in these areas. Will the Minister look positively at how we can continue our discussions and amend the Trade Bill to include parliamentary scrutiny of these vital issues?

Lord Grimstone of Boscobel (Con): The noble Baroness makes a good point. It is important that the impact assessments that we produce for each of these agreements cover these matters fully. If Parliament has this information, our debates can be more comprehensive and effective. As she says, these are extremely important matters.

Lord Lansley (Con) [V]: My Lords, I am a member of the International Agreements Sub-Committee. It is our job to report to this House on these continuity trade agreements. On 3 November, Ministers signed the agreement with Kenya which will come into force on 1 January. We have not yet seen the text of this agreement. If it is a copy and paste, why not share it immediately? If it involves new commitments, does not Parliament especially need to scrutinise them? When will we see it? How are we to conduct parliamentary scrutiny before it comes into force? If we do not, is this not unsatisfactory?

Lord Grimstone of Boscobel (Con): I pay tribute to the work done by the IAC. It is a very effective mechanism. My noble friend referred specifically to the Kenya agreement. Agreement in principle has been reached but some loose ends are still being tied up with the Kenyan authorities. As soon as the agreement is signed, it will follow the normal processes and there will be full parliamentary scrutiny allowed.

The Earl of Kinnoull (Non-Afl): My Lords, I thank the Minister for his and the Government's courteous engagement with the International Agreements Sub-Committee over the UK-Japan free trade agreement. The report will be published very shortly, in the coming days. My question is on the same theme as those of others who have spoken. Do the Government reaffirm the commitments, statements and aspirations contained in the DIT Command Paper of February 2019 on free trade agreements?

Lord Grimstone of Boscobel (Con): I thank the noble Earl for his comments about the Japan free trade agreement. Like other Members of this House, I am looking forward to our debate on it in a couple of weeks' time. We are following the spirit—if not the letter—of the Command Paper to which he refers.

Lord Alton of Liverpool (CB): My Lords, in the House of Commons yesterday the Trade Minister, Greg Hands MP, said:

"We are negotiating better market access in markets such as ... China".—[*Official Report*, Commons, 17/11/20; col. 196.]

Today Bob Rae, Canada's ambassador to the United Nations, has called on the UN to investigate the horrors being perpetrated in Xinjiang. Some 180 human rights groups say that many of the world's biggest fashion brands and retailers, along with suppliers of PPE to the United Kingdom, and companies such as Huawei and Volkswagen are complicit in the forced labour and human rights violations of millions of Uighur people in Xinjiang. Atrocities include torture, forced separation and the compulsory sterilisation of Uighur women. Is it a case of business as usual, or does the Minister believe that, where allegations of crimes against humanity or genocide are made, these should have consequences for trade with China? Will he therefore accept the amendment on genocide that I have tabled to the Trade Bill?

Lord Grimstone of Boscobel (Con): The noble Lord always speaks on this topic with both expertise and passion. We understand the importance that noble Lords attach to these matters. The Government are studying them actively and carefully.

Viscount Trenchard (Con): My Lords, it is good that the Government have confirmed that we have the bandwidth to conclude the agreement with Canada in short order. Can the Minister confirm that his department is at the same time discussing with Canada that country's

[Viscount Trenchard]
approach to our possible accession to CPTPP, and can he give a date by which the Government intend to notify CPTPP formally of our intention to accede? Can he confirm that there will be an opportunity to debate our accession before it is applied for?

Lord Grimstone of Boscobel (Con): My noble friend recognises, as I do, the importance of reaching an agreement with Canada. Of course, the agreements that we will reach with Canada, those we hope to reach with Australia and New Zealand and the agreement we have reached with Japan are all vital precursors to fulfilling our ambition to accede to the Trans-Pacific Partnership. It is a complex matter; there are 11 countries in that partnership, and it will take time to bring all this to the point where the meal can be served, as opposed to just being cooked. Once we get to that point, Parliament will be fully involved.

Lord Boateng (Lab) [V]: Can the Minister assure the House that our continuity trade agreements with our African partners will support rather than undermine regional integration and the African free trade area?

Lord Grimstone of Boscobel (Con): The noble Lord makes a good point. The free trade agreements are vitally important for the African countries; we are well seized of that. We have an active dialogue with them, and look forward to strengthening those agreements as we go forward.

The Deputy Speaker (Lord Brougham and Vaux) (Con): I call the noble Baroness, Lady Kennedy of Cradley.

Baroness Kennedy of The Shaws (Lab) [V]: I am afraid it is in fact Lady Kennedy of The Shaws—there was a mistake in the listing. It is clear from many of our debates that the House does not want trade to be elevated above human rights. The noble Lord, Lord Alton, put his finger on the particular problems regarding China. The Government give the right rhetorical support on this, but it is difficult to have confidence when the Minister is on record as saying that

"everything in China gets associated with politics, but we have to look through politics to help get successful business with China",

and that:

"The fact that Xi is prepared to give such strong authoritarian guidance within the context of a market economy is great for companies like mine

I am afraid that this does not give a lot of assurance to those of us who are concerned about the horrors taking place in China.

Lord Grimstone of Boscobel (Con): My Lords, the noble Baroness refers to comments that I made in my previous life, when I was chairing a major business in China for the United Kingdom. It is important to realise the context within which those comments were made but, as I have said previously at this Dispatch Box, I have no patience with authoritarian regimes and I am completely in agreement with the Government's policy in relation to China.

The Deputy Speaker (Lord Brougham and Vaux) (Con): My Lords, the time allowed for this Question has elapsed.

1.13 pm

Sitting suspended.

Public Procurement (Amendment etc.) (EU Exit) Regulations 2020

Motion to Approve

1.30 pm

Moved by ***Lord True***

That the draft Regulations laid before the House on 7 October be approved.

Relevant document: 31st Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 16 November.

Motion agreed.

Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2020

Competition (Amendment etc.) (EU Exit) Regulations 2020

Motions to Approve

1.31 pm

Moved by ***Lord Callanan***

That the draft Regulations laid before the House on 14 September and 30 September be approved.

Relevant document: 30th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 16 November.

Motions agreed.

Arrangement of Business

Announcement

1.32 pm

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): My Lords, we now come to the Report stage of the United Kingdom Internal Market Bill. I will call Members to speak in the order listed in the annexe to today's list. Interventions during speeches or "before the noble Lord sits down" are not permitted and uncalled speakers will not be heard.

Other than the mover of an amendment or the Minister, Members may speak only once on each group. Short questions of elucidation after the Minister's response are permitted but discouraged; a Member wishing to ask such a question, including Members in the Chamber, must email the clerk.

The groupings are binding and it will not be possible to de-group an amendment for separate debate. A Member intending to press an amendment already debated to a Division should have given notice in the debate.

Leave should be given to withdraw amendments. When putting the Question, I will collect voices in the Chamber only. If a Member taking part remotely intends to trigger a Division, they should make this clear when speaking on the group. We will now begin.

United Kingdom Internal Market Bill

Report (1st Day)

1.33 pm

Relevant documents: 24th, 26th and 29th Reports from the Delegated Powers Committee, 17th Report from the Constitution Committee, 8th Report from the Joint Committee on Human Rights

Amendment 1

Moved by ***Lord Hope of Craighead***

1: After Clause 1, insert the following new Clause—

"Common frameworks process

(1) The United Kingdom market access principles shall not apply to any statutory provision or requirement that gives effect to a decision to diverge from harmonised rules that has been agreed through the common frameworks process.

(2) No regulations may be made by a Minister of the Crown with regard to a matter that is under consideration under the common frameworks process while that process in relation to that matter is still in progress.

(3) The "common frameworks process" is a means, established by the Joint Ministerial Committee on European Negotiations, by which a measure of regulatory consistency to enable a functioning internal market within the United Kingdom may be mutually agreed between the United Kingdom and devolved governments."

Lord Hope of Craighead (CB) [V]: My Lords, I wish to move the first of three amendments in this group, which consists of Amendments 1, 38 and 51. They address the rules for the mutual recognition of goods in Part 1 of the Bill, of services in Part 2 and of professional qualifications in Part 3. They are all directed to the same essential point: the relationship between the common frameworks process and the internal market that the Bill seeks to create. Underlying this is a question which goes to the heart of the relationship between the Governments of the four nations in this United Kingdom.

There are two ways in which our internal market can be created. Is this to be a market created by all four nations working together, as they are doing through the common frameworks process, or is it to be created by imposition from Westminster, as the Bill seeks to do? If it is the latter, do the Government really support devolution, as the Prime Minister is now asking us to believe? Actions speak louder than words. How the Government respond to these amendments will tell us where the truth lies.

I am grateful to those noble Lords who have joined with me in proposing these amendments. I should make it clear that I intend to divide the House if the Minister is unable to give me an assurance that the Government accept the principle that lies behind the amendments and will come back at Third Reading with amendments of their own that give effect to it.

The noble Lord, Lord True, has said several times that the market access principles are designed not to replace but to complement the common frameworks. I am sure that he will not mind when I say that he was not the first to use that expression, nor, since it is not his word, if I tell him what I think of it.

The word "complements" is in the White Paper. The noble Lord assured us that the Government remain committed to the common frameworks programme. I would like to take him at his word, but what does he mean by that? Are the market access principles that the Bill sets out really complementary to each other, as he has indicated? It is hard to see how that can be, unless the Bill itself tells us how these two systems are to work together towards the same aim. As it is, when you consider the effect of the market principles on that programme, to say that they complement each other seems a complete misuse of language. My amendments seek to bring the two together, in a way that fully respects the devolution settlement while allowing the principles to operate fully in all the other areas that the common frameworks do not touch.

Without going over again all the ground that I covered in Committee, I should remind your Lordships that the common frameworks process has its origin in an agreement reached at a meeting of the Joint Ministerial Council in 2017. Something had to be done to create a harmonious working relationship between them all when we left the EU. The devolved nations had been able, within the limits of EU law, to fulfil their responsibilities as devolved Governments to formulate and apply policies that best suited their local circumstances. So it was agreed that they and the United Kingdom Government would work together through common frameworks in order to enable the functioning of the UK internal market, while—this was a crucial part of the agreement—acknowledging policy divergence. Therefore, each devolved Administration was to retain the ability to diverge from the harmonised rules in their territory within the mandate given to them by the devolution settlement, after consulting the relevant policy group to see whether a common outcome could be reached and agreed to. Now, three years later, and without the agreement of the JMC or any of the devolved nations, we have this Bill.

Not only does the Bill ignore the common frameworks process but it destroys one of the key elements in that process that brought the devolved Administrations into it in the first place: it destroys policy divergence. It destroys those Administrations' ability through that process to serve the interests of their own people, and to innovate. The common frameworks operate by working out solutions by agreement between the four nations. If a policy divergence is sought, it has to be agreed to. The market access principles system, on the contrary, does not operate by agreement; it is hard edged. It is a set of strict statutory rules which, apart from the few limited exceptions, do not allow for any divergence at all.

A policy aim which is designed to deal with serious threats to human, animal or plant health will be protected by the exclusion in Schedule 1, but that exclusion is narrowly drawn—threats to the environment, for example, are not mentioned. So policy aims giving effect to advances in the science relating to biodegradable

[Lord Hope of Craighead]
plastics, for example, are outside its scope. As time goes on, there will be others which one party to the common frameworks system would like to put into effect. Business is nothing if it is not dynamic, so there must be room for improvement in what we do across all four nations. The common frameworks system should be allowed to develop but, under the Bill as it stands, all of that will be inhibited by rigid rules.

It does not have to be that way. Our amendments seek to go to the heart of the problem. They assume that a requirement is enacted by a devolved Administration that has been agreed by all four nations under a common framework. They assume that it is being enacted to give effect to a policy formed within its own part of the UK, which the other nations, having assessed its effect on the market as whole, are willing to accept. The question is: how can that requirement retain its effect if traders from another part of the UK can simply ignore it when trading across the border? There is nothing that a trading standards officer—or a court, for that matter—could do to prevent that. This is an invitation to traders—who operate, after all, in their own commercial interests according to the rules of the marketplace—to disregard the requirement as they please when they cross the border.

The devolved Administrations deplore the fact that a process that all four nations have agreed to is at risk of being undermined in this way. The Welsh Government have indicated that they cannot agree to this. The Scottish Parliament has refused to consent to it. Others will speak for Northern Ireland. How can this be a UK internal market when it does not have the support of the other nations? Please do not say that there is widespread support for this Bill. That is not an answer to the very precise question that I am raising, which the White Paper said nothing about at all.

Our amendments seek to do no more than allow the two systems to live together. It will enable them both to work together towards the same common aim. In that way the market principles will truly complement the common frameworks, instead of undermining them and calling into question the whole process. Had it not been for the devolved settlements—for devolution itself—there would have been no problem. We would have been a single Administration and there would have been no need for this Bill at all. But we cannot turn the clock back. Devising rules for this internal market requires us to accept the constitutional arrangements that now exist. It is the genius of the common frameworks that a way was found, by agreement, of doing that. That is what our amendments are all about. They are no wider than is necessary. They are not seeking to undermine the Bill. I beg to move.

Baroness Finlay of Llandaff (CB) [V]: My Lords, in this group I wish to speak in particular to Amendment 1, which my noble and learned friend Lord Hope of Craighead has explained most eloquently. In Committee, the Government tried to assure us that Parts 1 to 3 of the Bill were somehow compatible with or complementary to the common frameworks process, that the Government were fully committed to that process, and that the intention of the Bill was to fill in the gaps where common frameworks did not operate. But we had no explanation of how the common frameworks process and the market access principles would work alongside each other. No real-world example was cited that the existing common frameworks process did not or could not address in the future.

For example, we were told that different building standards would tie the construction industry in knots. But there are already different building standards, including the excellent requirement in Wales that builders must install fire suppression systems in all new residential premises. This was introduced 14 years ago by the then National Assembly, and guidance to the sector on it runs to several hundred pages—understandable for a measure that will save lives. Has the construction industry been campaigning against devolution as a result? No. Then there was the risk to the English supply of malting barley to Scotland from divergent restrictions on pesticides. That case folded when the noble Lord, Lord Purvis of Tweed, pointed out that the use of fertilisers and pesticides was one of the extremely rare explicit exclusions from the market access principle.

1.45 pm

In Part 3, the regulation of qualifications, we heard that there are no examples of current professions where the measures might be needed, but that they might be needed in future. We were told that

"there may be new technologies, ideas and proposals that will come forward. There is the whole world of artificial intelligence or gene editing—there is a massive range of new and potential professional areas, bodies and qualifications that may come forward."—[*Official Report*, 2/11/20; col. 506.]

In response, I simply say that we all want and welcome innovation. Advancement is accommodated in the common frameworks process. This Bill does not complement the common frameworks process; it consigns common frameworks to becoming a meaningless sideshow.

The Bill does not simply maintain the status quo ante EU membership; it shackles the ability of the elected Parliaments in Scotland, Wales and Northern Ireland to find their own solutions to the problems we face. It is not based on warm support for devolution but rather on hot resentment of the fact that the devolved Governments and legislatures can innovate at speed and take their populations with them. In response to every example of innovative policy-making by the devolved institutions—on plastics, minimum pricing of alcohol and so on—Ministers say that they would not be affected by this legislation. But what of future innovations? There have been no assurances, because the day this Bill is enacted is the day an iron curtain falls between the past and the future capacity of the elected Parliaments in Scotland and Wales to make a difference.

The charge on disposable plastic bags in Wales resulted in a 90% reduction in consumption, and this has not slipped significantly. But the Welsh Government's desire to ban all nine types of single-use plastics in combating the environmental emergency could get caught without common frameworks in place. Yet, on the world stage, the UK can now turn this to advantage as, in discussions with President-elect Biden to build and repair relationships, we evidence our ability to action initiatives to tackle climate change.

Amendment 1 and the similar Amendments 38 and 51 to Parts 2 and 3 make the market access principles the fall-back, not the default. They build on the hard work that has already gone into the common frameworks process, rather than negate it. The future of the UK depends on good internal working arrangements, respecting the devolution settlements and ensuring that all four nations work together for the common good. Securing different trade agreements will be difficult, and those negotiating need to know that the four nations recognise the importance of clear external policies, while also ensuring that the specific needs of their own populations are being actively addressed.

I ask everyone who is a unionist to think very carefully before voting against these amendments, because a rejection of this approach of mutual respect across the four nations of the UK is a rejection of devolution itself. Rejecting the uniting processes in common frameworks signals a step towards the break-up of the United Kingdom. We left Europe to have the ability to set our own rules. Now let us respect that ability internally and amend this Bill accordingly.

Lord Mackay of Clashfern (Con) [V]: My Lords, I very much support these amendments. It has been my privilege to often lead the noble and learned Lord, Lord Hope of Craighead, and today I am very glad to follow him.

I want to say a bit about the nature of the common frameworks. They were brought into being in 2017, as the noble and learned Lord, Lord Hope, said, and he and I played some little part in encouraging that to happen. It seemed to us that it would be entirely right to take account of the different views of the devolved nations and bring them together. To a great extent that is what has happened since this system was set up.

The UK internal market is not a fixed law like the laws of the Medes and the Persians. The detail in the part that deals with the Competition and Markets Authority shows that it is intended that the internal market should develop in accordance with circumstances as they develop. It is not a rigid matter. Some mechanism therefore has to be found before allowing change. As I have understood my noble friend Lord True, he has said that the common frameworks are complementary to the Bill—or the other way round, whichever way you like to take it. That was set out quite clearly in the White Paper that preceded the Bill.

The fundamental point is that the UK internal market law will apply in the whole of the UK, but that does not preclude that law allowing for circumstances that may vary from one devolved nation to another. At the moment I live in the very north of Scotland, and I can see that there is a good justification for having somewhat different rules about building regulations relating to temperatures and so on from those in London. That kind of thing is much easier to deal with if it is dealt with by people who know about it in detail, and that is what has happened in the common frameworks over quite a long time. It has been found that a large number of those frameworks do not require any innovation at all in the circumstances, although there are some, which are still under consideration, that require modification as a result of changes in the various conditions that apply across the United Kingdom.

I take it from what my noble friend Lord True, whom I greatly respect, has said on behalf of the Government from the Dispatch Box that those two ways of legislating are complementary. I am anxious that the way they complement each other should be set forth in the Bill because that is an important part of how the UK market Bill will develop. As I said, there is no question but that it is expected to develop and change.

The situation is that the common frameworks are dealt with by a committee set up by principles. So far as I know, and I have sought information on this point, it has worked very well, so why not allow it to continue? All that is required to happen is that the particular result of agreement in the common frameworks will lead to a modification of the United Kingdom Internal Market Bill agreed in the whole of the UK. That seems a very good way of dealing with some kinds of change. The Bill provides for the Competition and Markets Authority to have a function of the same general kind, leading to advice and legislation in Parliament. That is an extremely good and wise way of conducting the business of an internal market, and it makes it clear that the same law applies over the whole of the UK—nothing else but that the law recognises agreed variations suitable to the circumstances of particular nations. I cannot for the life of me see why that is not legislated for in the Bill.

As I have said already, it is said that the two are complementary. There is no provision in the Bill at the moment to say how that complementary relationship is to work. We have sought to do that after a fairly thorough consideration of how it can be done, and that is what this series of amendments is trying to do. If the Government can think of a better way of arranging it then we would be glad to hear it, but we cannot leave it without any consideration at all. If the Bill goes forward without any reference to the common frameworks, it is hard to see how those frameworks affect the issue as they ought to.

I am very much in favour of the amendment, and of the union. All my life I have been concerned with Scotland and I am very anxious that it should remain in the warmth and success of the United Kingdom, which it has done already for a long time. I have personally found that a very great comfort, as your Lordships will understand. So I hope the Government can accept this amendment or, if not, will come forward with a better way of recognising the complementarity of the common frameworks with the Bill and put it in an express form that would be better than this, if they can find one.

Lord Bourne of Aberystwyth (Con) [V]: My Lords, I apologise to the House that I was unable to participate in Committee, but I spoke at Second Reading.

I shall speak particularly to Amendment 1. I was pleased to add my name to the signatories to this amendment. The noble and learned Lord, Lord Hope of Craighead, and my noble and learned friend Lord Mackay of Clashfern have unparalleled understanding of the principles and workings of devolution in the United Kingdom today, while my good friend the noble Baroness, Lady of Llandaff, has a very practical grasp of the day-to-day issues and realities of the operation of devolution in a plethora of policy areas, particularly health and palliative care.

[Lord Bourne of Aberystwyth]

My experience of devolution was initially very much at the coalface of the operation of what was then the Welsh Assembly—now the Senedd Cymru, the Welsh Parliament—for 12 years as a Member and a party leader from its establishment. The reality of life was largely driven not by idealism in those early days, and indeed now, but by ensuring that it operated in the best interests of the people of Wales and of the wider UK. I believe that that lodestar is still what guides Members of the Senedd today in making it work effectively.

The year 1999, with the setting up of both the Scottish Parliament and the then Welsh Assembly, represented a very real break with the past. There were of course pressure points between Wales and Westminster, and certainly between Scotland and Westminster, even when the parties in power were the same, which of course they were in the early days, both being Labour. That phenomenon is possibly more acute when the same parties are in power. Over time, those points of friction have decreased and eased. Politicians and officials got used to closer working. There were still points of dispute, of course, but that is the nature of politics. Devolution was extended and deepened by the Conservatives in Wales with a referendum for full powers, which was passed decisively, and the Silk commission report being acted on and introducing new powers from Westminster. There was a new devolution settlement, which has been honoured by successive Governments and needs to continue to be honoured.

Let us flash forward to the withdrawal from the EU and the work of this House and the other place on common frameworks. As was noted by my noble friend Lord Dunlop in Committee, the introduction of common frameworks was a success and agreement was

"reached … in October 2017, between the UK Government, the Scottish and Welsh Governments and the senior civil servant representing the Northern Ireland Executive, on the principles to guide the work on common frameworks."—[*Official Report*, 26/10/20; col. 58.]

That approach has delivered on the policy areas that were identified, with very few exceptions, which were all truly exceptional. It is worth restating that the common frameworks have delivered and are delivering.

2 pm

It may be an unpalatable truth for some that consensus has succeeded, but it has. Dirigiste action—directions imposed top down from the centre—will not be successful. As the Constitution Committee of your Lordships' House has concluded in relation to this Bill:

"We consider that adhering to the principles agreed for formulating common frameworks would improve the likelihood of reaching agreement on how to progress the Bill."

Respectfully, I very much agree with that view.

I am a committed unionist and a proud Briton. I was pleased to see how successful the common framework was in delivering. I was at some of those meetings where the common frameworks were being discussed, representing both Northern Ireland and Wales on those occasions. I take no pleasure at all in the possible break-up of what, to me, is the greatest country in the world. It is far from inevitable, but the preservation of the union has to be worked at constantly. It is vital for the devolved Administrations and Westminster to work together—which Amendment 1 provides for—never more so than now. That is why I support this amendment and urge others, and indeed the Government, to do the same.

Lord Wigley (PC) [V]: My Lords, it is a delight to follow the noble Lord, Lord Bourne, with whom I served in the National Assembly 20 years ago and who has done a good hard day's work for Wales. We do not always agree, but we certainly agree on the need for us to work together whenever possible in the interests of Wales and the wider interest represented in this Chamber.

I rise to support Amendments 38 and 51, to which I have put my name. I will also speak to Amendment 1, moved so effectively by the noble and learned Lord, Lord Hope. The House is indebted to him for the diligent and convincing work he did in Committee and has done on earlier legislation before this House. He has highlighted the need to establish an acceptable mechanism for facilitating a harmonious working relationship between the four Governments of these islands in the context of the UK common market. The noble Baroness, Lady Finlay, has also been diligent in pursuing these points, and has warned graphically today about the iron curtain that will fall if the Bill goes forward unamended. I know that several colleagues will have received representations from the Welsh Government on these and associated matters.

I will not restate the detailed arguments in favour of the common frameworks. I am sure that I am not the only Member participating in this debate who is, by now, heartily sick of having to restate time and again the same old arguments concerning the relationship between the devolved Governments and the Westminster Government in the context of the post-Brexit world that we inhabit. I am sure that noble Lords from England are tired of hearing the same issues arise time after time—as they have in a succession of Bills and debates over the last four years—about how new legislation to create appropriate manufacturing, farming and trading relationships between Wales, Scotland, Northern Ireland and England will work out, how a level playing field may be established and how differences may be resolved without undermining either the integrity of the UK market or the authority of the devolved Governments within their own devolved competences. Both need to be achieved, but the Government address only the first: the integrity of the UK market.

Members of this Chamber from Wales are heartily sick of having to press the same issues time after time for the simple reason that they still have not been resolved. Colleagues from Scotland and Northern Ireland may well feel likewise. The Minister is no doubt equally tired of having to trot out the same old responses. The debates continue because the uncertainty continues and, even now, six weeks before the end of the transition period, we still do not know what the trading parameters applicable from 1 January next year will be.

If that uncertainty were not enough, this week, the Prime Minister described devolution as a disaster. The tragedy of the post-devolution era is that Westminster still has not adjusted its mindset to accept that it now has to work in partnership, not as a domineering and

patronising big brother that always expects to get its own way. It is that failure, more than anything else, that now stands to blow the United Kingdom apart, and it is central to this amendment.

It is facile to blame the SNP for advocating the policy that is, after all, their raison d'être. The far more relevant question is why, in every election since 2003, have the SNP secured the support of the Scottish electorate to govern Scotland? It is no use the Prime Minister shooting the messenger; he must ask himself, as must all his colleagues in government: how is it that such a clear message from Scotland has come about? One element in the answer to that is Brexit and, in particular, the failure of the Government to put forward an acceptable model for the post-Brexit trading relationships within the United Kingdom. This amendment offers them an opportunity to put that right.

Once again, these amendments seek to establish a partnership in which, as the noble and learned Lord, Lord Hope, described, there is a system of framework agreements that can help to ensure that one Government will not overrule the other three Governments on matters where responsibility is now returning from Brussels. I am glad that the noble and learned Lord, Lord Mackay of Clashfern, has his name to these amendments because, through the passage of this Bill and earlier legislation impinging on these matters, he has consistently advocated to join common frameworks. He understands how important this is in a Scottish context for such a provision to be included; indeed, he understands the reservations that many Members of the Scottish Parliament, across party lines, have with this Bill as it currently stands.

I am glad that the noble Lord, Lord Bourne, added his name to this amendment and was delighted to hear him speak from his personal experience. As former leader of the Conservatives in the National Assembly, as it was then, he understands the need to get this right. He also understands the thinking among Senedd Members in Wales today. There is enough cross-party agreement in Cardiff, Edinburgh, Belfast and Westminster that this area needs to be revisited and that the Government, surely, must move to make some accommodation along the lines of these amendments. I hope that the Minister is in a reflective mindset and, indeed, a conciliatory mood today, and that he will be positive in his response.

Lord Falconer of Thoroton (Lab): It is a pleasure to follow the noble Lord, Lord Wigley, and a real privilege and honour to follow the speeches of the noble and learned Lords, Lord Hope of Craighead and Lord Mackay of Clashfern, the noble Baroness, Lady Finlay of Llandaff, and the noble Lord, Lord Bourne of Aberystwyth. They were speeches of real quality, and they got absolutely to the heart of the problem that had been identified in the Commons—indeed, identified time and again.

Everybody accepts the need for trade that is as frictionless as possible within the internal market of the UK. Everybody equally respects the need for appropriate divergence. How are those two matters to be dealt with? The answer, which everybody in this House and the Commons agreed with, was the common frameworks process, set up by the Conservative Government, with the agreement of the devolved Assemblies, in October 2017. It is a process that has stood the test of time and works to deliver divergence by agreement.

I note in passing that the noble and learned Lord, Lord Mackay of Clashfern, said that he often led the noble and learned Lord, Lord Hope of Craighead. However, one thing that the noble and learned Lord, Lord Hope of Craighead, did not learn from the noble and learned Lord, Lord Mackay of Clashfern, was emollience. However, the trenchant language used by the noble and learned Lord, Lord Hope, today was appropriate. He said that "actions speak louder than words". He said that if we are to believe the commitments repeated in the last 24 hours by the Government on devolution, they need to deliver on their promise that the common frameworks process should be allowed to complement the internal market arrangements.

The noble and learned Lord, Lord Hope of Craighead, said that, without some amendments to this Bill, it would be a "misuse of language" to say that they complement each other. I beg to suggest that what he meant by that is that if you have only the market access principles and no legal recognition of the common frameworks process, that process is completely ignored because—to use the language of the noble Baroness, Lady Finlay of Llandaff, in an earlier part of the proceedings on this Bill—this is a "blunderbuss" that, in the words of the noble and learned Lord, Lord Hope of Craighead, does not allow for a key part of the functioning of devolution, namely divergence in the appropriate case.

We on this side of the House support Amendments 1, 38 and 51. We think they do give effect to the common frameworks in a legally binding way, without in any way undermining the need for a properly functioning internal market—the need for which we recognise. I earnestly ask the Government, on behalf of this side of the House, to do what they kept saying they would do: find a solution to the problem. It is so important, not just for the proceedings of this Bill but for the preservation of the devolution settlements in Wales, Scotland and Northern Ireland, and the preservation of the union.

Lord Wallace of Tankerness (LD) [V]: My Lords, it is a great privilege to follow all the speeches so far, which have so compellingly made the case for the common frameworks process. I wish to speak in favour of the amendments in this group, which have been spoken to so effectively by the noble and learned Lord, Lord Hope of Craighead. These are amendments which, rightly, seek to give effect and primacy to decisions agreed under the common frameworks process. I regret that it was not possible for me to join the Committee stage proceedings, but I have read the *Official Report* of the first-class discussion of similar amendments debated on 25 October.

The issue of common frameworks and the lack of any recognition in this Bill of their existence, let alone their importance, goes to the heart of many of my profound misgivings about this proposed legislation. As has been noted several times in the past and already several times today, the creation of the common frameworks process can be traced back to the Joint

[Lord Wallace of Tankerness]

Ministerial Committee declaration on 16 October 2017. Among the principles set out in that communique was that:

"Common frameworks will be established where they are necessary in order to: enable the functioning of the UK internal market, while acknowledging policy divergence"—

and the noble and learned Lords, Lord Hope and Lord Falconer of Thoroton, emphasised the words "policy divergence". Among the other principles was that:

"Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore … maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules".

Crucially, and to state the obvious, that declaration was agreed by the United Kingdom Government and the devolved Administrations.

The importance of such agreement being reached was recommended by the conclusions of the European Union Committee of the House, which, in its fourth report of the 2017-19 Session, said:

"Any durable solution will need the consent of all the nations of the United Kingdom, and of their elected representatives."

It went on to say that

"A successful settlement cannot be imposed by the UK Government: it must be developed in partnership with the devolved Governments."

The Government themselves acknowledge in their most recent report, published only a few weeks ago, that

"the UK Government and devolved administrations have continued to work jointly to develop UK Common Frameworks, to protect the UK economy and give maximum certainty to businesses, consumers and international partners",

and, notably, that United Kingdom Ministers commend UK common frameworks as ensuring

"regulatory coherence across the UK by flexibly managing any potential policy divergence across the four nations."

2.15 pm

However, instead of building on the positive and constructive work of the common frameworks process, we have this Bill, which surely runs counter to the conclusions of the European Union Committee report. Quite clearly it does not command the support of the devolved Administrations, nor was it developed in partnership with them—it is being imposed by the UK Government. That is why I believe that these amendments are so essential to restore the common frameworks process as the main driver for giving certainty to business and allowing potential policy divergence to be sensibly managed.

With respect, the efforts of Ministers to date to explain why the common frameworks are insufficient to achieve that goal have so far been unconvincing. In a letter of 10 November to the noble Baroness, Lady Taylor of Bolton, the chair of the Constitution Committee, of which I am a member, the noble Lord, Lord True, sought to explain why common frameworks alone are insufficient. He said that:

"Common Frameworks cover the large number of policy areas where powers previously exercised at EU level will flow directly to the UK Government and the devolved administrations in Edinburgh, Cardiff, and Belfast. The Common Frameworks programme is restricted to these areas, and is not intended to cover the full spectrum of the UK economy or of business operations."

The last sentence is factually correct, but the implication is surely that the provisions of this Bill are intended to go beyond areas where powers were previously exercised at EU level. That runs counter to what is said in the opening paragraphs of the Explanatory Notes, where we are told that businesses should be able to trade freely across the UK "as they do now." The measures in this Bill obviously do not apply "now" to areas where powers were not exercised at an EU level, nor have they applied, or indeed been needed, in the 21 years since the devolved legislatures were established.

Rather than building on the common frameworks process, and in spite of there being no examples of trading among our UK nations having been disrupted by the legislation of a devolved legislature in these 21 years, this Government seek to take powers to regulate and diminish these legislatures as some kind of safety net against some unspecified hypothetical measure which might be brought forward at some unspecified future time. On no account can that be described as proportionate.

Surely the better way of achieving a durable and successful solution would, as advocated four years ago by the European Union Committee and reflected in the recent report of the Constitution Committee, be to reinvigorate the common frameworks based on consent and in partnership with the devolved Administration—or as the noble and learned Lord, Lord Hope, put it, "all four nations working together."

If the Government feel that there are gaps, far better to negotiate and agree with the devolved Administrations principles of mutual recognition which can be incorporated in a fresh memorandum of understanding, as well as establishing a common way forward on resolving disputes. Of course there may be challenges involved, but the agreement on common framework principles in 2017, and the admirable co-operation shown since in developing them, suggests that it is a far from impossible task.

Many of us would be reassured if, before Third Reading, Ministers were able to show a willingness—reciprocated by the devolved Administrations—to engage constructively with the objective of producing the draft of such a fresh memorandum of understanding, together with proposals for a common way forward on resolving disputes. Building on the common frameworks process, agreed jointly and implemented co-operatively, surely provides us all with a better way forward.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I am delighted to follow the noble and learned Lord, Lord Wallace of Tankerness and I support the amendments in this group in the name of the noble and learned Lord, Lord Hope of Craighead. I declare an interest as a member of the Common Frameworks Scrutiny Committee.

The purpose of this important group of amendments is to safeguard the common frameworks process and ensure that it is placed in legislation. The common frameworks process cannot be bypassed by attempts by the Government to impose themselves on the

constitutional devolution settlements. I agree with the premise that the amendments seek to ensure that primacy and due recognition are given to the common frameworks and that they are enshrined in legislation. They should not be perceived by the Government as a means of conflict with the internal market Bill. As the noble and learned Lord, Lord Falconer of Thoroton, has said, there has to be frictionless trade and divergence by agreement. The best way to capture that is by ensuring that common frameworks sit within the legislation itself.

Common frameworks are built on the assumption that consent and agreement can be reached between Westminster and the three devolved Administrations and that they should not be undermined. The process of common frameworks should be respected and honoured in the legislation and should not be eclipsed in any way. It is interesting that in our Common Frameworks Select Committee yesterday Professor McEwen said that the process of common frameworks has sufficient flexibility to allow divergence. That builds on the comment of the noble and learned Lord, Lord Falconer. In Committee, it was said that the legislation is seeking to jettison the common frameworks process that was started in October 2017. In many ways it is a common approach to managing divergence, a point made to our committee last week by the Welsh Counsel General, Jeremy Miles.

The Governments have been working on a primacy or a hierarchy of Governments in this to develop common frameworks in areas where they agree it is necessary to replace EU regulations with shared EU regulations or non-legislative frameworks. The Joint Ministerial Committee made clear that common frameworks will be established where they are necessary in order to, among other things, enable the functioning of the UK internal market while acknowledging policy divergence. These points have been made by earlier speakers today. It was clear from listening to the Ministers from the Scottish and Welsh Governments last week that, although they come from different political perspectives, they see the benefits of working together in partnership to manage divergence on certain policy issues through the common frameworks. So why would the Government want to nullify that process? It is surely eminently complementary that they can work together in legislation with the regulations of the United Kingdom Internal Market Bill.

I make a plea to the Government and the Minister to change their minds and make such provisions for common frameworks in the legislation. By abstracting the internal market from these frameworks and pushing ahead unilaterally, against opposition from the devolved authorities in Scotland and Wales, the UK Government are putting the common frameworks and devolution arrangements at risk. Coming from Northern Ireland, I fully recognise that there will be divergence anyway in Northern Ireland because certain measures to do with electricity transmission and the agri-food industry will be subject to the rules of the Northern Ireland protocol. What is the Government's view of the devolution settlements? Do they view the devolved Administrations as subordinate or equal to Westminster, which I believe they should be? Common frameworks should be allowed to work; they are an innovative process to manage divergence.

Like the noble Lord, Lord Wigley, I hope that the Minister is in a conciliatory mood today and that he can accept Amendment 1 and Amendments 38 and 51 which are consequential. The noble Lord, Lord True, said that the Bill and common frameworks are complementary as they work together to deal with future divergence. The best way to deal with that is, surely, in the internal market Bill. That would eradicate the frustrations and any difficulties, which is an important thing to do.

Baroness Andrews (Lab) [V]: My Lords, I will speak briefly in support of the amendment in the name of the noble and learned Lord, Lord Hope of Craighead. Before I do so, I thank the noble Lord, Lord True, for his graciousness in coming to speak to the Common Frameworks Scrutiny Committee, which I have the privilege of chairing, and I follow my esteemed colleague the noble Baroness, Lady Ritchie of Downpatrick, in her speech.

The Committee has since taken evidence from Ministers and leading academics across Scotland, Wales and Northern Ireland. I have to tell the Minister that we have found no evidence whatever to support the Government's claim that the Bill is complementary to the common frameworks. We have heard, time and again, of the deep anxiety on all sides that the Bill undermines them in principle and practice and that, most significantly, it will do serious harm to trust and confidence between the four Governments, as the House has already heard this afternoon. In the words of many witnesses, those relationships have never been worse. We have heard from those witnesses of many examples of how the common frameworks themselves, in pioneering innovative, collaborative ways of working across the nations, have brought a new common purpose and are, in that way, improving relationships.

My first question to the Minister has been asked already: is this not in itself a prize worth keeping? That unity of purpose which makes it possible for two systems to live together to make the internal market stronger and more innovative is at the heart of the amendment in the name of the noble and learned Lord, Lord Hope of Craighead, which he introduced, as usual, in a measured style and with devastating power. The amendment encapsulates both the principles and the purpose of the common frameworks as a means of managing the internal market, but in a rational and predictable way by managing the future divergent policy choices made by the four countries in a post-Brexit world, as they have for many years in the past.

Divergence is the signature and symbol of devolution and a mark of confidence in the right to make choices in each country, in law, which are appropriate to each nation. Doing that brings clarity and stability in the trade in goods and services across the internal market by agreement. The amendment simply asks the Government to change the Bill so that when the common frameworks have reached agreement on divergence, whether in goods or services, that is not demolished or overridden by the operation of the Bill.

No matter what examples the Minister gives, or whatever rationale he finds, this is the effect of legislation made in Westminster. Governments may be equal, but

[Baroness Andrews]
Parliaments are not. The Minister may say that nothing is being taken away from the powers of the devolved Governments in these clauses, and he is right. The Bill does not need to do that. Its effect, however, is the same, because future legislation in Wales which would, say, have enabled the abolition of a further six types of single-use plastic—which is the ambition—would not be able to be put into effect as long as other manufacturers of plastic goods are able, as they will be under the principles of mutual recognition and non-discrimination, to bring their goods for sale in Wales.

I shall ask the Minister a direct question, and I would very much appreciate a direct answer. Was the Welsh Attorney-General right when he told the Common Frameworks Scrutiny Committee that the legislative preferences in the Senedd could not be enforced on the ground in Wales—that we would not be able to enforce the ban on the extra six plastic products if this Bill came into force? "Enforcement" is the key word. The noble and learned Lord, Lord Hope, was eloquent on how difficult is going to be for trading officers and the courts to know how to enforce it. There is no certainty here, yet certainty is at the heart of the Government's argument. All this very modest amendment is asking is for the Government to acknowledge this and stop dodging this reality.

2.30 pm

As many noble Lords have said already, the far greater impact is what this Bill is doing to the principles of devolution and the future of the union. I have searched hard to find why the Government are taking such a provocative line that runs such risks. I had hoped we might have seen more of a thaw in Downing Street now the architects of chaos have been chucked out, but it seems Ministers are still in thrall to that toxic heritage.

It is clear, not least from recent government statements, that this Bill is seen as a purely commercial proposition. Its authors cannot see any ethical or political problems that cannot be ignored, dismissed or overridden. Ministers have told us that it is necessary to bring certainty but in reality, it is a dreadful combination of uniformity, imposed by the UK Government, and uncertainty. Where is the comfort for business there?

We are told that the Bill is necessary because it creates a coherent legal framework within which the common frameworks can sit, which is needed because there are gaps. But this very framework chokes the common frameworks off. Whenever we or anybody else have asked, publicly or privately, where the gaps are and why the common frameworks cannot develop to fill them, there has been a deep and embarrassed silence from the Government. We are told that the common frameworks are limited in scope, but when we ask why they cannot be expanded to cover what may be needed, since they have proven to be so flexible, we are again met by silence. Why will the Government not give the common frameworks the time and opportunity to prove themselves?

On Monday in this House, the Government set out their plans for the Queen's Platinum Jubilee in 2022, which will be a fantastic opportunity to celebrate everything good about this country—its institutions and communities, in all four nations. I find it profoundly sad and ironic that we should now be debating a Bill that will do more harm to the unity of this precious union of the UK than we can imagine, because it will become a symbol of the disrespect this Government have shown to the devolved nations. I would urge the Minister to read the evidence our committee has taken from those Ministers in Wales and Scotland who are profoundly aggrieved by the conduct of the Westminster Government—by the fact that 24 hours before this Bill was published, they knew nothing about it, and by the fact that every argument and piece of evidence for the damage it would do is brushed aside.

It is not too late for the Government to salvage this situation. The Minister has heard many persuasive arguments from many senior Members of this House already this afternoon. Ministers in this House are always trusted to do their best to prevent the worst consequences and to act on principle. This amendment offers the Government a dignified option that would remove the threat of a major national disruption. I have no doubt that the House will support the amendment this evening. I hope, with all sincerity, that the Minister can show some flexibility.

Baroness McIntosh of Pickering (Con) [V]: My Lords, it is a pleasure to follow the noble Baroness, Lady Andrews, and I would like to congratulate her and her committee for all the work they have done in connection with common frameworks. I would also like to express my support for the amendments in this group and, in particular, Amendment 1, for the eloquent reasons set out by the noble and learned Lord, Lord Hope of Craighead, and my noble and learned friend Lord Mackay of Clashfern. I would also like to recognise and pay tribute to the work they did in instigating the common frameworks, and to note the role of the Joint Ministerial Committee on EU Negotiations in agreeing in 2017 to create the common frameworks.

If the noble and learned Lord, Lord Hope, is minded to press this amendment to a vote, I intend to support it, for two principal reasons. One is the advanced stages of discussions on the common frameworks that have been reached, as a number of noble Lords have said, and which have proved quite fruitful; the other is the lateness of this Bill and the proceedings, and the poor consultation of the devolved nations.

In progressing these arguments, I would like to refer briefly to the eighth *European Union (Withdrawal) Act and Common Frameworks* report and the revised analysis, which were published on 24 September. They go into some detail about the policy areas that have been covered and conclude that, in total, there are 40 active framework areas—18 legislative and 22 non-legislative. They go on to state that in some instances, policy areas include a mixture of reserved and devolved competence, including where technical standards that derive from EU law are relevant. These policy areas include four that the UK Government believe are reserved, which are subject to ongoing discussion with the devolved Administrations.

The noble and learned Lord, Lord Hope of Craighead, in moving his amendment, and the noble and learned Lord, Lord Mackay of Clashfern, and others have referred to the environmental aspects. I have a particular

interest in this as I am fortunate enough to be a member of the EU Environment Sub-Committee. Paragraph 1.21 of the latest report, to which I have just referred, states:

"There have been regular Frameworks Project Team meetings between officials in the UK Government and the devolved administrations, where productive collaborative work continues."

Examples are then given. Paragraph 1.22 states:

"Multiple meetings have taken place between officials in the Department for Environment, Food and Rural Affairs (DEFRA) and their counterparts in the devolved administrations. These include working group meetings … on Animal Health and Welfare,"

plant health,

"Waste … Chemicals and Pesticides, and Fisheries."

The noble and learned Lord, Lord Hope of Craighead, specifically mentioned the need to recognise conditions relating to the environment where divergences and different threats need to be established. He noted that there is no specific reference to the environment in the exclusions given in Schedule 1.

As I mentioned at Second Reading, for all these reasons it is bewildering that the Government have parted from the very advanced discussions of the common frameworks process. I would like to pay tribute to and thank those involved in them, particularly the Defra officials, who, in addition to all they have had to deal with at this time, have worked closely with their counterparts in the devolved Administrations.

Unless I hear a very strong argument from the Minister as to how the progress that has been made can be accommodated, I will support Amendment 1 and the other amendments in this group.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I am one of no fewer than seven members of the Common Frameworks Scrutiny Committee, including our chair, the noble Baroness, Lady Andrews, who we have already heard from, and the mover of this amendment, who are participating in this debate, which shows our interest—one of those interests you do not need to declare. I call it a debate but I fear that, sadly, even more so than usual, because of the hybrid nature of our proceedings, it is more a series of statements. That is a great pity and I look forward to the day when we can get back to all sitting round this Chamber and having a proper debate.

I also speak as a strong supporter of devolution since the early 1960s, when, as some of my colleagues here, who are nearly as old as I am, will recall, to be a supporter of devolution was not the most popular thing to be in the Labour Party. We had to work very hard to persuade the party to move in that direction. I say that now to put into context what I will say later, but I sound a cautionary note. People sometimes get on to a bandwagon, and it goes faster and faster, more and more people jump on, and they do not always know which direction it is going in and what the consequences and all the implications are.

We have had devolution for a very long time in Scotland, but mostly it was administrative devolution. We have had a different educational service for a long time. As my noble and learned friend Lord Falconer and the noble Baroness, Lady McIntosh, who is a Scots advocate—not practising, as she keeps reminding us—could tell us, we have had a Scots law system that is entirely different. We have had that for decades—indeed, in some cases for centuries. However, for so long, legislation in Scotland was dealt with at Westminster right at the end of lots of other legislation, as a sort of afterthought or codicil. There was little time spent on it, or interest in it. I was a Member of Parliament, along with the noble Lord, Lord Cormack, and others who will remember that it was not the main business we were dealing with. That is why we pushed hard.

The main argument in favour of a Scottish Parliament was to provide democratic accountability in relation to the administrative devolution that had already taken place. But we always understood—this is what I think some people have forgotten—that Westminster remained and remains ultimately responsible for the good government of the whole United Kingdom. That is something never to forget. Some people want us to forget it, but it is very important. We have a sort of quasi-federal system. It was supposed to develop throughout the whole United Kingdom, but the proposal that the Labour Government put forward for devolution in the north-east of England was ill thought out. It was put forward at a bad time and did not get through. Had we had devolution for the whole United Kingdom things would be very different from the way they are at the moment.

The other thing is that devolution is completely different from independence. The two are completely separate concepts, and it is important never to forget that. It is in the interests of the SNP, the nationalists, to obfuscate, to muddy the waters, to pretend that one and the other are very similar, and to say, "Don't worry". Boris Johnson, our Prime Minister, recently showed that he does not understand devolution, but beware: equally, the SNP does not want us to understand devolution and is not using it as it is meant to be used, to benefit the people and improve the conditions of the people in Scotland.

Someone—I think the noble Lord, Lord Bourne—raised earlier that when we have Governments of similar political persuasions in Scotland and in the rest of the United Kingdom there are sometimes substantial difficulties. I know exactly that situation: I was Minister of State for Scotland in the United Kingdom Government and I dealt with an Administration in Scotland that was run by the Labour Party in coalition with the Liberal Democrats. We worked very well together. I used to meet weekly with Ministers in the Scottish Government. We had discussions about free personal care and how it should be funded. They were good, positive discussions and we all understood the position exactly.

I acknowledge as much as anyone—after all, I was a Member of the Scottish Parliament for four years, so I saw it as an MSP—the importance of involving the Scottish, Welsh and Northern Irish Parliaments and Governments, consulting where appropriate, giving them powers, allowing them total control over all the devolved areas and having them involved in other areas through the legislative consent Motions and the Sewel convention. I know that, and I felt it myself. But it is equally important to remember that each of the devolved Governments are not always right. Sometimes I think that some people assume that they are always right. I worry sometimes that we in Westminster do

[Lord Foulkes of Cumnock]
not want to be seen as big brothers, or to impose on or upset them, so we take what they say as gospel. We give them a veto where it is not appropriate. Sometimes I wonder whether those who came late to supporting devolution are the strongest advocates of taking account of their concerns: it is the zeal of the convert, perhaps.

2.45 pm

Having said all that, I strongly support the amendment because it is better to achieve consensus through a common frameworks procedure, a procedure by which agreement can be reached in most cases, and if it cannot be reached there are mechanisms for resolving that, rather than the clumsy, if I may say so, blunderbuss of the internal market Bill, which was rushed in without consultation. This is where I do understand and agree with what others have said, and with the devolved Administrations. I do not blame the noble Lord, Lord True, but I know who is to blame—he does as well.

I do not want to see one—particularly one—of the devolved Administrations having a veto. That is why I hope the Government will look carefully at the possibility of the qualified majority and how it can be used, so that if three out of the four agree to go forward, one, for its own particular reasons, cannot stop this being achieved. I also hope that the Minister will look at the amendments relating to the super-affirmative resolution and the kind of safeguards that gives.

Finally, I say to beware of wolves in sheep's clothing: if you throw meat at them they just ask for more. Beware: it is sometimes better that, from time to time, they be tethered. It is better that, from time to time, we give the people of the countries of the devolved Administrations the opportunity of looking forward to having Governments that look after the interests of the people, not their own political aims and ideals. What we have in Scotland now, sadly, is a Government who put that above everything else. We have seen it in some of the services in education, in the health service and in justice that have been neglected. It is something that I ask colleagues in this debate—I hope it will become more of a debate—to remember.

Lord Naseby (Con): My Lords, it is always a privilege to follow the noble Lord, particularly in his plea that we parliamentarians should debate in depth with all who want to take part in this Chamber. This is my first opportunity to thank colleagues on the Front Bench, my noble friends Lord True and Lord Callanan, for the way they handled Committee stage. It was not an easy Committee; nevertheless, one notes that among the amendments on Report there are a number of government amendments that follow some quite long debates on issues. We should reflect as colleagues and thank them for listening and coming forward with those amendments.

Subject to rereading the debates on the final day, I also hope that it is now recognised in the House that there is nothing illegal about the Bill. Noble Lords may disagree with it and with the politics of it, but its legality is now without question.

I am sure everybody is pleased, as I am, that there appears to be total agreement that the common framework is complementary to this Bill as matters stand and that—we have listened to noble Lords from Wales, Scotland and Northern Ireland—it appears to have worked well. That is to be cherished but, having spent five years in the chair looking at this, I note that it is pretty unusual to have a linkage across one Bill that becomes an Act and another Bill that hopes to become an Act. If there is to be such a linkage, the evidence must be absolutely conclusive, because if you go down that road you will find a clash of interests at some point. As a parliamentarian, for me that is the worst of all worlds.

At some point, arising from the dimensions of some of the contributions today, we may well need a further Bill reflecting some of the issues voiced this afternoon. However, we should not impose a new clause which appears to undermine to a degree the drive of this Bill. We need to reflect that this is a UK government Bill. It is all about the powers of the UK Government, particularly regarding the internal market but nevertheless recognising that the UK Government are responsible for external matters.

This amendment appears to me, having looked at and thought about it quite a lot, to undermine this. I am really concerned that, as it stands today, this may undermine devolution to a degree. I fully accept and understand that we may well want a full debate on a different Bill on the powers that rest with the Northern Ireland, Welsh and Scottish Governments and with the central UK Government, but this is not the Bill for that. I understand people's concern about it, but this Bill focuses totally—and I believe should continue to focus totally—on making a success of leaving the EU.

Lord Rooker (Lab) [V]: My Lords, I reflect from the debate so far that the leadership of the main political parties at Westminster would do themselves a favour if they studied the speech of my noble friend Lord Foulkes. I will not go over the detail, but there were sufficient warnings there from someone who has had experience of the Scottish Parliament, the House of Commons and the House of Lords that really need to be listened to.

The first four speeches, from the noble and learned Lord, Lord Hope, the noble Baroness, Lady Finlay, the noble and learned Lord, Lord Mackay of Clashfern, and the noble Lord, Lord Bourne, were masterclasses in argument in favour of the union, going well beyond this amendment. To be honest, I must tell the Minister that this is not a modest amendment, as far as I am concerned; no way is it a modest technical adjustment of the Bill.

This Bill, as was said earlier, destroys policy divergence. It is a one-size-fits-all Bill; to that extent, it is a rejection of devolution. I well remember the examples that my noble friend Lord Foulkes gave, as will the noble Lord, Lord Cormack. Take the 1974-79 Parliament; it was always at 10 o'clock at night that we got Scottish business, on housing and education, and we were on a three-line Whip, with slender government majorities or, most of the time, no government majority. We always thought, "Why can't Scots deal with this themselves? This is a different legal system, which most of us do not understand." Moreover, there was never enough time for those representing Scotland, who did understand it, to debate the matters fully. Born out of that was devolution.

My experience, which I will not go into in detail, was as a Minister at the ODPM and MAFF—which had massive contacts with the devolved Administrations simply because of the devolution of food, farming and agriculture—and then at the Food Standards Agency. At the time, the Scottish Government were in effect forced to set up their own food standards agency, as they were entitled to do by the legislation. Wales and Northern Ireland may well do the same—the legislation allows them to do it—because they will be forced into the situation as a result of issues such as this Bill.

I do not quite understand this issue of complementary arrangement. I spent a bit of time while listening to everybody's speeches going through my dictionaries, thesaurus and everything, and I still do not understand it. There seems to be no connection between the common frameworks set-up and the Bill. If that is the case, I cannot for the life of me see how there can be any complementary arrangements. The Bill overrides the other processes; there is no connection whatever to that extent. Amendment 1 puts in a connection, which is crucial.

In terms of divergence over what is required with imports, the UK Government will take no account of what happens in the common frameworks process if the Bill goes unamended. Again, it will be one size fits all. The trade department will do the trade deals and take no account whatever of any desired or agreed policy divergence between the four constituent parts of the UK.

The Prime Minister has made the position crystal clear. It does not matter how much spin he puts on it or how many weasel words come from him and his acolytes; the fact is that he said that

"devolution has been a disaster north of the border".

That is a fundamental attack on devolution; it would not matter who was in charge north of the border. He said it was a fundamental mistake of Tony Blair, but he later tied it to the actions of the current Government in Scotland; he did not say that to start with. He was fundamentally opposed to devolution. You cannot compare the devolution of the Mayor of London with what happens in the Governments of Scotland, Wales and Northern Ireland.

The union is at stake. Ministers seem to gloss over this. I think we are on our way to a federal Great Britain. I give full support to this amendment, which is fundamentally required. This is nothing personal, but I have never seen a spark of conciliation from the noble Lord, Lord True—I am sure he will take that from me as an absolute compliment—and I do not expect him to be at all conciliatory to what the noble and learned Lord, Lord Hope, has said, and in due course I expect to vote for the amendment.

Baroness Randerson (LD): My Lords, I congratulate the noble and learned Lord, Lord Hope, and his fellow signatories on these amendments. Amendment 1 neatly turns this Bill on its head, so that market access principles will not apply to any decisions to diverge that are agreed through the common frameworks process. That means that common frameworks come first, and it is only when they do not provide complete cover that the provisions of this Bill need to come into effect.

The Government have maintained throughout these debates that they remain committed to common frameworks, despite their determination to avoid even mentioning them in the Bill. They have insisted that all they want to do is fill the gap left by our leaving the EU and that they have no intention of attacking devolution. The mask slipped on Monday when the Prime Minister called devolution a "disaster" and "Tony Blair's greatest mistake"—which makes it a greater mistake than the Iraq war. The cards are now on the table.

3 pm

The Government have also hidden behind what they allege to be the requirements of the business community, and that is what I want to deal with now. That seems to have been a misrepresentation, too. Some noble Lords may have been contacted by the Aldersgate Group, which represents major businesses, professional institutes, civil society organisations and academic institutions. Its corporate members have a collective turnover of £550 billion a year and include Associated British Ports, Tesco, John Lewis, Siemens, Michelin and many more household names. The group wants this Bill substantially amended. It says specifically that, although it wants frictionless intra-UK trade,

"these objectives should be pursued in a way that allows individual nations of the UK to go above and beyond minimum common standards."

The group points out that EU rules allow member states to go beyond harmonised rules relating to the environment, for instance, and that this has allowed the UK in the past to set higher standards on single-use plastic, for example. The group states:

"Allowing different approaches in different jurisdictions that are subject to common minimum standards can drive improvements and result in a race to the top."

Finally, it points out that frictionless trade and encouraging a race to the top in environmental standards are not mutually contradictory.

I live in Cardiff and, like the noble Lords, Lord Bourne and Lord Wigley, I am an ex-Member of the Welsh Assembly. Therefore, I have a strong awareness of the successful efforts within Wales over the last two decades to encourage responsible and sustainable economic development. As a country, we know that we cannot win markets on the basis of our size and dominance, so we set out to win business on the basis of excellence and higher standards. That is a noble ambition and Wales—as I have pointed out before—is a perfect size for experiments and pilot projects.

It is common frameworks that lie behind the development of higher standards. I am a member of the Common Frameworks Committee. We have had evidence from academics, reports from officials involved in developing common frameworks over the last three years and conversations with Ministers from the devolved Assemblies and Parliaments. All these people say that the common frameworks process is working well, that collaboration is good and flourishing, and that they are a good and firm foundation for the future of the internal market in the UK. So this Bill is not needed—and certainly not without major amendment to cement the central and primary role of common frameworks, so that, as long as there is agreement

[Baroness Randerson]
between Governments via a common framework, innovation and specific requirements for individual markets will be possible. My noble friend Lord Bruce is also a member of the Common Frameworks Committee and has specifically asked to be associated with my remarks on this today.

As it stands, the Bill severs all incentive for the development of best practice and stops innovation in its tracks, not just within the devolved nations but, by read across, in England as well, because there is no compulsion or incentive to raise standards. In the words of the Aldersgate Group, the Government's proposals will "stifle innovation". That is a long way from the world-beating post-Brexit economy of the Government's imagination. At the same time, this Bill strikes quite deliberately at the whole basis of devolution. It is designed to roll back devolution, and I warn the Government, as several noble Lords have done already, that their tactics are dangerous, not clever, and that they are playing with fire.

Lord Thomas of Cwmgiedd (CB) [V]: It is a very great privilege to follow the noble Baroness, Lady Randerson, and the many other noble Lords who have spoken in support of these amendments, and in particular Amendment 1. I strongly support that amendment in the names of my noble and learned friends Lord Hope of Craighead and Lord Mackay of Clashfern, the noble Baroness, Lady Finlay of Llandaff, and the noble Lord, Lord Bourne of Aberystwyth.

It is a great shame that these issues were not addressed some time ago in the House, after the promising steps taken in the withdrawal Act. It was obvious that there had to be arrangements to deal with a common approach to standards and—a matter to which we will come later—state subsidies, and any other matters that are essential to the operation of any internal market. We are where we are, but this Government cannot say that we have to continue to proceed along the lines of the Act without thinking through the consequences of passing it—particularly passing it unamended.

Some have said that people must be sick of points being raised about devolution. But it is important to point out that the provisions of the Act and the ones we are considering not only affect the devolution settlements and the positions of Wales, Scotland and Northern Ireland, but should be as much a concern for England. We are concerned with standards that can apply to an internal market across the UK and can be enforced in England, as in other places. Sometimes, we forget the effect this could have on England.

I will take two examples. In its current form, this Bill would prevent the operation of one of the nations that wished to produce a product that was beneficial to the environment. I will take Wales as a country that would want to do that as it innovated in the case of plastic bags. I will take the example of selling ketchup in single-use plastic bottles and Wales being the first in the UK to think of introducing legislation banning that sale. In the other nations the regulations that may have to be complied with would say nothing about that, so manufacturers there would be able to sell ketchup in single-use plastic bottles. If a common framework were agreed that Wales was allowed to diverge and ban the use of ketchup in single-use plastic bottles, Wales could then proceed and make such a regulation. The effect of this Bill would be that the Welsh regulation could not be enforced in Wales against the sale of ketchup in single-use plastic bottles manufactured in England, Scotland and Northern Ireland or imported into England, Scotland or Northern Ireland. The Welsh regulation would have been rendered nugatory.

Of course, if the amendment from the noble and learned Lord, Lord Hope, is accepted, it would prevent that result. It would allow the Welsh regulation to be enforced and it would be a provision that gives effect to a decision to diverge from the common framework process—and while the common framework was under discussion it would prevent the principles in the Bill applying. That has the wholly beneficial effect of driving up standards. I will put the converse example and substitute for a beneficial aim an example where one of the Governments decided to pursue an aim that was not in the results beneficial: for example, if a Government decided to allow a manufacturer to make and sell a product in packaging that was harmful to the environment.

It is not difficult to envisage this happening when a Government bow—as they do, regrettably—to pressure from a manufacturer to allow such packaging, as it would provide much-needed employment and, at the same time, play down the harmful effects. As it currently stands, the Bill would allow that manufacturer not only to sell the packaging in the nation that was prepared to permit this, but in all the other nations. Without this amendment, the Bill would have the effect of driving down standards. These two examples show, therefore, that this is a matter of concern for the Governments of Scotland, Wales and Northern Ireland, and for the Government of the UK in its capacity as the Government of England. However, as my noble and learned friend Lord Hope has so eloquently explained, deeper issues are involved. Will the Government stick with their commitments to respect the devolution arrangements or will they undermine them? Alternatively, do they wish to achieve an internal market by consensus and with proper discussion?

I do not need to say again that, without the amendment, these provisions demonstrate a desire to undermine the devolution settlements for, without this amendment, common frameworks are pointless. However, it is worth thinking a little further. As the noble Lord, Lord Foulkes, has tried to explain, dealing with an internal market is a complex matter, and it would be much better if there was time for proper debate. Taking the second of my examples, it is easy to see how the consequences that I have outlined would undermine a proper approach to an internal market and bring about a result that no Government would want. Surely the better way of proceeding is to allow this amendment, to allow the common frameworks to develop, and to think again about how we deal with these issues of standards—as we come later in the debates to deal with the issue of subsidies—so that we create an internal market which is thought through, works, is achieved by consensus and will build the prosperity that I, like the Government, wish to see come out of this process.

Lord Garnier (Con) [V]: My Lords, without the new clause proposed by the noble and learned lord, Lord Hope of Craighead, the common framework system is redundant and, without a change of attitude by the Government, the union of Great Britain and Northern Ireland is gravely threatened. I agree with the new clause as proposed by the noble and learned Lord and his co-signatories for the reasons that they have given, and I will support them accordingly if a Division is called. That I am disagreeing with my noble friends, the hard-working and overworked Minister on the Front Bench and Lord Naseby, is a matter of avoidable sadness.

As will readily be appreciated, common frameworks are a mechanism for the UK and devolved Governments to agree among themselves some regulatory consistency for policy areas where powers returning from the EU are within devolved competence. As the noble and learned Lord, Lord Hope, told us, the principles for when a common framework is needed were agreed between the four Administrations in October 2017. It was then agreed that common frameworks would be established where they are necessary to enable the functioning of the UK internal market, while acknowledging policy divergence; to ensure compliance with international obligations; to ensure that the UK can negotiate, enter into and implement new trade agreements and international treaties; to enable the management of common resources; to administer and provide access to justice in cases with a cross-border element; and to safeguard the security of the United Kingdom. We expect common frameworks on a wide variety of topics, from the UK emissions trading system to food safety.

3.15 pm

This House has appointed the Common Frameworks Scrutiny Committee to scrutinise and consider matters relating to these frameworks. I am, as the noble Lord, Lord Foulkes, has indicated, one of seven members of that Committee speaking today. It is a privilege to follow another, the noble and learned Lord, Lord Thomas, whose remarks, as always, deserve close attention. Under the chairmanship of the noble Baroness, Lady Andrews, we have already considered in a properly collegiate way a number of draft framework agreements, and we have more work to do.

It will perhaps be said by the Minister that this proposed new clause would disapply elements of the Bill, leaving people waiting in limbo for framework agreements to be concluded where consensus between the four Governments was not being achieved. It could create legal uncertainty about when an agreement has been finalised and hinder the Government's ability to act where there was a need to do something quickly to avert a crisis. However, these are not convincing arguments. In which framework agreement area do the Government expect a prolonged—or even any—lack of consensus? If there is a damaging delay, the Government and Parliament can deal with the actuality, as opposed to the theoretical, with a one or two-clause Bill in a matter of hours. If the Government refuse to accept this proposed new clause, they will be doing something entirely contrary to government and Conservative Party policy, namely to encourage and even hasten the break-up of the United Kingdom. I cannot believe that they intend this. If they do, the policy behind the Bill is even more eccentric than I had previously thought. I identified some serious concerns at Second Reading and in Committee, and do not wish to add to them.

To prevent this proposed new clause becoming part of the Bill will undermine the purposes set out in the 2017 communiqué and have the adverse consequences that the noble and learned Lord, Lord Thomas, cited but, worse, it will endanger the union. I assume that the Bill is intended more as a political instrument than a constitutional one. I know that the development of our constitution over centuries has been at times unplanned, pragmatic and even haphazard, but we have tended to avoid deliberately destructive or destabilising measures.

The devolution settlement is by no means perfect but, as a Conservative and unionist, in company with my noble and learned friend Lord Mackay of Clashfern and my noble friend Lord Bourne, and many other noble Lords who have spoken today, I want to resolve the conundrum without destroying the integrity and cohesion of the United Kingdom. The natural and probable consequence of enacting this statute in its unamended form only three years after the quadrilateral agreement underpinning the common frameworks process will pull us in a damaging direction, through unwanted domination, absence of collaboration, lack of respect for the limited powers of the devolved Administrations, and a failure to recognise the complex and dynamic nature of this area of public policy. It will provoke an unequal and opposite reaction and hasten the break-up of the union.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, speaking after so many distinguished noble Lords, I will try to avoid repeating what has been said. I formally offer the Green Party's support for these amendments and thank the noble and learned Lord who tabled them and his co-signatories for their labours and powerful arguments.

I will offer three perspectives from green political philosophy. First, on the value of diversity, which the common frameworks approach embraces, a healthy ecosystem and a healthy governance system contain diversity. Our outdated, dysfunctional Westminster system acts to suppress that and, in response, we have seen the successful drive for devolution that has brought in political diversity across these islands. As we speak, the Senedd is considering extending that diversity to local government in Wales. That is a direction of travel that the Bill clearly and deliberately seeks to wrench into reverse, being deliberately destructive, as the noble Lord, Lord Garnier, said.

Diversity has obvious practical benefits, such as the ability to experiment, as the noble Baroness, Lady Randerson, reflected earlier, with different approaches to blocking the flood of single-use plastics into our choked islands; different approaches to producing healthy food from flourishing small market gardens and farms; and different approaches to educating our children, which later amendments in my name address. Where one approach is transparently successful, we hope others will follow its lead—unless political calculations get in the way.

[Baroness Bennett of Manor Castle]

The second philosophical point is about the value of localism—the people affected making the decisions that affect them, ideally democratically, as the nations other than England enjoy their democratic devolved legislative structures. "Take back control" was a very popular slogan in 2016. I entirely agree with that need, and put it to your Lordships' House that this is what the amendments in support of the common frameworks agreement do for the people of these islands.

Finally, there is the value of co-operation. Working co-operatively is something that we, as Greens, find is very popular with the public. They are fed up with the see-saw of two-party politics, of a new Government seeking to sweep aside and to argue against everything their opponent did, just for the sake of claiming victory. The common frameworks approach is the very epitome of a co-operative way of working.

The noble Baroness, Lady Finlay, said that for the Government to reject these amendments is to reject devolution itself. I agree. She said that it would be a step towards the break-up of the United Kingdom. I agree. My view of the union is different from the noble Baroness's. I believe there is a strong natural current towards taking back control in many parts of the United Kingdom but, if it is to happen, we can surely agree that it should be in a co-operative, positive environment, not nations feeling that they have to struggle their way out from under the boot of an overweening, care-less, distant Westminster.

Finally, taking the scientific perspective that reflects my background, I invite your Lordships' House to consider the fate of the trilobites, whose long story of ocean success and eventual extinction was laid out in a paper in the *Proceedings of the Academy of Natural Science* this week. Through three periods of mass global extinction, the trilobites were a large part of ocean ecosystems but, after each challenge, they had less diversity in ecological niches and bodily forms. Eventually, they dwindled to one species and disappeared. In diversity, co-operation and local power is strength. In homogeneity, dominance and centralism is a loss of resilience, decline and the potential for disaster.

Lord Cormack (Con): My Lords, this has been a remarkable afternoon. I agreed emphatically with my friend the noble Lord, Lord Foulkes, when he said it was not so much a debate as a series of statements. I have said similar in the past about other debates. I really believe it is essential that we do something to restore debate. My very good and noble friend Lord Naseby made an interesting speech, but I would have loved to have intervened. I would have challenged him, for instance, when he said the Bill is entirely legal. It is now, because we took out Part 5 last week but, if they attempt to put it back, it will become illegal again. He would have responded robustly and interestingly to that sort of interchange. It brings the place alive. We are in a dead, one-dimensional Parliament and we have to do something about it.

Having said that, I will make a suggestion. If we group the speakers who are in the Chamber, it should be permissible for me to intervene on the noble Lord, Lord Foulkes, the noble Lord, Lord Foulkes, on me, me on my noble friend Lord Naseby or whatever. At the beginning, whoever is on the Woolsack reads the rubric about all noble Lords being treated equally, but there is a time to depart from that. It is entirely right and proper for noble Lords to speak on the screen but, if they are there and not here, they cannot expect to enjoy all the privileges and preferences that those of us who take the risk to come here ought to have. I urge those who arrange these things to consider that.

Outside Part 5, the subject of today's debate is the most important part of the Bill. We had a magisterial introduction to the debate from the noble and learned Lord, Lord Hope of Craighead, wonderfully and amusingly backed up by somebody who led him so often, my noble and learned friend Lord Mackay of Clashfern. I beg the Minister, in his reply, to reflect on what those two eminent lawyers said. One was a Conservative Lord Chancellor of many years, and he was backed up by others such as the noble Baroness, Lady Finlay, who was another signatory to the amendment. I think that all noble Lords who introduced this amendment gave, as one noble Lord described, a masterclass in how to do it.

Despite what my dear and good friend the noble Lord, Lord Rooker, said, the Government have demonstrated that they can listen to your Lordships' House—not only on the Agriculture Bill a week ago, but today on the Order Paper. We have all had a letter, signed by my noble friends Lord True and Lord Callanan, thanking us for our contributions in Committee and saying that they have taken points on board. They have—not enough, but they have. If any point is to be taken on board it is that which we are debating in this first series of amendments. It is crucial, as several noble Lords have said, as the union is at stake.

We were not helped by a certain insensitive remark by an eminent personage a couple of days ago. As we have said before, the noble Lord, Lord Foulkes, and I were on opposite sides in the 1970s when we were debating devolution, but it has happened. It is a fact of life. Therefore, there has to be an arrangement between the constituent Parliaments of the United Kingdom. Every noble Lord who has spoken today, with the possible exception of the noble Baroness, Lady Bennett of Manor Castle, has expressed a fervent desire to keep the union. It is the most remarkable union in modern history, but it is at risk. It is at risk because the Prime Minister is perceived—and perceptions are so important in politics—to have a rather haughty attitude towards Scotland. It is at risk because the Government are perceived not to care sufficiently about the frameworks of the constituent Parliaments of the United Kingdom.

The noble and learned Lord, Lord Hope, laid this out with forensic and clinical precision. I beg my noble friend, in his reply, to reflect on what the noble and learned Lord said in introducing our proceedings. Notice that I am not calling them a "debate". I beg and beseech my noble friends, Lord True and Lord Callanan, to show a degree of sensitivity, as they have on some other amendments. Sensitivity is not a political weakness; it is sign of political maturity and strength. Reflect and, as I hope, we may not have to vote this afternoon.

I hope the Minister promises to come back at Third Reading, having had conversations with the noble and learned Lord, Lord Hope, my noble and learned friend

Lord Mackay of Clashfern, and my noble friend Lord Bourne of Aberystwyth. Remember that, for several years, he led the Conservative Party in the Welsh Assembly, as it then was. These are not political enemies and this is not a party-political issue. It is a constitutional issue of supreme importance to all parties. I ask the Minister, please, to take it away and have conversations with the noble and learned Lord, my noble and learned friend and other noble Lords, and to come back at Third Reading. If he cannot give that conciliatory, sensible and constructive answer, then I will have no hesitation in pressing the "Content" button on my machine.

3.30 pm

Lord Liddle (Lab): My Lords, first of all I say how much I agree with what the noble Lord, Lord Cormack, has said about how we should organise our affairs. We have to bring back genuine debate to this Chamber, and I hope that those responsible will take on board what he has just spoken about.

Secondly, I had prepared what I thought was an extremely well-argued speech on the subject before us today. However, having listened to far more eminent figures than me talk about the need for these common frameworks, I am not going to deliver it. All I will say is that the noble and learned Lord, Lord Hope, in opening the debate, spoke with a sharpness, a forcefulness and a logical directness that the Government would be well advised to take into account.

I have a couple of questions for the Minister because I think political questions arise from this discussion. First, does he acknowledge that the Government have changed their policy on these common frameworks since 2017-18, and why? It is clearly the case that there has been a change of policy and that Theresa May, in her commitment to "our precious union", as she put it, saw the dangers that Brexit would pose to the devolution settlement and tried to find a consensual way of resolving them. David Lidington, with the help of people such as the noble Lord, Lord Dunlop, came up with this concept of common frameworks as a way of doing this.

Why, in this Bill, if the Government have not changed their policy on these common frameworks, can they not find a place for them in the legislation? What is the objection to actually acknowledging their existence to balance the abstract principles of mutual recognition and non-discrimination, which every single lawyer in this Chamber tells us will override the practical effect of these common frameworks? Why do the Government not come clean about this? Why do the Government not admit that what they actually want is to take power to the London Government to get their way on whatever they want in this area, rather than using the bottom-up, consensual approach that David Lidington and the noble Lord, Lord Dunlop, put together in the passage of the EU withdrawal Act? I think the Government should do that because we are marching into very dangerous territory for the future of our United Kingdom.

I remember that the noble and learned Lord, Lord Hope, in his speech in Committee, argued that common frameworks were consistent with the principles of subsidiarity and proportionality that had been underlying principles of the European Union in this area of law. The noble Lord, Lord Callanan, said in response, "Well, those are European principles. We have now left the European Union; we don't have to follow them anymore". What principles are the Government following? What is the Government's vision for the future of the United Kingdom now that the Prime Minister has described devolution as Tony Blair's biggest disaster? Will he please set out to us what is his vision of the balance of relationships between the devolved nations? We are really getting into very dangerous territory.

I hope that we can somehow rescue the situation by getting these common frameworks back. If we do not, I hope that my party will press the case hard for a major constitutional convention on the future of the United Kingdom. It seems to me that unless we provide that credible alternative, the nationalists in Scotland will break up what has been one of the greatest ventures in history.

Baroness Noakes (Con): My Lords, I start by saying how much I agree with what a number of noble Lords have said about the nature of debate in this sterile House, and I hope that we can certainly move on. I think it is important to say that because, as noble Lords might expect, I am not going to be saying much else which will find favour with other noble Lords who have spoken in this debate.

I respect the concerns about protecting the powers of the devolved Administrations which lie behind the amendments in this group, but I believe that these amendments would not be helpful in the context of the internal market and might well be very harmful. There is no exact correlation between what the common frameworks cover and the UK's internal market covered by the Bill. Indeed, the functioning of the internal market is only one of six objectives of the common frameworks programme. Not every common framework will have a UK internal market dimension, and not every aspect of the UK internal market is included in the common frameworks programme.

So if Amendment 1 is agreed to, we will have uncertainty from day one about which bits of the common frameworks would override the market access principles. Uncertainty kills businesses. Uncertainty might be resolved only by the courts, and that could take five, maybe 10, years to bring to conclusion. Businesses cannot in general cope with timeframes of that nature, and that is especially true in today's lockdown-harmed business environment.

The common frameworks are by their very nature detailed and specific. They are practical solutions to well-defined problems, such as compliance with international obligations. They do, however, have two big weaknesses. First, they have no guiding star, or no guiding principle, and they cannot, by their nature, cope with future change. By contrast, the internal market enshrined in the Bill is based on the overarching and enduring principles of market access, namely, mutual recognition and non-discrimination.

I am very clear that businesses want the Government to deliver an internal market which has as few barriers to trade as possible. They do not want to have to master thousands of pages of common frameworks, which may or may not impact the internal market, just

[Baroness Noakes]
to do business 10 miles away if that is over one of the UK's internal borders. I have to say to the noble Baroness, Lady Randerson, that I have never even heard of the Aldersgate Group she referred to as representing business opinion, and I do not believe it represents the opinion of the whole business community.

In Committee, I urged noble Lords to consider the provisions of the Bill through the lens of businesses and individuals who will be trying to live, work and trade within the United Kingdom—that is what the Bill is about. By viewing the Bill through the lens of what the devolved Administrations think they might lose in terms of devolved competence, I believe that they may end up inflicting acts of self-harm on the people and businesses in their own territories.

I remind noble Lords of the high degree of dependence of the devolved nations on trade with other parts of the United Kingdom. This is an issue for Scottish businesses and residents, Welsh businesses and residents and Northern Ireland businesses and residents. It is important but not such a big issue for English businesses and residents. If trade is made more difficult, the result, as night follows day, will be higher cost and less choice for consumers. At a time of economic stress, that does not seem a sensible route to follow.

I have heard many arguments of principle adduced by the supporters of the amendments, but I have heard less about the practical issues. We heard about Scottish concerns on minimum alcohol pricing, but that was debunked in Committee. I believe that building regulations are a new red herring that has been introduced and will not conflict with the Bill. The Bill does not outlaw every variation within the UK, as some have tried to suggest. More importantly, I am still waiting to hear what will make life better for the businesses and residents of the devolved nations if the amendments are passed.

More than 90% of UK small and medium-sized enterprises, and nearly 60% of large businesses, trade only within the UK. That is the scale of the issues we are facing with the amendments. I hope that noble Lords will not jeopardise the aims of an internal market which works for the whole of the United Kingdom by pressing the amendments.

Lord Fox (LD): My Lords, the noble Baroness, Lady Noakes, is right: I found cause to agree with her opening statement, as I did with the noble Lords, Lord Foulkes and Lord Cormack, and others. The need to have proper debate—not least to allow the noble Lord, Lord Foulkes, to go back to his heckling—would add to the debate.

Congratulations should go to the proposers of the amendments and to the noble and learned Lord, Lord Falconer and my noble friend Lord Newby, who have managed to create a debate which gives your Lordships a proper choice. That choice centres around the words "mutual respect", because the Bill as it stands, unamended, is disrespectful to the devolved authorities and to the process of devolution. The amendment gives your Lordships a chance to build that respect back into the Bill.

On many occasions, Ministers have freely used the word "complement" and expressed the view that the common frameworks complement the process devised by the Bill. Unless those common frameworks can be built into the Bill, and unless the Minister can explicitly explain how they complement, there is no complementary process; there is replacement, which I believe is sought by the Bill. The noble Lord, Lord Naseby, spoke of the common frameworks as if they were some Bolshevik plot. I remind him that they were the policies of a Conservative Government whom he probably supported and voted for at some point in the recent past.

The amendments give an opportunity to put respect back into the Bill, but there is also a practical element to them. We should remember, as we were reminded by, I believe, the noble and learned Lord, Lord Mackay, that trade and the internal market are flexible: they move, they change. The common frameworks are designed to be a flexible, living document. As many Peers have pointed out, they are also there to manage divergence. The common frameworks are there to manage divergence and, as we have heard from a number of speakers, not least my noble friend Lady Randerson, that divergence delivers innovation, progress and better things for this country.

My noble and learned friend Lord Wallace brought up something very important. In the words of the Minister, the Bill seeks to do that which the common frameworks do not do. The common frameworks do that which is being transferred from the European Union. Therefore, the Bill is trying to do more than was being transferred from the European Union. This is a zero-sum game. Where is that power coming from? It is being reserved by the Government from what was previously devolved. My noble and learned friend showed that that is the clear plan that sits underneath the Bill.

3.45 pm

Your Lordships have spoken at length about the symbolic nature of what the Bill does to the devolved settlements and their future, and I will not re-emphasise those points, but I prescribe to the Minister, who I understand is a busy person, the Second Reading speech of the noble Lord, Lord Dunlop. It makes good reading and could very well inform some of the decisions that have to be taken as a result of what we are discussing today. I will not read the whole speech, but I pick up one sentence:

"The broader question for the House and for this union Parliament is: do we want our country's future to be all about endless intergovernmental competition and conflict or about co-operation and confidence?"—[*Official Report*, 19/10/20; col. 1336.]

The noble and learned Lord, Lord Hope, said that actions speak louder than words. He also said that these amendments reset the relationship with the four nations, which is why noble Lords on these Benches will support these amendments if they are pushed to a vote.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, this has been an excellent debate, despite the fact that it is decidedly one-sided—although the noble Baroness, Lady Noakes, did her best to redress the balance—and I look forward to the Minister's response. I said to him in an earlier meeting that this might be one occasion—perhaps the only one—when the House would be happy to hear a full response from him to the points made by the noble and learned Lord, Lord Hope, and his distinguished co-signatories and supporters.

I say that because, as the noble and learned Lord said, although the amendments sensibly address the rules for the mutual recognition of goods in Part 1, services in Part 2 and professional qualifications in Part 3, their underlying, ancillary purpose is to support and enhance the relationship between the Governments of the four nations of this United Kingdom. They focus on the key question raised by the Bill: is this to be a single market under new rules created and imposed from Westminster or is it to be all four nations working together, managing appropriate divergence, as they are currently doing through the successful common framework process?

I hope the Minister will give us a full answer to the important questions raised by this debate. I also hope that he will reaffirm his Government's commitment to our devolution settlement, because, as we have heard, our current settlement is under pressure—not least because of recent comments from the Prime Minister. This is not confined to the devolved Administrations. The virus, the recession and recent spats over local lockdowns, who manages public health and welfare best and who pays have exposed a centre that seems unable to listen and outlying areas that do not feel they are being consulted. As we will come to in later amendments, these are bodies with far greater knowledge of what is happening locally, but which lack the resources to solve the problems they identify. It can be argued that the Bill is actually about gathering powers which should be devolved to an insensitive centre which is trying to imprison a multinational country composed of vibrant, diverse regions with diverse histories and needs into a straitjacket of a unitary state. We can and need to do better than that.

As many noble Lords have said, the most striking aspect of this debate so far has been the wide cross-party support for these amendments, coupled with the fact that no fewer than seven members of the Select Committee considering common frameworks have made it clear beyond peradventure that the common framework process is alive and well, doing the job that the Government say they need done: supporting frictionless trade across the UK, improving standards, managing divergence and strengthening the union. Why is this process not at the centre of the Bill?

We support these amendments and will support the noble and learned Lord if he decides to test the opinion of the House. However, we heard from the Minister in earlier stages of the Bill and in separate meetings that his mind was not closed on this issue. Obviously, other interests are at stake here. However, the case made today by virtually everyone who has spoken has been strong and formidable in the arguments deployed. I urge the Government to give the House an assurance that they accept the principle that lies behind the amendments and that they will come back at Third Reading with amendments of their own which give effect to it. If so, we would support that.

It is clear that there is more that unites us on this issue than divides us, and it is clear from the tone and content of the debate that this would be the preferred solution of your Lordships' House.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, in preamble, I say again that I agree with those who would like to see our old proceedings back; as long as I am trusted and have the privilege to answer to this House, I will seek to do so from this Dispatch Box. However, I say to my noble friends on the Liberal Democrat Benches that if they want to have heckling from the noble Lord, Lord Foulkes, they should be careful what they wish for.

In reply to the noble Lord, Lord Rooker, I try always to be in a conciliatory mood. Particularly after a debate such as this I am mindful of the wise advice of the Emperor Marcus Aurelius: "Accept modestly; surrender gracefully." Unfortunately, however, as noble Lords who have had the privilege of serving in office will know, conciliation does not mean that one must accept specific amendments.

This debate was rooted in a passionate and sincere spirit, almost universally shared, of concern for the union and respect for devolution. As I say, that unites almost all of us who have spoken, including the Member now on his feet. The noble Lord, Lord Foulkes of Cumnock, made a fascinating and thoughtful speech, which of course I will study carefully. Those of us who care for the union and support devolution should be cautious in echoing the separatist claim that this or that action is being done to undermine devolution when it is not. The debate about effect and perceived effect is legitimate. The claim of bad intent that we have had from some is risky, if not perilous.

The UK Government and the devolved Administrations all have a clear stake in a smooth-functioning internal market, as my noble friend Lady Noakes pointed out. However, the Government have been clear—we have made no secret of this in the Bill—as my noble friend Lord Naseby said, that the right place for final decisions on the internal market should be the United Kingdom Parliament, where parliamentarians from all parts of the United Kingdom can debate and vote on legislative proposals.

I was asked a specific question by the noble Baroness, Lady Andrews; the noble and learned Lord, Lord Thomas of Cwmgiedd, touched on it also. New restrictions on the sale of goods, including goods made from plastic produced in or imported into one part of the UK, will be subject to the mutual recognition principle for goods unless an exclusion in Schedule 1 applies. The Bill will preserve the devolved Administrations' ability to regulate in line with their own strategies and regulate production of goods in their territory. However, goods, including ketchup, sold lawfully elsewhere in the United Kingdom will not be denied access to other parts of the UK market unless an exclusion applies. Consumers are of course not required to buy them.

The noble and learned Lord, Lord Hope of Craighead, in his powerful opening speech claimed that the Bill "destroys divergence"—that it is not possible under the Bill. I want to make it clear that to say it is not possible is incorrect. The Bill will apply only where divergence would create a market barrier under the conditions set out in the Bill. Domestic producers will have to conform to local regulation, and devolved Administrations will be able to regulate the use of all goods.

My noble friend Lord Callanan and I have welcomed positive engagement with a number of your Lordships across the House on the common frameworks programme—

[LORD TRUE]
some noble Lords have been kind enough to allude to that. This issue and the concerns raised in our debates are important. I hope we will be able to draw lessons from these discussions in the constructive spirit that they have taken on to date and find ways to set at rest some of the concerns expressed that we believe are unjustified.

As I have said before to your Lordships' House, we, along with the devolved Administrations, remain committed to the common frameworks programme. We recognise the importance of the issue and the need to underline unequivocally the Government's continued commitment to the frameworks programme, before and after the passage of the Bill. An iron curtain will not fall. For all the profound respect I have for the noble Baroness, Lady Finlay, I do not believe that that sort of language is helpful.

Our commitment has been made clear to your Lordships' House at every stage in our debates and discussions on this to date, as the noble Lord, Lord Stevenson of Balmacara, said, and in the regular publication of framework analysis, which has been in circulation since 2008. The pursuit of this aim must respect the interests of the other parties involved in the common frameworks programme. There is no indication at present that the devolved Administrations would support placing common frameworks on a statutory basis. Indeed, when I had the privilege of giving evidence to a Welsh Senedd Select Committee last week, that was not the impression I received. However, in any case, common frameworks have not been designed to carry legal force.

The Government have made it clear—yes, I will use the word—that the frameworks programme and the UK internal market are two complementary undertakings. The devolved Administrations will continue to be able to innovate and regulate in devolved policy areas, but the UKIM Bill will create limits on the extent to which they can enforce new requirements against traders from other parts of the United Kingdom. The market access principles will ensure that any divergence does not damage the ability of UK companies or investors to trade with every part of the United Kingdom. I appreciate the feeling across the House on this matter, but the Government view retaining the flexibility and voluntary nature of the programme and respecting market principles as important and viable complementary objectives.

I acknowledge that there may be an appropriate way to put frameworks into the Bill while retaining the flexibility and the voluntary nature of the programme and respecting the market principles. However, I respectfully suggest that the approach proposed here to make these amendments to the Bill is not the right one, and I will seek to explain why.

The approach proposed in these amendments would significantly change the nature of common frameworks, giving agreements within them primacy over the market access provisions in the Bill, as acknowledged and argued by the amendments' signatories. Although I understand the intention of these amendments in seeking to define the relationship between the common frameworks and the market access principles, they are problematic in a number of respects. The approach would automatically disapply the market access principles and mutual recognition of authorisation requirements in relation to regulations or requirements that implement agreements reached under common frameworks. I disagree with my noble and learned friend Lord Garnier; this creates a risk of legal uncertainty. On this I agree with my noble friend Lady Noakes in her powerful speech about the interests of business and consumers, particularly in the smaller economies of the United Kingdom—an aspect ignored by the signatories to the amendments.

4 pm

The approach in the amendments goes against the very purpose of the Bill, which is to give businesses across the UK certainty on the conditions under which they must operate. The amendments would make the operating environment potentially unstable and create confusion for business. No one could know for sure, until the question was determined in court, whether a regulation or requirement, or a combination of regulations or requirements, was giving an effect to an agreement reached within a common framework. There would be uncertainty as to whether or not the market access principles applied.

For instance, in the case of the provisions of Amendment 1, proposed subsection (2) creates the risk that Ministers would not be able to make any regulations in the absence of an agreed framework. This approach is too broad and would allow for a situation where Ministers are unable to legislate until a common framework process has been completed, even where there is a pressing need. Ascribing an expansive legal definition may well lead to unintended consequences, without having the safety net of mutual recognition and non-discrimination present for citizens and businesses.

Equally, Amendment 51 would disapply the mutual recognition of professional qualifications, set out in Clause 22(2) in its entirety. This could lead to significant uncertainty for those reliant on continuing mutual recognition of professional qualifications across the United Kingdom. There is also scope for legal uncertainty on exactly when mutual recognition under Clause 22(2) would be disapplied. Furthermore, where these amendments refer to the completion of framework processes, they leave open, as we discussed in Committee, the question of what would constitute an end—I think the word then was "exhaustion"—to the relevant framework process in a given area. If it is not possible to agree a common framework, it is unclear at what point limitations proposed by these amendments would cease to apply. Once again, such uncertainty would create the risk of an excess of litigation and perverse outcomes, as different Administrations might differently interpret what constitutes an end to negotiations on a common framework. As I said in Committee, not everyone has the same definition of an end.

In our judgment, this broad approach to using common frameworks to disapply elements of the Bill goes too far and could lead to legal and regulatory uncertainty. Subjecting businesses to the uncertainty of waiting for numerous individual agreements to be reached between four parties is not in the interest of the devolved Administrations, inward investors, or the businesses and citizens of the United Kingdom.

I appreciate your Lordships' interest in this, and will restate the Government's wish to find a way to allay concerns, in the context of this Bill or outside. We remain absolutely committed to the common frameworks programme. However, in the light of the contributions today, which I have listened to carefully, I must none the less tell the House that these amendments do not provide a basis for any agreement before Third Reading. I recognise that noble Lords may therefore wish to press their amendments. None the less, I formally urge noble Lords to withdraw them for the reasons I have outlined.

The Deputy Speaker (Lord Duncan of Springbank) (Con): I have received only a single request to speak after the Minister, so I am going to call the noble Baroness, Lady Randerson, to ask a short question of elucidation.

Baroness Randerson (LD): The Minister cast doubt on warnings about the impact on devolution. Has he looked at opinion polls in Wales tracking support for independence? That is a country that only 20 years ago very narrowly accepted devolution. It is a country that voted for Brexit, and one that is governed by a Labour-Lib Dem coalition—two unionist parties. You can see in that country the clear feeling about the way in which this Government are behaving.

Lord True (Con): My Lords, I am not sure that is directly relevant to the subject matter of the Bill. I thought I had in fact made the point that imputation of motive and intent is a political choice that should be exercised wisely. This Government's intention in this Bill is in no way to undermine the devolution settlement and I have restated, from this Dispatch Box, our commitment to the common frameworks. As for opinion polls, if I were a Liberal Democrat I would not live by them.

Lord Hope of Craighead (CB) [V]: [*Inaudible*.]—perspectives have offered support to what these amendments seek to do. Picking up a point made by the noble Lord, Lord Cormack—sitting on my own in my little room, participating virtually—I too very much regret that it has not been possible for us all to join together in the Chamber. I see the value of the points he was making about introducing some more lively spirit among those in the Chamber, so there could be a real atmosphere of debate, which even remotely we would be able to enjoy.

I listened very carefully to what the noble Lord, Lord True, said. He expressed his position, as always, very clearly in careful language. I think, on a fair reading, that the clauses in Parts 1 and 2 are more absolute in their effect than he was making out, and I do not accept the criticisms that he makes of the amendments' effect. Of course, I do not claim that the amendment I have put forward is a final solution; there was always an option open to the Government. If they thought the amendments could be improved upon or altered to meet some of the points that the Minister made, that could have been done—but there was no such offer forthcoming from him, for reasons that I understand.

The question was whether the devolved nations should continue to be free to develop and apply market policies within their devolution mandate which have secured agreement under the common frameworks process, or whether that freedom should simply be brushed aside, as the Bill really seeks to do. It is difficult to avoid the conclusion that this Government regard devolution as an inconvenience that can simply be ignored when they want to. I regret that very much indeed. I am a unionist and I believe in the union and all that it stands for, and all the values that I hope it will continue to give us in future. But I am afraid we see here an uncompromising, careless and centralist style of government, which divides our United Kingdom into pieces at a time when harmony is most needed. That has no place in our democracy.

I know that the Minister will reflect very carefully on what has been said today, and I hope that he will do his best to persuade those at the heart of government to think again, but what he has said in his reply leaves me with no alternative. I seek to test the opinion of the House on my amendment.

4.08 pm

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4.20 pm

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, we now come to the group beginning with Amendment 2. I remind noble Lords that Members other than the mover and the Minister may speak only once, and that short questions of elucidation are discouraged. Anyone wishing to press this or anything else in this group to a Division should make that clear in the debate.

I should inform the House that, if Amendment 2 is agreed to, I cannot call Amendments 3 or 4. In that case, the debate on the group beginning with Amendment 3 will take place with Amendment 8 or 9, as called. The debate on Amendment 4 will take place with Amendment 5, with the same list of speakers. I hope that that is all clear.

Clause 3: Relevant requirements for the purposes of section 2

Amendment 2

Moved by ***Baroness Andrews***

2: Clause 3, page 3, line 25, leave out subsections (8) to (10)

Baroness Andrews (Lab) [V]: My Lords, I shall speak also to the other amendments in this group which stand in my name and those of other noble Lords. I am very grateful that such a distinguished group of noble Lords have supported them.

Since my amendments were tabled, the noble Lord, Lord Callanan, has, to my pleasure, added his name to Amendment 2. He will, of course, make his own arguments clear on why he supports this amendment, and I look forward to hearing them. However, I hope to change his mind just a little further in this debate and to say a few words in respect of the amendments as they now stand.

We had a very powerful debate in Committee, when it was made absolutely clear that the majority of your Lordships agreed with the combined censure of the

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Delegated Powers and Regulatory Reform Committee and the Constitution Committee that the Government had taken unprecedented and unnecessary Henry VIII powers in this Bill—powers that were too wide, too vague, opportunistic and altogether so inappropriate that the best thing to do was to remove them from the Bill entirely.

I have to declare an interest in the Delegated Powers Committee. It was set up more than three decades ago and has, particularly in the past few years, recorded the casual and accelerating abuse of the parliamentary process.

Both committees dismissed the arguments that the Government made originally in support of these extraordinary clauses as contemptuous of Parliament. They pointed out that the argument that secondary legislation could offer more speed and flexibility to deal with things that just might happen in the future were both specious and dangerous.

In particular, they referred to Clauses 3 and 6, which are the twin pillars of the archaeology of market access—mutual recognition in Clause 3 and non-discrimination in Clause 6. They said that they contained Henry VIII powers which, in each case, allowed Ministers to alter the definition of the key requirements of the Bill—for example, the fundamental nature of what is traded, and the characteristics of goods and matters related to, for instance, their inspection and production—and, in each case, to rewrite those principles substantially in secondary legislation. The DPRRC said that both clauses suffered from the same defects and both proposed to make future amendments merely by consulting the devolved Administrations but without seeking their consent.

The committee was equally clear that both clauses were conjoined and equally egregious, and that the relevant subsections in both should be removed. That is just what my Amendments 2 and 7 would do. Therefore, I was really delighted that the Government had clearly respected the weight of the argument of the committee and had agreed to withdraw completely subsections (8) to (10) of Clause 3.

In his letter to the Delegated Powers and Regulatory Reform Committee on 12 November, the Minister said that the Government had done so because they recognised

"the strength of Peers' concerns about the number and extent of delegated powers, and therefore"

are

"prepared to remove this power."

So far, so very good, but, sadly, and for reasons that I really cannot explain, the Government have not recognised the committee's identical and equally grave concerns in relation to Clause 6. They merely said that they are

"fully committed to ensuring that the use of the power in clause 6(5) is subject to effective oversight and consultation."

I really do not want to be churlish about this; I want to persuade the Government to do the consistent and logical thing. My first question to the Minister is: if they recognise the problem with Clause 3, why cannot the same grace and logic be applied to Clause 6? What is different about Clause 6? The substance of Clause 6(3) deals with slightly different aspects of trade but ones that are no less important and cover, in some paragraphs, exactly the same areas, such as inspection. Therefore, why should the non-discrimination aspect be treated differently from market recognition and be subject only to the uncertain and retrospective review that the Government offer? The Minister's letter is silent as to the reason, but I have some hope that this evening, with encouragement, he might be prepared to reconsider whether it would not make better sense to treat these two clauses consistently, in the same way, and to remove both sets of subsections from the Bill, rather than introduce a whole new set of anomalies.

There is another reason why he might want to think again about Amendment 7. Much of the debate on the whole Bill turns on the impact it has had, from start to finish, on the future of the devolution settlements and the respect given to the devolved and equal Governments. We have just finished a debate on that point on Amendment 1—the way in which the Bill impacts on the freedom that the devolved Administrations have to apply their legitimate and different legislation. I will not repeat what I said on earlier amendments, but, as the DPRRC report puts it:

"Clause 3(4) equally affects all the administrations of the UK. If it turns out to be defective, it should be for Parliament to correct it rather than Ministers at Westminster."

However, with these clauses the Government can act without the need to introduce new primary legislation or to obtain the consent of the devolved Administrations, the Minister being under a duty only to consult, even though the proper functioning of the internal market is essential to all the Administrations of the UK.

The identical language is applied in Clause 6, so that, I argue, is a very powerful ethical, legal and political case for removing the relevant subsections from both Clauses 3 and 6. These powers of consultation without consent stand out as a failure to understand what the Delegated Powers Committee spells out quite clearly: that this part of the Bill marginalises the devolved Governments. I simply do not understand why the Government do not grasp the significance of that.

The other amendments in my name in this group, Amendments 12, 17, 31 and 42, deal with different ways in which secondary legislation is used to deal with other, related matters in the Bill—indirect discrimination, for example. Amendments 12 and 42 concern the list of legitimate aims; Amendment 17 concerns the powers to amend Schedule 1 in relation to provisions excluded from the application of the market access principles; and Amendment 31 deals with the power to amend Schedule 2 to add, amend or remove services or requirements to or from those currently excluded from principles of mutual recognition and non-discrimination. Each of those amendments, again, reflects the egregious way in which secondary legislation has been seen as a point of first resort.

The Government have responded to the committee's recommendations, according to the detailed letter that the noble Lord, Lord Callanan, sent to it, by tabling amendments that will provide for additional consultation with the devolved Administrations. Those amendments are not in this group, but I simply say that "consultation" is a very slippery word and a slippery concept, unless it means conducting a serious and independent consultation and taking account of and acting on the findings. If it

does not, it is meaningless. To consult is not to seek consent, which is what the devolved Governments seek and are entitled to.

4.30 pm

The government amendments in this group, however, contain something of a novelty: provision for the review of the exercise of delegated powers in Parts 1 and 2 covering both goods and services. While I would much prefer these powers not to be in the Bill in this form at all, I will listen with care to what the Minister has to say and what he tells us about the reviews, what they will do and when and how they will do it. I will be looking for evidence of independence, rigour and any identification that the powers have been misused in the way that the committee has already drawn attention to.

We should not be having this debate on the Bill in this way. The Government now have the opportunity to change their tone, particularly since the Jacobin tendency seems to have been evicted from No. 10. But we have had years of the Government challenging the legitimate role of Parliament in ways that we simply could not have imagined a decade ago. I really hope that, in the word of the moment, we can reset that relationship. The tone of the letter sent to the DPRRC was something of a mea culpa from the Minister but it was only a start.

I welcome the fact that the Minister has accepted the deep concerns of that committee and the Constitution Committee on Amendment 2. I only ask him to treat Amendment 7 in the same way and agree to the relevant subsections being removed from the Bill. If he cannot accept my Amendment 7, I shall have to seek the opinion of the House when we come to it. For the moment, however, I beg to move.

Baroness Meacher (CB) [V]: My Lords, I speak in strong support of the amendments tabled by the noble Baroness, Lady Andrews, to which I have added my name.

As many noble Lords made clear at Second Reading and in Committee, this Bill has plumbed new depths in undermining our democracy through the unprecedented and unacceptable use of Henry VIII powers to sidestep the scrutiny of Parliament and give Ministers extraordinary powers. It is no accident that it was Henry VIII clauses in this Bill, six of which are the subject of this debate, that prompted the chairs of the Delegated Powers and Regulatory Reform Committee, the Constitution Committee and the Secondary Legislation Scrutiny Committee to write to the Minister for the Cabinet Office and the Leader of the House of Commons expressing their deep concern about these developments. This Bill using Henry VIII powers unreasonably is of course not a one-off. As a relatively new member of the Delegated Powers Committee—I should declare that interest—I have been very conscious of its growing concerns about this Government's increasing use of delegated legislation and ever wider Henry VIII powers. It is worth putting on the record a point made by the Leader of the House of Commons in response to the letter from the three committee chairs. Mr Rees-Mogg says that

"there will be times when the Government will still need to rely heavily on delegated powers, particularly if legislation is needed urgently, but I am clear that at all times the Government must fully justify the appropriateness of these powers to both Houses and to your Committee."

The problem is that in the view of the Delegated Powers Committee, and certainly in my view, the Government simply have not justified the wholesale delegation of powers in the Bill.

We are very pleased that the Government have gone some way towards rectifying the problem through their many amendments. In particular, we welcome the Government's acceptance that the Henry VIII power in Clause 3(8) should be removed. The arguments for removing that power, as set out in the Delegated Powers Committee report, are overwhelming. However, as the noble Baroness, Lady Andrews, has cogently spelled out, exactly the same arguments apply to the Henry VIII power in Clause 6. I fully support the position that if the Government are unwilling to withdraw the Clause 6 Henry VIII power then the opinion of the House on this issue just has to be tested. I hope a vote will not actually be necessary—would it not be wonderful if the Government accepted this amendment along with the one on Clause 3?—but if there is one then I will be supporting the noble Baroness.

Our amendments to Clauses 8, 17 and 20 are less broad and the issues are therefore a bit less concerning. However, I have considerable reservations about Clause 10(2), which gives Ministers the power to rewrite Schedule 1 in part or indeed in its entirety. Surely that cannot be justified. Our Amendment 17 would delete that power. I hope the Minister will give the House some assurance that he will take this issue back for reconsideration.

I welcome the Government's new commitment to consulting the devolved Administrations before making regulations under a number of clauses of the Bill. Whether that goes far enough will be debated at a later stage of Report and I therefore will not comment further on it here. I also welcome the Government's commitment to review the use of Parts 1 and 2 as set out in the government amendments.

Lord Carlile of Berriew (CB) [V]: My Lords, it is a pleasure to follow the speeches by the noble Baronesses, Lady Andrews and Lady Meacher, who have spoken with such cogency. I agree with them.

My name appears on Amendments 2, 7, 12, 17, 31 and 42 for two reasons. The first is that I was there at the beginning of devolution in Wales and have watched it develop in ways that were described earlier this afternoon by other noble Lords. It has been successful; it has brought the people of Wales much closer to government and resulted in faster decision-making than we ever had in the old days when the nearest we had to devolution, when I was a Member of another place, was the Welsh Grand Committee.

The second reason why I speak in favour of these amendments is a more general one. I have watched with surprise, and sometimes despair, the galloping tendency of government—and it has been successive Governments—to take more executive power through secondary legislation. Henry VIII must be very surprised, if he is aware of it at all, that his powers are being asked for so frequently and when they are not necessary.

I want to focus on Amendment 7 for I, like the noble Baronesses who have just spoken, welcome the addition of the name of the noble Lord, Lord Callanan, to Amendment 2. That is truly welcome. When I first saw it, I thought it showed a thorough recognition of

[Lord Carlile of Berriew]
the issues at stake because it is a significant concession. All that we are asking on this side of the debate is consistency with regard to the non-discrimination principle. That principle is of as fundamental importance as the mutual recognition principle for markets to which the noble Lord, Lord Callanan, has signed up in Amendment 2. They are plainly legislative siblings—indeed, they are almost identical twins—since they have a great deal of political and legislative DNA in common. Certainly they are equally important, and they are of equal moment in the devolved parts of the UK. I therefore feel bound to say that I am bemused by the lack of logic displayed by the Government's failure to agree to Amendment 7 having agreed to Amendment 2.

I was talking earlier about the way in which devolution has worked. I can put that point very simply. These days in Wales, about which I know more than Scotland, legislative changes are brought about in real time as decisions become necessary. They are not always right—legislative changes are never always right—but at least there is an understanding by the public, those involved in politics in Wales and public servants in Wales that it is possible to make change. By that process, one has given a new self-respect regarding the way in which Wales is governed to elected Members, public officials and those who elect the elected Members.

What is still in Clause 6, the requirement for consultation without consent, is, unfortunately, a fig-leaf. It does not provide any reality to the role of Wales—on which I speak particularly—in this process because it can be overridden. Yes, reasons have to be given, but it is not very difficult to construct reasons. It relegates the devolved regions to a negligible role on matters directly affecting their interests. If it were necessary to do that, if that relegation could truly be demonstrated intellectually and logically as necessary, then I would be willing to support it, but I see no such explanation. Allowing executive powers in this way goes far beyond what is necessary.

Baroness McIntosh of Pickering (Con) [V]: My Lords, I am delighted to follow the noble Lord, Lord Carlile of Berriew. I congratulate the noble Baroness, Lady Andrews, and other noble Lords on tabling these amendments. I thank my noble friend Lord Callanan for supporting Amendment 2 and, in particular, for adopting government Amendment 35 as his own. I thank the Law Society of Scotland for its help, both in briefing me and in helping me to draft an earlier form of this amendment. I want to single out for praise Michael Clancy, whom I have known for many years. He works tirelessly on behalf of the Law Society of Scotland, and Scotland more broadly, to ensure that both Houses of Parliament and other sectors of Scotland are in tune with the constitutional implications of their thinking. I also thank my noble friend Lord Callanan for tabling government Amendments 29 and 47. They are inclusive in reaching out to consult the devolved Administrations.

Amendment 2 lays to rest the dangers of many of the original provisions in this Bill—particularly in relation to secondary legislation and Henry VIII powers—that did not find favour with your Lordships' House. I remind the House of my interest as a non-practising member of the Faculty of Advocates. I shall pursue a similar line of thought to that expressed by the noble Baroness, Lady Andrews, in moving Amendment 2. I welcome government Amendments 29, 35 and 47, but perhaps we need to persuade the Government to move similarly further in other parts of the Bill. I shall seek to do so when the time comes. I congratulate my noble friends Lord Callanan and Lord True on their letter and thank them for listening to our concerns.

Baroness Jones of Moulsecoomb (GP): My Lords, it is always a pleasure to follow the noble Baroness, Lady McIntosh of Pickering. The noble Baroness, Lady Andrews, made a superb opening speech. I also agree with everything said by the noble Baroness, Lady Meacher. They were two superb speeches.

I want to raise something that the noble Lord, Lord Cormack, said in the last debate and with which I strongly disagree. He said that there is no debate in this House. This is an absolute fallacy. A normal debate is when one side puts its argument and the other side responds. What the noble Lord meant by "lively debate" is rude interruption. I do not see why we should accept that as normal debate; it simply is not. When I was first in this House, I found it extremely difficult because some rather nasty Peers interrupted my early speeches. It was very distracting for me and for those listening to me. I disagree completely with that concept of a debate. The reason we have no debate in this House is that we all agree that the Government's legislation is rubbish. That is why there is no argument. Even the noble Lord agrees with the noble Lords, Lord Foulkes and Lord Fox. We are all agreeing, apart from—well, sometimes the Minister agrees.

How dare anyone suggest that people in this Chamber have more of a right to speak than those outside? I have kept away from this House because I did not want to risk my life or other people's. I care about this very much. Why should people in this red and gold bubble think they are entitled to a different sort of debate? I am here now only because I am so angry about some of the Bills coming through and I cannot express my fury well enough virtually and remotely; it does not come across through the screen. I do not want to be here. I am here only because it is the best way to get my point across. Those staying away are being more rational.

4.45 pm

I return to the internal market Bill. We are reaching a point where *Hansard* should be given copy-and-paste versions of our speeches. We keep saying the same thing, particularly about the Henry VIII powers. I do not understand why the Government do not accept that it is not democratic for Ministers to continually grab bits of power for themselves because they think they have to make quick decisions. The Government are in an incredibly difficult situation and I have some sympathy for them. I cannot imagine how any Government could handle it perfectly, but they cannot keep grabbing bits of power. The Government should accept that Parliament can react quickly if it has to.

There are excessive powers in parts of the Bill that are infuriating. The experience of the last nine months shows that we should be sceptical of granting the Government any made-affirmative powers. The Bill already tramples over everything in the name of a free market. The Government want even more power to be even more destructive. I strongly oppose these powers and the government amendments. I believe that the Minister's amendments should be withdrawn.

Lord Beith (LD) [V]: My Lords, apart from the interesting diversion by the noble Baroness, Lady Jones, into wider issues affecting the House, there has been an air of unanimity in this debate. There has been unanimous support for the amendment moved by the noble Baroness, Lady Andrews, and appreciation of the clear way in which she expounded the need for it. Of course, she is referring to Amendment 7 rather than Amendment 2.

It is unusual for my name and for that of the noble Lord, Lord Callanan, to appear on the same amendment, although we have always had cordial relations. I welcome the Government's acceptance of the case put to them—at least for this part of the Bill. On government Amendments 29 and 47, it would be churlish not to welcome the review of how delegated powers are used, but this does not answer the case against these powers being in the Bill at all. A number of speeches made that point very strongly.

Henry VIII powers—the Government's ability to change statute law by means of secondary legislation—are repugnant in all but the narrowest of cases. They have become habitual—a "galloping tendency", as the noble Lord, Lord Carlile described them. They present Parliament with law that cannot be amended in almost all instances. They are not subject to effective parliamentary scrutiny, partly because of the Government's control of the Commons agenda and timetable. They can be applied to devolved areas without consent, as the noble Baroness, Lady Andrews, pointed out. From the Government's point of view, and from the standpoint of legal certainty, it should be remembered that secondary legislation is open to legal challenge in a way that primary legislation is not.

What range of powers are we looking at in these amendments? Amendment 7 would remove a very wide power in Clause 6, allowing the Secretary of State by regulation to change the Act that this Bill will eventually become so as to vary, remove or add to parts of subsection (3). That subsection defines the statutory provisions relating to what is within the scope of the non-discrimination principle. It includes goods, transportation, display, certification and the conduct of businesses. That is where the Government's offer of a review comes in, but I do not believe this meets the case for amending primary legislation by means of secondary legislation. It is wrong in principle and unnecessary in practice because primary legislation can be brought forward. Parliament can act quickly, and it is generally within the Government's ability to ensure that it does so.

Secondary legislation is incapable of amendment by Parliament and not open to adequate scrutiny. That is why the Constitution Committee, of which I am a member, and the Delegated Powers Committee have so often argued against the excessive use of secondary legislation, particularly in its Henry VIII form, and I think the case is a very powerful one. It is like the sea trying to wash away a piece of particularly hard rock: we occasionally make some progress with it but before very long we find that we are unable to effectively resist the Government's permanent tendency to create powers of this kind.

If the noble Baroness decides to test the opinion of the House on this matter, Liberal Democrats will support her amendment.

Baroness Hayter of Kentish Town (Lab): My Lords, as I have said before, the women in the House always get a bit nervous when we talk about Henry VIII. We have only to go outside and see what happened to some of Henry VIII's women to remind us that we are a bit uncomfortable with him.

The debate has made clear why the amendments in the name of my noble friend Lady Andrews and fellow members of our always brilliant Delegated Powers Committee should be heeded. Indeed, the unanswered question, posed by my noble friend, is why the Government have not removed the powers in Clause 6 in the way that they have now agreed to remove them in Clause 3. Why the inconsistency? What is the difference between them? Our Delegated Powers Committee certainly did not distinguish between the two pillars of the internal market—market access and non-discrimination—so we do not understand why the Government have taken such a different view on those. Without a stunning, innovative answer—the Minister looks as though he may have one, but there was none such in his letter of 12 November to the Delegated Powers Committee—when we come to Amendment 7 a little later, we will throw our weight behind it to remove the sections which, as the noble Lord, Lord Beith, has just set out, give overwhelming power to Ministers. Furthermore, as my noble friend Lady Andrews says, if these are meant to be just backstop powers to correct as yet-unknown deficiencies, then, given that Clause 13 affects all parts of the UK, it should be for Parliament, not Ministers in Westminster, to make any correction, with the full panoply of safeguards that come with primary legislation for input from the two Houses as well as from the devolved legislatures.

It is really not good enough—in a Bill which, after all, they must have known for four years they would need—for the Government at this stage still to be so unsure that they have thought of everything and drafted correctly that they need to accord to themselves these extraordinary powers to amend important parts of what will then be an Act of Parliament. That was never the purpose of secondary legislation. Indeed, as the Minister will know, we feel that it is likely that the proposed use of these ministerial powers is more the result of the Government's tendency to rely on them rather on than proper primary legislation on a wide variety of measures. Indeed, as the noble Baroness, Lady Meacher, noted, so common has this become that my noble friend Lady Taylor of Bolton wrote on behalf of the Constitution Committee to Mr Rees-Mogg on 9 November suggesting how to diminish the practice, while the noble Lords, Lord Hodgson and Lord Blencathra, from the Secondary Legislation Scrutiny Committee and the Delegated

[Baroness Hayter of Kentish Town]

Powers and Regulatory Reform Committee respectively, similarly wrote to Mr Rees-Mogg on 10 November, specifically with concerns about "skeleton bills and skeleton provision", noting his acknowledgement that delegated powers

"should not be 'a tool to cover imperfect policy development'"

and reiterating the need for the Government "at all times" to

"fully justify the appropriateness of delegated powers".

I fail to hear such justification for these particular powers. Therefore, while welcoming the Government's support for Amendment 2, we will support Amendments 7, 12 and the others in this group.

I am delighted that, because of the acceptance of Amendment 2, my Amendment 4 is pre-empted. For those who do not follow all this, Amendment 4 would have amended subsections (8) to (11), which was a regulation-making power. We were seeking to give the delegated legislatures a say over that. But clearly, as those powers have come out, my Amendment 4 luckily is pre-empted and not needed. However, we will return to similar amendments next week. For the moment, we welcome the moves of the Government on Amendment 2 and, in due course, unless the Minister comes up with a stunning answer in the next few minutes, we will support Amendment 7 in its place.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): I thank everybody who has spoken in the debate so far. Just before we start, let me give my personal support—not a matter for the Government—to the gruesome twosome, the unholy alliance between the noble Lords, Lord Foulkes and Lord Cormack. I hope that we can get back to full and proper debate in this Chamber as quickly as possible. I do not know about other noble Lords, but I quite miss the heckling from the noble Lord, Lord Foulkes; it adds a bit of interest and spice to our debates. I am sure that the noble Baroness, Lady Jones, copes very well with debate in this Chamber, of which she is a noted exponent.

The Government have listened closely to the concerns from colleagues from all sides of the House and outlined in the DPRRC report. I thank your Lordships for the helpful debates that we had, and I hope noble Lords will think that I have responded at least to some of the points that were made. As I set out in my letter to colleagues last week, we listened closely to all your Lordships' comments and, after further reflection, we are proposing a number of changes in line with many of those comments to how these powers will operate. The amendments will remove powers that are now, on further reflection, considered non-essential and will provide the fullest transparency and accountability in the use of those that remain. We hope that the package of changes proposed will address the concerns that were raised and provide some reassurance that the Government take their responsibilities seriously in administering these powers.

I understand from the comments of the noble Baronesses, Lady Hayter and Lady Andrews, and others that noble Lords intend to divide the House on this issue tonight. I hope that they will consider carefully what we hope will be very welcome steps before voting in a way that will have quite far-reaching consequences for the operation of the UK internal markets. Given that there are no other groupings today and next week on the delegated powers more generally, I hope that noble Lords will allow me to discuss this grouping in a little more detail.

First, the amendment in the name of the noble Baroness, Lady Andrews, will remove the ability of the Secretary of State to amend the list of statutory requirements that are in scope of the mutual recognition principle for goods. While our position remains that the majority of the powers in the Bill are essential, as I said, in this particular case we are now content that the removal of the power will not substantially undermine the operation and flexibility of the internal market system. Therefore, we have removed the power—I have added my name to the amendment from the noble Baroness, Lady Andrews—in combination with further changes on transparency and accountability that we are proposing.

5 pm

Secondly, I have tabled an amendment that will remove the "made affirmative" power to make regulations amending Schedule 2 on exclusions from the market access principles for services. The Government have reassessed the balance between the need to make changes to Schedule 2 and the need to give Parliament sufficient opportunity to scrutinise any such changes. We have decided that it would be possible to make all of the necessary changes using the draft affirmative procedure. I believe that this amendment goes some way to address the concerns raised by the House about the use of these two powers.

Thirdly, I have tabled amendments that impose a new duty on the Secretary of State to review and lay a report before the House on how the powers in Parts 1 and 2 have been used. This duty affects the powers in Clauses 6, 8, 10, 17 and 20. The purpose of this amendment is to offer comfort to the House that the powers to make delegated legislation contained in Parts 1 and 2 will be scrutinised not only when they are being laid before Parliament, but in a more holistic way after a suitable period of time has elapsed. This dedicated review will ensure that individual uses of the power can be considered in the round, for example, taking into account cumulative impacts and those that could not have been foreseen prior to the change. The report has to be laid between three and five years after the Bill is passed. This will ensure that enough time has passed for the effect of the powers to be thoroughly and properly considered, while not waiting too long before the House has a chance to consider the evidence.

I understand the scepticism expressed by the noble Baroness, Lady Andrews, about the independence and rigour of the review, but I reassure her that we are fully committed to carrying out this review thoroughly and rigorously. This will involve consultation with the devolved Administrations where the powers have been used to ensure that their views are accounted for. It will involve any relevant reports by the office for the internal market—an independent office—and the Secretary of State will provide evidence and justification as to why it was necessary to exercise the power and what impact it has had on the integrity of the market.

This is in line with further government amendments I have tabled, which were outlined in the "Dear colleagues" letter that a number of noble Lords were kind enough to refer to, requiring consultation with the devolved Administrations prior to the use of the powers I mentioned earlier. I will introduce these amendments in a later grouping. However, they again underline our commitment to effective consultation and transparency and to ensuring that the internal market works for all parts of the United Kingdom. I hope that this, together with the other amendments in my name, goes at least some way to addressing the concerns raised by noble Lords in previous stages, and I hope that the House will accept the amendments.

There are also a number of amendments in the group that seek to remove other delegated powers from the Bill. These amendments seek to remove the powers to amend the legitimate aims and exclusions for both goods and services, and the power to amend the list of relevant requirements for the non-discrimination principle for goods. The noble Baronesses, Lady Andrews and Lady Hayter, and the noble Lord, Lord Carlile, asked me why I support Amendment 2 but not Amendment 7. The reasons for removing that power with Amendment 2 do not read across to these other powers. As I said, we are content that removal of the Clause 3 power will not substantially undermine the operation and flexibility of the system.

However, these other powers deal with a completely different set of issues. The exclusions and legitimate objectives lists have been narrowly drafted to ensure that no limited barriers to free trade can be created. However, this list may need to adapt to respond to the feedback that we get from businesses and consumer stakeholders. The power will be subject to extensive oversight, as I have set out. However, removing these powers would make it impossible for the Government to respond to business and wider stakeholder feedback and act rapidly to adjust the list of exclusions if implementation shows the need for a review or if further areas are identified that need amending due to the shifting economic landscape.

For example, the remaining power in Clause 17(2) to amend the services exclusions in Schedule 2 is particularly relevant for sectors that are currently not applying the principle of mutual recognition as a result of retained EU law and for which such a sudden change could, therefore, be problematic. There is also a possibility that a need to amend the legitimate aims lists could arise. For example, there may be concerns in relation to future areas of regulation that could not have been foreseen at this time. Therefore, we are committed to keeping these powers to ensure that the system works as intended and as well as possible within our constitutional framework.

I also want to be clear that if the House agrees to the other amendments in addition to Amendment 7, which would remove other powers in the Bill, this would effectively render the Government's concessions on Amendment 14 and others in the group redundant. For example, it would remove the power that the Government have offered a concession on through Amendment 14. Removing this power would affect the operation of the internal market. Your Lordships will also not be accepting the positive steps that the Government have taken to reach what we think is a compromise position that balances the concerns of the House and protects the internal market. However, as I hope I have shown, our existing commitments and the new amendments I have tabled will ensure that their use is subject to effective oversight and consultation.

To sum up, as I set out in Committee, any use of these powers would require an affirmative regulation to be made in Parliament. This will ensure that Parliament will be able to scrutinise and vote on any changes. Secondly, consultation with colleagues in the devolved Administrations is now a legislative requirement for the use of these powers. Finally, the exercise and effectiveness of these powers will be subject to the review I talked about earlier within five years. Together, this will provide what I think is the highest degree of accountability and scrutiny. With these remarks, I hope I have addressed the concerns expressed and outlined in Committee. Therefore, in the light of that, I hope that noble Lords will feel able not to press their amendments.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, I have received a request to ask a short question of elucidation from the noble Lord, Lord Foulkes of Cumnock.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, at a time when the role and, indeed, the very existence of this House is under increasing scrutiny, would the Minister agree that the fact that he has put his name to Amendment 2, and that he and the Government have accepted the spirit of many of the amendments that were moved in Committee, underlines the value of this second Chamber as a revising Chamber and that that is something that should be broadcast widely?

Lord Callanan (Con): I agree with the noble Lord, actually. If you look at the degree of scrutiny with which this House has portrayed this Bill, as opposed to the degree of scrutiny in the other place, you see the value of the debates we have here.

Baroness Andrews (Lab) [V]: I am very grateful indeed to everyone who has taken part in this debate, particularly those noble Lords who signed my amendments. It has been a very useful and illuminating debate. I am grateful to the Minister for his detailed responses and, particularly, the information he has provided on the review. Retrospective reviews are always too late to improve or perfect what has happened, but I understand that this is a useful step forward, and I look forward to more detail.

I am afraid I am unable to accept his explanation of the difference between Amendments 2 and 7 in relation to the two clauses. I was struck by the use of the term "non-essential" powers, which was applied to Amendment 2 to Clause 3 and which has enabled the Government to sign the amendment, but made them unable, in the same sense, to apply the same logic to Clause 6.

Very briefly, I will read what the Delegated Powers Committee report actually said about Clause 6, which deals with non-discrimination:

"It suffers from similar defects"

[Baroness Andrews]

to Clause 5. The report continues:

"The Government say … that the power in Clause 6(5) is necessary to 'future-proof' the operation of the non-discrimination principle. They might have said 'to completely re-write' the non-discrimination principle."

We believe that the extreme degree of freedom that these powers give Ministers to go back almost to the drawing board and rewrite their own legislation by way of secondary legislation is so dangerous. Although the Minister has made a case for the distinction, I am afraid it is not one I can accept. Therefore, he will not be surprised when I say that I shall press Amendment 7 to a vote when we reach its place on the Marshalled List.

I say again that I am extremely grateful that the Government have responded so positively to the arguments of the DPRRC, the Constitution Committee and your Lordships, supported Amendment 2 and brought forward these other amendments, as outlined by the Minister this afternoon and in his letter. I beg to move.

Amendment 2 agreed.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, Amendment 3 has been pre-empted, so the debate on the group beginning with Amendment 3 will take place when Amendment 8 or 9 is called with the same list of speakers. Amendment 4 has been pre-empted, so this group therefore now consists of Amendment 5.

Amendment 5 not moved.

The Deputy Speaker (Baroness Garden of Frognal) (LD): We move swiftly on to Amendment 6, and I remind noble Lords that Members other than the mover and the Minister may only speak once and that short questions of elucidation are discouraged. Anyone wishing to press this amendment or any other in this group to a Division should make that clear in the debate.

Clause 5: The non-discrimination principle for goods

Amendment 6

Moved by ***Baroness McIntosh of Pickering***

6: Clause 5, page 4, line 29, after "part" insert "only"

Member's explanatory statement

This amendment clarifies the meaning of Clause 5(3) regarding the effect of a statutory requirement under Clause 6.

Baroness McIntosh of Pickering (Con) [V]: My Lords, it gives me great pleasure to speak to and move Amendment 6, which I hope is self-explanatory. It seeks to clarify the meaning of Clause 5(3), regarding the effect of the statutory requirement under Clause 6. It should have read, just for greater clarification, "A relevant requirement (see section 6) is of no effect in the destination part but only if, and to the extent that". That is a compromise we reached for greater understanding of the text.

The effect of Clause 5(3) will be to render a discriminatory statutory provision in UK or devolved legislation of no effect. I warmly thank the noble Lord, Lord Foulkes, for co-signing this amendment. In Committee, we had reservations about the meaning of "no effect", because it lacked clarity. That was the view put forward by the Law Society of Scotland, which has helped me to draft this amendment.

My noble friend Lord Callanan confirmed in Committee that:

"Clause 5(3) will operate so that any future requirements that fall within the scope of the non-discrimination principle will be of no effect to the extent that they are discriminatory. For the benefit of the lawyers, this does not mean that the requirement is to be treated as if it never had any legal effect. Rather, it allows the continued operation of the requirement, except to the extent that it has discriminatory effects."

The amendment therefore seeks to emphasise that the lack of effect relates only to the discriminatory element of the statutory requirement and does not otherwise affect the validity of the requirement. I hope that my noble friend will take the opportunity to confirm that that is the case.

There is also concern about the application of Clause 5(3) to a statutory provision in an Act of Parliament. My noble friend Lord Callanan confirmed that:

"As the Bill deals with trade across the whole of the United Kingdom, the intention is that this will apply to all legislation: secondary legislation, primary legislation passed by devolved legislatures and legislation passed by the UK Parliament."—[*Official Report*, 28/10/20; col. 251.]

Under Clause 49, legislation means, inter alia, primary legislation, which includes an Act of Parliament. Therefore, we know that this provision means that such an Act will be of no effect to the extent that it is discriminatory under the Bill. I am minded to repeat the words of the noble Lord, Lord Beith, who mentioned that secondary legislation can be open to interpretation by the courts. I would be most grateful if my noble friend could clarify and further benefit us with his understanding of this provision.

I also comment briefly on Amendment 24 in the name of the noble Baroness, Lady Ritchie of Downpatrick, and others, with which I have some sympathy, as it ensures continued compliance with the principle of non-regression in Article 2 of the Northern Ireland protocol. That is a worthy aim, and I admire the enthusiasm and energy with which the noble Baroness, Lady Ritchie, has pursued this in the interests of her nation. With those few remarks, I beg to move and wait to hear the response of my noble friend to this little debate.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I speak in support of both amendments in this group. The noble Baroness, Lady McIntosh of Pickering, has already explained the purpose of Amendment 6. Amendment 24 is in my name and those of the noble Baronesses, Lady Suttie and Lady Bennett of Manor Castle, and the noble Lord, Lord Hain.

We have been contacted by the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission, which have agreed to act as a dedicated mechanism responsible for the monitoring, supervising, advising and reporting on and enforcing the UK's commitment, under Article 2 of the Northern Ireland protocol to the withdrawal agreement from the end of the transition period. They believe that this amendment is needed to ensure that the Bill is brought into compliance with the UK's obligation under Article 2 of the protocol to the EU/UK withdrawal agreement.

The problem with the Bill as currently drafted arises when Clause 5 is read in conjunction with Clause 6. The commissions' research only came to light while we

were in Committee, as they were awaiting senior counsel's advice, hence the only opportunity to have brought forward this amendment is now, on Report. I thank all noble Lords who have signed the amendment and hope that your Lordships' House accepts that explanation.

Clause 5(1) provides that:

"The non-discrimination principle for goods is the principle that the sale of goods in one part of the United Kingdom should not be affected by relevant requirements that directly or indirectly discriminate against goods that have a relevant connection with another part of the United Kingdom."

It may appear, on superficial reading, that Clause 5 applies only to goods and not, for example, to statutory requirements regarding employment conditions. This is incorrect, however, because Clause 6(3) provides details of what constitutes "relevant requirements" for the purposes of Clause 5(1):

"A statutory provision is within the scope of the non-discrimination principle if it relates to any one or more of the following—

(a) the circumstances or manner in which goods are sold (such as where, when, by whom, to whom, or the price or other terms on which they may be sold);

(b) the transportation, storage, handling or display of goods;

(c) the inspection, assessment, registration, certification, approval or authorisation of the goods or any similar dealing with them;

(d) the conduct or regulation of businesses that engage in the sale of certain goods or types of goods."

The effect of these provisions, therefore, is to bring statutory provisions regarding employment conditions, including legislation regulating wages, which apply to those selling goods, within the scope of the non-discrimination requirement in Clause 5(1). This means that equality legislation regarding employment conditions introduced in Northern Ireland in order to comply with the non-diminution requirement in Article 2 of the protocol must be protected.

If there is a challenge to such employment legislation, it is not clear that the legislation can be defended on the grounds that it can, as set out in Clause 8 of the Bill,

"reasonably be considered a necessary means of achieving a legitimate aim."

Clause 8 defines what constitutes a legitimate aim. This appears to be an exhaustive list and does not include, for example, compliance with an international treaty as a legitimate aim. To illustrate the potential impact of the Bill on the Article 2 obligation, I will set out an example of additional requirements on employers in Northern Ireland that could be introduced as a result of changes to the Annexe 1 directives that deal with the wide panoply of equality directives that could be challenged under the Bill. It is not possible to predict the exact nature and extent of future EU changes to the Annexe 1 equality directives, including new obligations on employers.

However, taking into consideration EU equality law changes already made, recent European Commission proposals and plausible future scenarios, there is a reasonable prospect that over time, the Annexe 1 directives dealing with all equality matters may be updated, amended or replaced, and additional EU requirements on employers introduced. Employers in Great Britain may consider that these changes negatively impact on their businesses and influence an employer's decision to employ staff in Northern Ireland, and thus to provide goods in Northern Ireland, and would therefore be challengeable as indirectly discriminatory under the Bill. The equal pay example can be characterised with the EU amending or replacing the existing equal treatment directive to incorporate extended equal pay obligations on employers.

As a result of these additional requirements, an employer in Great Britain with a predominantly female workforce could decide not to employ staff in Northern Ireland and could consider that there is more limited market access in Northern Ireland than in Great Britain. Using the indirect discrimination prohibition in the Bill, the employer could challenge legislation enacted by the Northern Ireland Assembly to comply with these new obligations. Other examples could be given relating to disability discrimination, race equality, equal pay audits and gender pay reporting.

To comply with Article 2 of the protocol, there is a need to ensure that any such additional requirements on employers in Northern Ireland, introduced to keep Northern Ireland equality law aligned with future EU changes to the equality directives in Annexe 1, cannot be challenged as indirectly discriminatory under the Bill. I therefore urge the Government to accept this amendment and ask the Minister to accept a letter from me, on behalf of the Northern Ireland Human Rights Commission and the Equality Commission, which will outline in depth their main concerns about this issue. Will he meet with us and the other signatories to the amendment to discuss these issues? I honestly believe that the amendment would provide legal clarity and certainty, including for employers who have responsibility under Article 2 of the protocol.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I am delighted to speak in support of Amendment 6, moved so well by the indefatigable noble Baroness, Lady McIntosh, who has done such a good job in moving amendments in Committee and on Report. I endorse the tribute that she gave earlier to the equally indefatigable Michael Clancy of the Law Society of Scotland, who has helped us draft these amendments and examine the Bill in detail. It must be a greatly satisfying reward for his hard work to see some of his suggestions incorporated into legislation. I am sure we all endorse the thanks to him.

I underline one point made by the noble Baroness, Lady McIntosh. The amendment emphasises that the lack of effect relates only to the discriminatory element of the statutory requirement and does not otherwise affect its validity. I hope the Minister will therefore feel able to accept the amendment. I am sure he would not want to encourage discrimination in any form.

Lord Hain (Lab) [V]: My Lords, I too wish to speak to Amendment 24, so ably addressed by my noble friend Lady Ritchie of Downpatrick, to which I have added my name. As she said, the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission have explained why the amendment is necessary. It ensures that any legislation introduced in Northern Ireland after the UK leaves the EU must comply with the UK Government's obligations under the withdrawal agreement: to implement in Northern Ireland certain amendments to, or replacements of, EU law, where this is necessary to ensure continued

[LORD HAIN]
compliance with the principle of non-diminution under Article 2 of the protocol; and to keep Northern Ireland law in alignment with EU amendments to, or replacements of, the listed equality directives in Annexe 1 to the protocol.

The commissions have briefed us and are concerned about the Bill's effect on the UK's obligations under Article 2 of the protocol, in which the UK Government have committed to ensuring that there will be no diminution in Northern Ireland of vitally important rights, safeguards or equality of opportunity specified in the relevant part of the Belfast/Good Friday agreement, resulting from the UK's exit from the EU. This commitment is binding on the UK Government and Parliament, the Northern Ireland Executive and the Assembly, as a matter of international law.

EU law, particularly EU anti-discrimination law, has formed an important part of the framework for delivering the guarantees on rights and equality set out in the Belfast/Good Friday agreement, and for ensuring that rights and equality protections continue to be upheld in Northern Ireland. However, after the end of the transition period, individuals would be able to bring challenges to the Article 2(1) commitment directly before the domestic courts and take judicial review proceedings to challenge the compatibility of Northern Ireland Executive or Assembly actions or legislation with the Article 2(1) commitment. If the Northern Ireland Assembly failed to introduce legislation required to ensure that Northern Ireland law was in alignment with EU amendments to, or replacements of, the listed equality directives in Annexe 1 to the protocol, that failure could be challenged by individuals. Such challenges would mean that individuals would not be able to benefit from any additional EU equality rights provided for under legislation implemented in Northern Ireland so as to ensure compliance with Article 2.

That could create considerable opportunity for sectarian mischief of the kind that has sadly bedevilled politics in Northern Ireland, despite the massive progress made in the last two decades. The provisions of the United Kingdom Internal Market Bill could undermine these obligations and commitments. For example, Article 13(3) of the protocol ensures equality legislation in Northern Ireland which, as my noble friend Lady Ritchie said, places additional requirements on employers in Northern Ireland, which is so important, given the discrimination historically practised against Catholics.

However, because there is no requirement under the withdrawal agreement for the UK Government to make similar changes to the equality legislation in Great Britain, there is the possibility that there could be greater equality requirements on employers in Northern Ireland than on employers in Great Britain. There is therefore a possibility that an employer in Great Britain may decide not to employ staff in Northern Ireland and, as a result, could consider that there is more limited market access in the provision of goods and services in Northern Ireland than in Great Britain.

Ministers have shown during Brexit a casual and, I am afraid, sometimes contemptuous disregard for its impact on Northern Ireland, but establishing really strong equality and human rights legislation has been crucial to eliminating the deep and historic grievances, suffered by the Catholic population especially, that provided fertile ground for paramilitarism. The stakes are very high—hence this important amendment, which I very much hope the Minister, when he replies, will support.

5.30 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I shall speak to Amendment 24 in the name of the noble Baronesses, Lady Ritchie of Downpatrick and Lady Suttie, and the noble Lord, Lord Hain, to which I have attached my name.

First, I shall reflect briefly on the earlier words of my noble friend and the response of the Minister. I believe that this is highly relevant to this debate and to the nature of the Bill. We have, on one side, a combative politics of struggle and conflict—the politics of "Gotcha"—and, on the other side, our side, an attempt to work together to achieve a good outcome with which a large majority are at least comfortable, if not 100% satisfied: the politics of compromise. That, I believe, reflects the two sides of the debate about the Bill. I am a former rugby player and I do understand the pleasures of a crunching tackle, but I do not think that that is an approach that produces good outcomes for the people we are here to represent.

Going back to the specifics of the amendment, the noble Baroness, in introducing it, set out a precise and detailed explanation of the legal circumstances and the need for this clause. I do not intend to repeat that. The noble Lord, Lord Hain, has just laid out, from a position of great knowledge and experience, how this reflects the need to protect vital parts of the Good Friday agreement: rights and equalities protections. These are vital things that the Government would surely not want to downgrade.

We have a very long night ahead of us, so I shall add just one additional reflection to their words, while echoing everything they have said. I note that earlier, the noble Lord, Lord True, for the Government, said that he was concerned that the common frameworks process would create uncertainty for business. I suggest that what the speakers before me have made very clear is that, without this amendment, we have a great deal of legal uncertainty and lack of clarity, with conflicting responsibilities. That is something that creates a great deal of uncertainty for business—although, perhaps, lots of work for lawyers, reflecting many Members of your Lordships' House. But that is not what we should be aiming for. We have some fundamental issues, concerns, rights and balances to protect here, so I commend the amendment to your Lordships' House.

Baroness Suttie (LD) [V]: My Lords, it is a pleasure to follow the noble Baroness, Lady Bennett. She makes very many important points, and I hope that noble Lords listened to them this evening. This has been a short but deeply important debate and I shall speak in support of Amendment 24, to which I have added my name. As has already been said, it is a cross-party amendment signed by the noble Baronesses, Lady Ritchie of Downpatrick and Lady Bennett of Manor Castle, and the noble Lord, Lord Hain.

As the noble Baroness, Lady Ritchie, has already comprehensively explained, the purpose of this amendment is to raise very real concerns about the potential impact on the obligations under Article 2 of the Northern Ireland protocol, which ensures that there will be no reduction of rights, safeguards or equality of opportunity in Northern Ireland, as set out in the Good Friday/Belfast agreement, following the end of the transition period in just over six weeks' time. Article 13(3) of the protocol obliges Northern Ireland to remain in alignment with EU equality directives, as set out in Annexe 1. This amendment would ensure that Northern Ireland could not be challenged under the Clause 5 non-discrimination principle as set out in the Bill if, in future, it has to make certain changes to the law to ensure that it remains aligned to EU standards after the United Kingdom has left the European Union.

At present, all parts of the United Kingdom are aligned under EU law covering equality issues, but this will not necessarily always be the case. I will take the specific example of equal pay. Currently, the whole of the United Kingdom is covered by the equal treatment directive, but if, in the near future, the EU amends that directive to incorporate extended equal pay obligations on employers, the new obligations would have to be introduced in Northern Ireland but not in Great Britain. As the noble Baroness, Lady Ritchie, and the noble Lord, Lord Hain, spelled out very clearly, it is possible to imagine that a British company with a predominantly female workforce might decide not to employ staff in Northern Ireland. Under the indirect discrimination prohibition in the Bill, it is not inconceivable that the employer could then challenge the Northern Ireland legislation that had been put in place to comply with Article 13(3) of the protocol. It is also possible to imagine similar scenarios following future amendments to EU race, equality and disability directives, for example.

The Government will no doubt reply that it is not their intention to reduce standards in UK equalities legislation following the end of the transition period. But it is equally unlikely that, in years to come, Britain will follow and replicate every future amendment to EU equalities directives. This amendment is therefore really about future proofing. This is a complex matter. All legislation is capable of resulting in unintended consequences, but it is surely important to anticipate future problems now and to provide potential solutions to safeguard against such problems.

In his concluding remarks, I would be very grateful if the Minister could reassure the House that the Government have thought through how the non-discrimination principle set out in Clauses 5 and 6 will operate in practice in Northern Ireland, given the pre-existing commitments set out in Articles 2 and 13(3) of the Northern Ireland protocol. Equally, I would be grateful if he could give assurances that there will be no reduction in the mandate for the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission to oversee the Government's implementation of Article 2 of the Northern Ireland protocol. I conclude by echoing the request of the noble Baroness, Lady Ritchie, for a meeting with the Minister and the Northern Ireland Human Rights Commission to discuss these matters further.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, the noble Baroness, Lady McIntosh, and my noble friend Lord Foulkes have made the case clearly around the issue raised in Clause 5(3), and I hope the Minister will be able to respond. I join them in thanking the Scottish Law Commission for its considerable work in scrutinising some of the detail of the Bill—as always, it has been very helpful. I put on record our thanks to the noble Baroness, Lady Ritchie, for her very comprehensive and clear explanation of Amendment 24 in her name, and to others who have spoken.

We on this side had the benefit of a presentation by the Equality and Human Rights Commission and the Northern Ireland Human Rights Commission on this point, and I was seized by the fact that this is very important indeed to them and a matter that really has to be dealt with. The ground has been covered very fully and I just want to make sure that it is clear that we support this important amendment. It is designed to ensure that the non-discrimination principle in Clause 5 cannot be used to challenge the statutory provisions introduced in Northern Ireland after the end of the transition period to fulfil the obligation set out in Article 2 of the Northern Ireland protocol. That is relatively easy to say, but it is rather difficult to see how it translates into legislation. I hope that, when he responds, the Minister will be able to give us clarity on this.

As my noble friend Lord Hain said, the stakes here are very high. If you have not been to Northern Ireland, it is sometimes very difficult to get why it is so important to the people there and to the institutions that have to operate within Northern Ireland. There is a very widespread respect for human rights and equalities issues in Northern Ireland; it is something that comes up in conversations wherever you have them, in relation to employment, services, goods and operating in the commercial sector in Northern Ireland. Once you have had that conversation, and once it has been explained to you why it is so important, it is very clear that this is a matter that cannot be left. It is up to the Government to explain now how it is going to happen, and I look forward to hearing from the Minister.

Lord Callanan (Con): My Lords, I thank all noble Lords who have contributed to this debate.

Amendment 6, in the names of my noble friend Lady McIntosh and the noble Lord, Lord Foulkes, seeks to clarify the meaning of Clause 5(3). This subsection explains that

> "A relevant requirement … is of no effect in the destination part if, and to the extent that, it directly or indirectly discriminates against the incoming goods."

This wording was chosen by the Government because it targets discrimination, while leaving intact other elements of a regulation that may be perfectly useful or serviceable. For example, consider the case of one requirement covering two products. One of those products is not discriminated against, but the other faces indirect discrimination due to the particular market structure for that product. Clause 5 ensures that the regulation of the product which is not facing discrimination continues. This would not be the case if the requirement were struck down in its entirety when any part of it is discriminatory.

[Lord Callanan]

This amendment gives rise to a risk that a court would read this as attempting to oust its jurisdiction on normal grounds of challenge. That is clearly not the intention of this provision, which is to target the mischief of discrimination without going further or interfering with other legislation. I am sure that it goes without saying that we would not want to invoke any such confusion, nor do I think that that is what my noble friend and the noble Lord are trying to achieve. For these reasons, I hope that my noble friend will feel able to withdraw her amendment.

On Amendment 24, from the noble Baroness, Lady Ritchie, and others, I am very happy to accept a letter from the noble Baroness, and I will ensure that it gets a full reply. The Government are fully committed to Article 2 of the protocol—that goes without saying. We have demonstrated this by making the necessary amendments to the Northern Ireland Act to establish the dedicated mechanism and by working closely with the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland to operationalise the dedicated mechanism, ready for the end of the transition period.

The Article 2 commitment is about protecting the specific rights that individuals are afforded under the Belfast/Good Friday agreement and non-discrimination in this regard. It is supported by six EU equality directives that are all designed to tackle discrimination because of specified protected characteristics of individuals and to promote equal treatment. It will be part of the role of both commissions, through the dedicated mechanism structure, to monitor, advise, report on and enforce the Article 2 commitment and report to the Government and the Executive Office in Northern Ireland in this regard.

As I have said, we have already delivered the relevant legislative measures to give effect to Article 2 of the protocol, and no further amendments are required in this regard. I can assure noble Lords that the rights for individuals in Northern Ireland captured within the scope of the Article 2 commitment will continue to be protected going forward and will not be impacted by the outworkings of this Bill.

In reply to the noble Baroness, Lady Suttie, I can say that, for statutory requirements to be relevant requirements under Clause 6, they must be requirements that apply to, or in relation to, goods sold in the nation in question. If the employment law requirement were to meet that test, they would not be disapplied because they had discriminatory effects.

I hope that, with those assurances, that the noble Baroness, Lady Ritchie, will not press Amendment 24.

The Deputy Speaker (Baroness Garden of Frognal) (LD): I call the Baroness, Lady McIntosh of Pickering.

Baroness McIntosh of Pickering (Con) [V]: My Lords, I am grateful to those who have spoken in support of this amendment—

Baroness Penn (Con): My Lords, I believe that a noble Lord gave notice that he wanted to speak after the Minister.

The Deputy Speaker (Baroness Garden of Frognal) (LD): I am so sorry; I did not get the message. Who wanted to speak after the Minister?

Baroness Penn (Con): I believe it was the noble Lord, Lord Fox.

The Deputy Speaker (Baroness Garden of Frognal) (LD): I am sorry. I call the noble Lord, Lord Fox.

Lord Fox (LD): My Lords, I apologise for creating such a fuss, and I thank the Whip for intervening on my behalf.

The Minister has made a lot of the need to future-proof this Bill. Indeed, part of the justification of the last debate was around future-proofing. My noble friend Lady Suttie made a very clear case on where future digressions in conditions between Northern Ireland and the rest of the United Kingdom could create issues. Does the Minister not admit that this is a problem and concede that Amendment 24 is a way round that problem becoming difficult in future?

5.45 pm

Lord Callanan (Con): In short, I addressed the point made by the noble Baroness, Lady Suttie. No, I do not believe that this will be a problem. We will, of course, keep it under review if any such problem were to be relevant. We think that we have already legislated to ensure these requirements and that, therefore, this amendment is unnecessary.

The Deputy Speaker (Baroness Garden of Frognal) (LD): I have just received a message that the noble Baroness, Lady Ritchie, would like to speak briefly.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I would like to ask the Minister a further question. In my submission, and the submission of the noble Baroness, Lady Suttie, we specifically asked the Minister for a meeting for the Northern Ireland Human Rights Commission and the Equality Commission, along with the signatories of Amendment 24, to further discuss the outworkings of Clauses 5 and 6 and Clause 11, and also the complex nature of our amendment and the problems that could ensue as a result of the outworkings. I would greatly appreciate it if the Minister could accede to our request.

Lord Callanan (Con): The noble Baroness also asked me if I would receive a letter, and I said that I would do so. That is probably the best course of action. If she writes to me with her concerns, we will, of course, look at it. I am not sure that I am the right Minister for any such meeting to take place. I am a Minister in BEIS, which is responsible for this Bill, but many of its aspects are, of course, being handled by other government departments. I will certainly seek to put her in touch with the correct and relevant officials and Ministers.

The Deputy Speaker (Baroness Garden of Frognal) (LD): I think that I am now safe to call the noble Baroness, Lady McIntosh of Pickering.

Baroness McIntosh of Pickering (Con) [V]: My Lords, once again I thank all those who have spoken in this debate, in particular my noble friend Lord Callanan for trying to explain the Government's position. The Bill could be made clearer if the words that the noble Lord, Lord Foulkes, and I want to introduce were added to it. I part company from the Minister in saying that, actually, I do not see that this proposal would interfere with other legislation. There remains confusion, but I am not minded to press this to a vote at this stage.

I thank all those who have spoken, particularly the noble Lords, Lord Foulkes and Lord Stevenson, and convey their thanks also to the Law Society of Scotland. I am sorry for Michael Clancy that we have not had more success on this occasion. I also thank the noble Baroness, Lady Ritchie, for so clearly setting out her Amendment 24, which has great merit. At this stage, I beg leave to withdraw my amendment.

Amendment 6 withdrawn.

Clause 6: Relevant requirements for the purposes of the non-discrimination principle

Amendment 7

Moved by ***Baroness Andrews***

7: Clause 6, page 5, line 23, leave out subsections (5) to (7)

The Deputy Speaker (Baroness Garden of Frognal) (LD): I should inform the House that, if Amendment 7 is agreed to, I cannot call Amendment 8. Does the noble Baroness wish to move Amendment 7 formally?

Baroness Andrews (Lab) [V]: My Lords, I have spoken to this in an earlier group, and I anticipated that I would be pressing the Minister. I intend to test the opinion of the House on Amendment 7.

5.49 pm

Division conducted remotely on Amendment 7

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Amendment 7 agreed.

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6.02 pm

The Deputy Speaker (Lord McNicol of West Kilbride) (Lab): My Lords, Amendment 8 has been pre-empted.

Amendment 8 not moved.

The Deputy Speaker (Lord McNicol of West Kilbride) (Lab): We now come to the group beginning with Amendment 9. I remind noble Lords that Members other than the mover and the Minister may speak only once, and that short questions of elucidation are discouraged. Anyone wishing to press this or anything else in this group to a Division should make that clear in the debate.

Amendment 9

Moved by ***Baroness McIntosh of Pickering***

9: Clause 6, page 5, line 29, at end insert—

"( ) The Secretary of State must publish the results of the consultation and give reasons for any decision reached."

Member's explanatory statement

This amendment requires the Secretary of State to publish the results of the consultation and give reasons for any decision reached.

Baroness McIntosh of Pickering (Con) [V]: My Lords, I am grateful to have this opportunity to move the amendment standing in my name and that of the noble Lord, Lord Foulkes. I thank him for kindly supporting the amendments. I shall speak also to Amendments 13, 33, 44, 60 and 74.

Amendment 9 requires the Secretary of State to publish the results of the consultation referred to in Clause 6(7) and to give reasons for any decision reached. The reason for this is the history of the Bill, which we are told was drafted at pace, and had an unusually short overall consultation period of one month. I understand the responses to the consultation were published on the same day as the Bill. There was no prior consultation on drafts of the Bill, which I understand is a most unusual procedure. Once again, I am obliged to the Law Society of Scotland for its assistance in drafting these amendments.

The obligation on the Secretary of State to consult the devolved Administrations is welcome, but the clause currently lacks any obligation on the Secretary of State to report the outcome of the consultation with reasons for the decision. In the interests of transparency, the Government should make public the outcome of the consultation for that reason. I hope the Minister in winding up this debate will see fit to do that.

The other amendments in the group all relate to the super-affirmative resolution procedure. Amendment 13 adapts Clause 8 to this; Amendment 33, Clause 17; and Amendment 44, Clause 20. Amendment 60 creates a new schedule on the super-affirmative procedure and Amendment 74 creates a new clause setting out the scrutiny procedure in certain urgent cases. The reason why the amendment seeks to introduce the super-affirmative resolution procedure, the supportive schedule and the new clause, as I have mentioned, is to up the level of parliamentary scrutiny applicable to regulations under these clauses and the new schedule, which is currently by the affirmative resolution procedure. This is partly for the reason that I gave earlier: woeful time was given, in quite unusual circumstances, in which to draft the Bill. Changing the scope of the relevant clauses, in my view, that of the Law Society and of the noble Lord, Lord Foulkes, may have significant consequences. It is much more beneficial to use the super-affirmative resolution procedure, because it enables longer consultation and for the views of interested parties to be taken into account.

I mentioned *Erskine May* previously in Committee. Paragraph 31.14 describes the super-affirmative procedure as having

"been implemented in enactments where an exceptionally high degree of scrutiny is thought appropriate, for instance, for the scrutiny of certain items of delegated legislation made, or proposed to be made, under 'Henry VIII' powers… The super-affirmative procedure provides both Houses with opportunities to comment on proposals for secondary legislation and to recommend amendments before orders for affirmative approval are brought forward in their final form."

In the view of the Law Society of Scotland, with which I concur, the Bill is of profound constitutional significance. As paragraph 4 of the Constitution Committee report indicates, we need as much scrutiny of the Executive as possible. Deploying the procedure that I propose, as set out in these amendments, will achieve a better outcome than simply keeping the Bill in its present form, with the usual affirmative procedure.

I was delighted by the debate that we enjoyed in Committee on the earlier manifestation of this amendment, as summed up by the noble Lord, Lord Thomas, in his objection. He said he could not "support the precise method" adopted. There may be many approaches to the super-affirmative resolution procedure, but the schedule that accompanies this amendment contains a detailed procedure. The noble Lord, Lord Thomas, also noted that:

"If a Minister wishes to exercise his powers under the Bill, there is no requirement under the noble Baroness's proposed schedule that scrutiny of his proposed amendment to primary

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legislation should in any way involve the devolved Administrations; no mechanism is proposed. It is true that, in paragraph 5, the Secretary of State must have regard to 'representations', but there is no indication from whom the representations would or should come."

Since the Minister's power undoubtedly includes the possibility that the proposals will, at the very least, impinge on the devolution settlement, the noble Lord goes on to say that:

"I would be more supportive of this proposal if it required as part of the super-affirmative procedure that, in the periods of 30, 40 or 60 days during which the proposals would be looked at in Westminster, there were a requirement that the devolved Administrations should at the very least be consulted, preferably that their consent to the proposals should be a necessary prerequisite. It is not enough that the Minister should 'have regard to representations'."—[*Official Report*, 28/10/20; col. 279.]

I am delighted to say that the schedule now provides a requirement to receive representations from and to consult with the devolved Administrations. We have also proposed a new clause in Amendment 74, which will deal with cases of urgency when regulations need to be presented. I am further encouraged by the fact that I understand from private discussions that the Liberal Democrats are minded to support the super-affirmative procedure, but I have had less success with the Official Opposition. There is still time for them to change their mind. On this basis, and with these brief remarks, I beg to move.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I am very pleased once again to support the noble Baroness, Lady McIntosh. I want to speak briefly to three of the amendments. I will say first that the regulation-making powers in this Bill cover very significant areas. They are not minor matters. They really are important and that is why they need scrutiny. As I said earlier, the House of Lords does the work that we do best in scrutinising these issues.

I will deal first with Amendment 13. In Clause 8, the Secretary of State can under subsection (7) make regulations

"to add, vary or to remove"

a legitimate aim. That is key in defining a relevant requirement which indirectly discriminates. A legitimate aim is defined in subsection (6) as either

"(a) the protection of the life or health of"

human animals—oh, sorry, it is

"humans, animals or plants,"

not human animals; well, human animals, other animals and plants. The second legitimate aim is

"(b) the protection of public safety or security."

Perhaps the Minister in his reply could shed light on which of these the Government would seek to amend in the future. That would be helpful.

The second amendment I want to refer to is Amendment 60. Particularly to my noble friend on the Front Bench, I commend this idea of the super-affirmative resolution. The noble Baroness, Lady McIntosh, said she has not yet got the support of the Labour Official Opposition. Once my colleagues scrutinise this in more detail, I am sure they will come round to supporting it. The super-affirmative resolution is described in Amendment 60. It provides for the laying of draft regulations and an explanatory statement by the Secretary of State to consult the devolved Administrations and to have regard to their representations and the representations of other persons, and to allow for additional time for parliamentary consideration. That is to "have regard to" these representations. The importance of the Secretary of State's powers under the Bill requires better scrutiny than the affirmative or negative resolution procedure. We know that and know that they are not particularly helpful ways of scrutinising legislation.

The super-affirmative procedure as defined in this schedule provides better parliamentary scrutiny, allows engagement with the devolved Administrations and enables proper consultation. Holding the Government to account is important when such regulations are being made. I hope my noble friend will come round to the view that she will at least take it away and have a look and see if, at a later stage, all Labour Members can support the super-affirmative resolution.

Amendment 74 allows the scrutiny of statutory instruments containing regulations under the Bill in such a way as to allow for their urgent implementation, rather than following the super-affirmative procedure. There was concern that the super-affirmative procedure would take too much time, and this amendment provides for issues that need to be dealt with quickly. Regulations can be made under this provision only if the Secretary of State makes a declaration that he or she is

"of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being approved under"

the super-affirmative resolution procedure. The regulations will be limited in time, under proposed new subsection (4), to a period of 28 days, unless

"the instrument is approved by a resolution of each House of Parliament."

I hope that the Minister will consider the amendments carefully and I have great pleasure in supporting the noble Baroness, Lady McIntosh, in her amendments.

6.15 pm

Baroness Neville-Rolfe (Con): My Lords, I speak to this group of amendments in the name of my noble friend Lady McIntosh of Pickering and the noble Lord, Lord Foulkes of Cumnock, applying a super-affirmative resolution procedure to changes to the reach of Clause 8 on indirect discrimination on services—the goods, equivalent and various other clauses having fallen. Amendment 9 requires publication of the results of consultation and reasons for decisions reached, and Amendment 74 tries to overcome the Minister's objection to the super-affirmative procedure on the grounds that it could cause needless delay, by providing for rapid approval in cases of urgency.

I agree with the need for consultation and explanation, but I am not sure that this needs to be in the Bill. There should indeed be an opt-out in cases of urgency, but only if this route were to find favour with our House. However, I do not believe that the case has been made that the super-affirmative procedure is needed, certainly not on the scale proposed and in the light of the amendments already made by the Government in respect of mutual recognition of goods.

I echo what the noble Lord, Lord Foulkes, said about the Minister's readiness to listen to the experts in this House and to make changes to make this

legislation work. I was involved in securing the procedures used very selectively in the withdrawal Act, when the then Minister, my noble friend Lord Callanan, was very helpful. I am a practical person, and I have not seen any real evidence here of the need for the use of the super-affirmative procedure. We need much more specific and concrete concerns to justify my noble friend Lady McIntosh of Pickering's amendment. If the proposers of the amendment are just fearful, that is not enough to merit the super-affirmative procedure.

Perhaps the Minister can provide examples of how the powers in the clauses will be used and, perhaps more important, why he believes that the super-affirmative procedure is over the top in this case. That would sit on the record, Pepper v Hart style, and minimise the risk from the use of the powers in the Bill.

Lord Naseby (Con): My Lords, given my five years in the Chair in the other place, noble Lords will not be surprised that I had a closer look at the super-affirmative procedure, where it has been used and where it should be used.

First, we all acknowledge that this is a very important Bill, which is why there is an affirmative resolution procedure in various clauses. We start with that. Secondly, as noble Lords have said, the super-affirmative procedure involves an additional stage of scrutiny where Parliament considers a proposal for a statutory instrument before it is formally presented—what we call laid. This procedure is used for statutory instruments that are considered to need a particularly high level of scrutiny. That is self-evident, I think.

I then checked where they had been used. The statutory instruments used so far usually amend or repeal Acts of Parliament. Examples would include legislative reform orders, localism orders, public bodies orders, regulatory reform orders and remedial orders. Although I have had only a short time to do it, I have not found it within primary legislation—I stand to be corrected, but I have not found it myself. Indeed, listening to my noble friend proposing that this procedure should be used, it seemed to me that it was a sort of grapeshot approach, scattered throughout the Bill, suggesting that all the bits in these amendments are absolutely vital and must be taken specially. I just do not think that stacks up.

Furthermore, because this Bill is important, and because we are dealing with devolved powers who will be consulted and worked with, it will just add further delay. That is not in the interests of Parliament, business, commerce, or the people of the United Kingdom. So quite frankly, I certainly will not be supporting this at all—I think it is almost out of order.

Lord Beith (LD) [V]: My Lords, in answer to the noble Lord, Lord Naseby, the fact that the super-affirmative powers have not been very widely used in the past is really no excuse for not using them where they are an appropriate way of dealing with important statutory instruments and providing a higher level of scrutiny. If the noble Baroness, Lady Neville-Rolfe, doubts the need for more use of the procedure, she should recall all those occasions when we have felt that a statutory instrument should be amended but have had no capacity to do so, and our dislike of a particular feature of it was not sufficient to justify blocking it or turning it down—something, of course, that this House very rarely does. It does address, although not by providing power of amendment, the lack of amendment power which is a characteristic of almost the whole of the statutory instrument system.

An alternative to heckling is the constructive tabling of an amendment, so we should welcome that, and I think that the noble Baroness, Lady McIntosh, and the noble Lord, Lord Foulkes—this new coalition, the Foulkes-McIntosh group—have done us a service in bringing this matter forward. If you worry, as I have done over many years, about the inadequacy of our procedures for dealing with statutory instruments, especially those which try to change primary legislation, super-affirmative procedure, as its name suggests, is better than ordinary affirmative procedure and better still than negative procedure, because it opens up fresh opportunities for how the matter can be dealt with. Because it takes more time, there should be some caution over which things we think it is right to use it for, but it could be much more usefully employed than it has been in recent years. Of course, it is not a single procedure; it is a category of procedure which is usually spelled out individually in the legislation which employs it, as in this case—and the noble Baroness, Lady McIntosh, has improved and added to the process in the version of it that is now before us.

The procedure allows for measured consideration. Sometimes measured consideration is impossible because of urgency, but things are not always as urgent as the Government say they are. Usually the urgency has arisen from the fact that the Government have taken too long dealing with it and have brought it to the House at a very late stage. Throughout the coronavirus epidemic we have had all these occasions when the House has suddenly been told that something is very urgent which the Government have been dealing with for weeks, and probably even announced many days previously, but are now giving the House minimum time to address. The Government cannot always claim that there is an inherent urgency in the situation; rather, they have created urgency by delay at their stages of the process.

Where measured consideration is appropriate, the super-affirmative procedures allow for it and allow the House to suggest amendments to a Bill, which the Government can then go back and consider. I think it has advantages and would have advantages for some of the processes in this Bill. So it is not the wild suggestion that the noble Lord, Lord Naseby, and the noble Baroness, Lady Neville-Rolfe, seem to think that it is. I think it has many advantages which ought to be deployed in circumstances such as this.

Baroness Hayter of Kentish Town (Lab): My Lords, this debate raises an important and much wider issue about how statutory instruments are dealt with and how much consultation goes into them. When we discuss them in the Moses Room, the Minister often hears from all of us: "Who did you consult and can we hear the feedback?" There are some really important general lessons to take from that, because, as all of us who have dealt with statutory instruments will know, often someone gets in touch at the very last moment to

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say that a statutory instrument does not work for their industry or their sector. Usually it is an issue of practicality rather than the policy, but by then it is too late, which is immensely frustrating.

The problem with the Bill is that we should not have these powers when dealing with policy. It goes back to what I said in the earlier debate: statutory instruments were never meant to be about policy shifts, but about the practicalities or some adjustment. In a way these amendments, whether right or wrong, are wrongly focused. We should not be saying, "These things need lots of scrutiny because they are terribly important." If they are terribly important they should not be using these powers.

It will not come as a surprise that I much prefer the amendments in my name that we will get to later, since Amendments 4 and 5 were pre-empted. They are also about the internal market. We are talking about regulations that affect the other parts of the United Kingdom, and very few, if any, would have no effect. Our other amendments propose that regulation-making will need the consent of the devolved Administrations unless that has not been possible within a month. In that case this Parliament will be able to put them through, but with a reason why it is doing so without the consent of the devolved Administrations. This is interesting, and in a way has a much shorter term than this amendment. It is more focused and specifically looks at this Bill, which is about producing regulations that affect the other four nations. I am sorry, but I prefer my amendments to these ones. The issue of scrutiny of statutory instruments is serious. Maybe we can get a better practice so that we do not end up with stuff that is not quite fit for purpose, and which it is then too late to do anything about.

Lord True (Con): My Lords, I am grateful to those who have spoken in the debate, which I will try to sum up briefly. As the noble Baroness, Lady Hayter, indicated, because of the quite proper impact of the pre-emption rule, and of how the Bill is grouped and how we consider it, there will be further opportunities to address in a later group the points she raised and those raised my noble friend Lady Neville-Rolfe on the appropriateness of the use of powers. Obviously, most amendments in this group follow on from and, as the noble Baroness, Lady Hayter, said, precede discussion on powers that are all exercised in the Bill as drafted by the affirmative resolution procedure.

We contend that those powers are necessary to provide flexibility to respond to future developments in the provision of goods and services trade. As my noble friend Lord Callanan said, and I venture to suggest might say again, we are fully committed to ensuring that these powers are used appropriately. The powers will be subject to parliamentary oversight to give them the widest legitimacy, which means that we will consult appropriately on the use of the power, including with each of the devolved Administrations.

6.30 pm

As my noble friend Lady McIntosh and the noble Lord, Lord Foulkes, set out, most of the amendments in this group ask for a super-affirmative procedure; indeed, as she said, equivalent amendments were tabled in Committee. Without repeating all the arguments made in Committee, I remind the House that I said that your Lordships' Delegated Powers Committee, which considered these issues carefully, did not propose any super-affirmative power for the Bill. I explained the problems with the proposed approach, which were graphically described by my noble friend Lord Naseby, with his great experience in the other place; this would cause unnecessary delay where a change is urgently needed.

I made it clear that it is our view that the affirmative power is sufficient to ensure adequate scrutiny while enabling the Government to act in the interests of the whole United Kingdom and, as we have heard and seen, the core arguments have not changed. Today, my noble friend Lord Callanan has tabled amendments to introduce consultation with the devolved Administrations and a requirement for the Secretary of State to review and report within five years on the use of the powers. Furthermore, the Government have supported Amendment 2 to remove the power in Clause 3. I believe that, taken together, these amendments deliver the additional assurances for consultation, due consideration, transparency and scrutiny that my noble friend seeks. However, the underlying objections to the super-affirmative procedure remain.

Indeed, the objections are tacitly acknowledged in Amendment 74, which, curiously, seems to allow the Secretary of State to set aside this procedure whenever he wishes to do so by declaring that it is urgent. That would be a very novel form of parliamentary procedure. It may be that the Law Society of Scotland has the answer to this one, but to legislate for super-affirmative and then say that the Secretary of State can set it aside whenever he wants by saying that it is urgent is a funny old way of proceeding, it seems to a non-lawyer at the Dispatch Box. Therefore, I urge my noble friend not to press her amendments. I ask her to consider that they are not proportionate, as my noble friend Lord Naseby said.

Amendment 9 now refers—I always defer to the wisdom of your Lordships—to Clause 6(5) to (7), including a reference to consultations, which your Lordships have just voted to remove. So the reference to consultations in this amendment is to sections that are no longer in the Bill. Looking at the intent of the amendment, it requires publication of the results of consultation on the exercise of the powers that were in Clause 6. Well, devolved Administrations and indeed the Secretary of State are perfectly free to publish their responses if they so choose, but the Government do not believe that that choice should be made for them in the Bill. Therefore, even if the amendment still made sense in the new context, there is no need for the stipulation in it. As it no longer makes sense in context, following your Lordships' amendment to the Bill a few minutes ago, and it does not seem to be a good way to make law to send to the other place, as it were, a floating amendment which refers to consultations which are no longer within the clause, I hope that my noble friend will withdraw her amendment.

Baroness McIntosh of Pickering (Con) [V]: My Lords, I am grateful to all those who have spoken, particularly the noble Lords, Lord Foulkes and Lord Beith, for indicating in principle their support for the super-affirmative procedure. I note especially the comment

by the noble Lord, Lord Beith, that just because a procedure has never been used, there is no reason not to use it in this case for the purposes of primary legislation.

I am slightly disappointed that my noble friend Lord True, in responding to this debate, does not seem to get the strength of feeling, certainly north of the border, about the rather peremptory fashion in which the Bill was introduced, with only one month for consultation to be had as opposed to the normal longer period. I hope this is something that we can discuss in connection not just with this Bill but with other Bills as well: my clear understanding is that the Government always used to publish in full the responses to their consultation procedures. I used to find it enormously helpful, as a shadow Minister in the other place, to go through and dissect comments that had been made, and I used to table amendments on the basis of those. So I can see that there might be a reason why my noble friend might not wish to publish the full responses.

I was also disappointed that my noble friend said the Government would "consult appropriately". I am not entirely sure from this little debate, given the background, the pace at which the Bill was introduced and the shorter consultation period than one might have expected, that that has necessarily been achieved. I note his comments that there will be other opportunities at this and later stages to consider how best to achieve the aims of these amendments. With those remarks, at this stage I beg leave to withdraw the amendment.

Amendment 9 withdrawn.

The Deputy Speaker (Lord McNicol of West Kilbride) (Lab): I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions or elucidations are discouraged. Anyone wishing to press this or any other amendment in the group to a Division should make that clear in the debate.

Clause 8: The non-discrimination principle: indirect discrimination

Amendment 10

Moved by ***Lord Stevenson of Balmacara***

10: Clause 8, page 6, line 47, at end insert—

"(c) the protection of consumers;

(d) the protection of environmental standards;

(e) the promotion of social and labour standards;

(f) the protection of public health;

(g) the protection of animal health."

Lord Stevenson of Balmacara (Lab) [V]: My Lords, In moving Amendment 10, I also speak to Amendments 21, 41, 48 and 49, which together deal with various exemptions and derogations that we believe should be appropriate in the case of the market access principles. I thank the noble Lords, Lord Anderson, Lord Young and Lord Wigley, and the noble Baronesses, Lady Bowles and Lady Jones, for their support, and I look forward to their contributions.

Now that we have accepted by a majority Amendment 1 from the noble and learned Lord, Lord Hope, and the Government have said they will not oppose Amendments 38 and 51, I hope we can assume that the common frameworks process will be at the centre of our future concerns about the internal market. We think it will ensure that the devolved nations will be able, within the limits of UK law, to formulate and apply policies that best suit their local circumstances, working together in order to enable the functioning of the UK internal market. Each devolved Administration will retain the ability to diverge from the harmonised rules in their territory within the mandate given to them by the devolution settlement, but only after consulting the relevant policy group to see if a common outcome can be reached and agreed to.

We fully accept that there have to be backstop powers retained by the UK Parliament that are subject only to the normal "consult and seek consent" modality, and we accept that that brings into play the market access principles system set out in the Bill. However, that does not operate by agreement. It is hard-edged; it is a set of strict statutory rules that do not permit any real divergence. For example, my noble friend Lord Foulkes mentioned in the last group that Clause 8, on the non-discrimination principle, refers to "legitimate aims" and limits them to

"the protection of the life or health of humans, animals or plants"

and/or

"the protection of public safety or security."

So it is very tight—but does it have to be that way? Surely we want exclusions to permit various exceptions from the lists, as set out in our Amendments 10 and 41. Others will make the case for the extension of the legitimate aims in Amendments 21 and the rest, affecting services.

The Welsh Government put around a note, which they prepared in response to the papers put around last night by the Government. They argue that the Bill's limitations have been too tightly drawn and that they go much beyond current international regulations, and effectively put new restrictions on devolved competence. One of the policy statements issued yesterday by the Government said:

"Each part of the UK will be obliged to follow a rigorous process to justify an exclusion. This will include suitable evidence and a risk assessment shared between UK administrations, to confirm the nature of the threat posed and the effectiveness and proportionality of any proposed measure in response."

This is hard-edged. This is not the language of consult and seek consent, let alone of a Government trusting in the common framework process.

Our amendments seek to add significant exclusions to the market access principles for goods and services and in relation to the recognition of professional qualifications. We think they are justified, we think they are proportionate and, otherwise, will not have an adverse impact on the powers we think the UK Government must retain. I beg to move.

Lord Anderson of Ipswich (CB) [V]: My Lords, it is a pleasure to follow the noble Lord, Lord Stevenson, and to have put my name to five of the six amendments in this group. The purpose of these amendments is to

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preserve the potential for legitimate policy divergence that is inherent in the devolution settlement. That potential is squeezed out for the future, save in limited and inconsistent respects, by the non-discrimination and mutual recognition principles as they appear in the Bill.

The scheme of these amendments is to provide for derogations from the applicable market access principles, to be available on a consistent basis across Parts 1, 2 and 3 of the Bill. Such derogations would be safety valves against the pressures that build up when central and local interests clash—safety valves of the sort that the member states of the European Union were sensible enough to gives themselves in their treaties, and that exist in devolved, federal and confederal states all over the world. Their purpose is more than merely political. The exercise of devolved powers has, in the past, produced creative and positive results in fields ranging from the requirement of fire suppression systems to the sale of electric shock collars. Noble Lords drew attention in Committee to the potential for similar action in future, if not prevented by the Bill, from measures against obesity to bans on the sale of peat.

The amendments are not a recipe for pointless and obstructive barriers to trade, which I strongly agree are to be avoided, because the use of those exceptional powers would remain subject to strict statutory controls. If challenged, rationality and the absence of protectionist purpose would have to be demonstrated, much as when the Scottish Government were put through its paces on minimum alcohol pricing. Yes, there will be cases in which compliance has to be demonstrated in the courts. Who, if not the courts, can be the arbiter of whether public authorities, whether central or devolved, have exceeded the limits of their legal authority? Litigation is always an inconvenience, and I would not wish it on my best friend, but the universal fact that the scope of a legal power must, in the last resort, be determined by the courts is no sort of justification, I would suggest, for withholding or removing that power from the devolved Administrations.

As for cases that last 10 years, as a barrister I can only dream enviously of such a durable source of income. Urgent cases can be quickly resolved, and the major source of delay will be removed once we move outside the jurisdiction of the Court of Justice of the European Union. Without its intervention, the time occupied by the Scottish case on minimum alcohol pricing —which delayed the introduction of that measure—would have been very much shorter.

The common frameworks incentivise consensus. Among their many advantages, therefore, is a likely reduction in recourse to litigation. So I welcome Amendment 1, which, if it remains in the Bill, will prioritise the common frameworks, and significantly narrow the circumstances in which the market access principles apply. For as long those principles remain in the Bill, it seems to me that something in the nature of these amendments is needed, if only and the noble Lord, Lord Stevenson, as a backstop. These amendments would diminish, in a controlled fashion, the crudely centralising force of the market access principles. They would also help to preserve the mutual respect between nations that the perpetuation of our union requires.

6.45 pm

Lord Young of Cookham (Con): My Lords, it is a pleasure to follow the compelling speech of the noble Lord, Lord Anderson. I have added my name to Amendment 10 in the names of the noble Lords, Lord Stevenson of Balmacara and Lord Anderson of Ipswich, and the noble Baroness, Lady Bowles of Berkhamsted.

As I said in Committee, it is essential that all the nations within the UK can pursue effective policies on public health, which is my particular interest. Last Friday, the Public Services Select Committee, of which I am a member, published its first report on the lessons from coronavirus for public services. One of the key recommendations to the Government was that there is an urgent need to recognise the vital role of public health in reducing deep and ongoing inequalities exacerbated by Covid-19. Unamended, the Bill makes that task more difficult.

While the committee welcomed the Government's commitment to extend healthy life expectancy by five years by 2035, and to narrow the gap between the richest and the poorest, we also recognised that this would be tough to deliver. We called on the Government to wait no longer before publishing their strategy to achieve this manifesto commitment and their response to the Green Paper *Advancing Our Health: Prevention in the 2020s*, which was due in January this year.

Why is this relevant to these amendments? Currently, the internal market within the UK has the flexibility, through exclusions, to allow different parts of the UK to move at different speeds on public health. England was able to lead the way on restricting tobacco displays in shops; Scotland and Wales are currently ahead on policies such as minimum unit pricing for alcohol. However, the internal market Bill may limit future innovations, as the exclusions are both narrow and narrowly applied to only part of the market access principles.

While policies similar to those I just mentioned might be allowable, it is not difficult to identify future public health policies that would not. For example, in the Explanatory Notes to the Bill, the Government describe how these rules would allow a packet of crisps produced in or imported into any part of the UK to be sold in any other. However, this leaves little space for Governments within the UK to pursue future legislation that aims, for example, to restrict the salt content or size, or even to improve the labelling, of crisp packets. The justification for this is unclear, as articulated in a blog by the Institute for Government.

My view is that leaving the EU should not remove the ability we currently have for different parts of the country to move at different paces. This has meant that we have not had to move at the pace of the slowest, and the different parts of the UK can benefit from the experience of the market leader. The noble Lord, Lord Anderson, made this point well. The Government have failed to explain why their list of exceptions is so much more restrictive than that of the EU or, indeed, the WTO. While the justifications are unclear, the risks are anything but. Unless the Bill is amended, some of

this ability to innovate would be lost. This would be a step back for the UK, not a maintaining of the status quo.

The background over the last few years has been to give Holyrood and Cardiff more autonomy, not less. The Bill conflicts with that trend, helping to increase demands for independence and undermining the devolution settlement. It would not limit the ability of just the devolved nations to act, but that of England too. As part of its obesity strategy, the Department of Health and Social Care will consult on requiring calories to be included on alcohol product labels. The mutual recognition principle could hamper this legislation if alcohol produced in the rest of the UK was not required to display calories. Further, if overseas companies wished to avoid displaying calories, they could simply ensure that their imports arrived in another part of the UK before moving them to England for sale. When other noble Lords and I raised our concerns about this in Committee, my noble friend Lord Callanan, responding for the Government, was unyielding. Indeed, he said that the exclusions from market access principles were "intentionally narrowly drafted, to ensure that there are no unnecessary trade barriers that would ultimately increase costs to businesses and consumers while reducing choice."—[*Official Report*, 28/10/20; col. 339.]

The Government have demonstrated that they are willing to listen to the concerns of the House—for example, with the removal of the Secretary of State's powers to change the scope of the mutual recognition principle—yet in other parts of the Bill they have suggested a relatively small adjustment, with the need to "consult with" but not "gain consent from" the devolved nations before using these powers. There has still been no movement on the limited nature of the public interest exceptions in the Bill, nor am I aware of any discussions on that, as I called for in Committee. That is why the amendments have been brought forward again on Report.

These amendments are supported by a wide range of health organisations: the British Heart Foundation, the British Lung Foundation, Asthma UK, Cancer Research UK, the Faculty of Public Health, the Mental Health Foundation, the Royal Society for Public Health, Action on Smoking and Health, and the Alcohol Health Alliance, for whose briefing I am most grateful.

I very much hope that, even at this late stage, the Bill might be amended and the Government might reflect the concerns that have been so widely shared on this subject.

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, I support the general thrust of all the amendments in this group, and I have added my name to Amendments 10 and 21, which relate to goods. I should also have put my name to the services amendments, because both I and my group support those as well.

As was debated in Committee, we already worked under a more generalised public policy, legitimate aim regime while in the EU, and, as the noble Lord, Lord Anderson, said, that provided safety valves, which have now been taken away. In Committee, the Minister argued that the UK internal market was different, and for some reason that meant that it needed to be narrower. I cannot understand why—perhaps because we are closer together—we have to have fewer freedoms because we have left the EU. Therefore, I agree entirely with the drafters of the amendments that there are many more legitimate aims that need to be spelled out.

Realistically, differences will not be introduced into the market without a lot of thought. As my noble friend Lady Humphreys said in Committee, Wales is a good size to experiment with. The noble Lord, Lord Young, gave examples of various nations progressing at different speeds. Differences will survive only when they are practical and when matters of good public policy all deal with specific problems within a particular area, but they should be allowed to be put to a proper test and should not be undermined from the start by immediate get-arounds.

These are important amendments, and I hope that the Government will consider carefully why it is necessary for the Bill to undermine the freedoms currently enjoyed. That is not how Brexit was advertised, whether you were for or against it.

Lord Whitty (Lab) [V]: My Lords, I have added my name to Amendment 11, in the name of the noble Baroness, Lady Boycott. She has her name down to speak later but has indicated to me that, because of other appointments, she might not be able to make it. She has therefore asked me to say a few words—more than I might otherwise have done.

I recognise that the amendment in the name of my noble friend Lord Stevenson lists a number of public interest exceptions that should be put into the Bill. There are good arguments for many or all of them, but surely, in this crisis period for our climate and our natural environment, the protection of the environment must be seen as an exception. It is one where, for example, the Welsh Government could take a lead, with different regulations on, for example, air quality limits, pollution in rivers, noise and dangerous chemicals that are tighter than those adopted by the UK, or English, Government.

The noble Lords, Lord Anderson and Lord Young, have both set out examples of where the devolved Administrations have indeed taken that lead. If the Government oppose long lists, they ought at least to accept a short list of environmental protections, because they are speaking with forked tongues on this. We have had that today with the 10-point plan for a long-term strategic approach to a green economy. We have had the green industrial recovery plan and commitments made for houses to be fuelled entirely by offshore wind. We have also had big commitments to green spaces and other environmental objectives. And, of course, the Government are trying to impress the world—rightly now—on our commitment when we take over to lead the COP 26 in Glasgow next year.

However, we also know that, historically, free trade is regarded as being breached when environmental protection regulations have been opposed by the WTO and in free trade agreements around the world. There is a global change in attitude towards this, and indeed to some of the WTO rules, but it would be absolutely absurd if, to preserve an internal market within the United Kingdom, we prevented progress on environmental protection by the devolved Administrations or by England alone in the name of having complete and absolute internal market access rather than mutual recognition of different requirements.

[LORD WHITTY]

If a regulation, a tax process or a planning approach that preserves environmental protection aims is to be regarded as a barrier to trade in our internal market, we are going against the trend of the whole of the rest of government policy and actually going against what is a rather slow but nevertheless clear intent of how world trade will have to be conducted in the age of the Paris climate agreement and the need to reduce carbon and greenhouse gas emissions. If there is one public interest limitation, surely it ought to be environmental protection, and that is what would be provided by the amendment in the name of the noble Baroness, Lady Boycott, which is also signed by myself and the noble Lord, Lord Randall.

Lord Randall of Uxbridge (Con) [V]: My Lords, it is a pleasure to follow the noble Lord, Lord Whitty. I too want to speak in support of Amendment 11, in the name of the noble Baroness, Lady Boycott, which I was pleased to add my name to. We have just heard from the noble Lord, Lord Whitty, who also signed the amendment and has astutely and eloquently put the case for it.

I apologise that I was not able to join your Lordships' deliberations in Committee, but, from reading *Hansard*, I see that my noble friend the Minister stated:

"The current list of legitimate aims will … align in many cases with the protection of the environment … expanding the list … beyond the current list would increase the grounds on which goods from one part of the UK could face discrimination in another … but with each addition steadily eroding the benefits that we all enjoy of the UK internal market. Expanding the list would also make discrimination easier to create and implement within the internal market."—[*Official Report*, 28/10/20; col. 338.]

With respect, I disagree with that. Amendment 11 adds the protection of environmental standards to the shortlist of what constitutes a legitimate aim. It is imperative that, at a time when most acknowledge that we are in a climate and nature crisis, the protection of environmental standards should be considered a legitimate aim—indeed, as the noble Lord, Lord Whitty, said, it is probably the most important legitimate aim—and that we can do so without it being treated as indirect discrimination.

As we have also heard today, the Government have unveiled a series of measures that are ground-breaking and very ambitious, and I do not doubt that the Government take environmental standards very seriously. I hope that this amendment will give them an opportunity to give more power to their elbow. This, I believe, is a very achievable ask and I hope that my noble friend the Minister will agree that it will help to ensure that the internal market supports the achievement of environment and climate goals and targets at this crucial time.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): I call the next speaker, the noble Baroness, Lady Boycott, although I am not completely convinced that she is with us. No, she is not, so I will move on to the next speaker, the noble Lord, Lord Wigley.

7 pm

Lord Wigley (PC) [V]: My Lords, I am delighted to follow the noble Lord, Lord Randall, and agree with much of what he said.

I support the amendments in this group, including the lead amendment, and will address in particular Amendment 21, which also stands in the name of the noble Lord, Lord Stevenson, to which I have added my name. I very much agree with his comments and will not repeat his references to the pleas made to us by the Welsh Government. We need to build flexibility into the Bill to deal with the issues that have been addressed.

In addition to the exclusions identified in Amendment 10, I refer to the two groups identified in Amendment 21, namely, in proposed subsection (2), paragraphs (f) and (g), which deal with cultural issues and regional socio-cultural considerations. Although there are many aspects to consider, the category that I wish to highlight is the Welsh language. It is used widely in day-to-day life in Wales, a factor recognised by many commercial concerns that use it to promote their goods or services, and for advertising. Contracts offered by either the national Government in Wales or local government may well include requirements relating to the use of the Welsh language in the delivery of services or the definition of goods.

The use of Welsh in Wales is underpinned by legislation. It is not just a question of equal validity, a principle incorporated in the Welsh Language Act 1967, replaced in the Welsh Language Act 1993 in favour of stronger provision, and further strengthened by legislation in our National Assembly a decade ago. Among other considerations is the need to provide information in Welsh, in order to give Welsh speakers the right to receive information and, where appropriate, respond, in the language of their choice. Such requirements can arise in the context of service delivery, particularly personal services, community participation and cultural activities. I therefore ask the Minister to give me an assurance that the Bill in no way overrules or diminishes Welsh language rights, and that related dimensions can be recognised under this legislation as a valid reason for a derogation.

Before I conclude, perhaps I may respond to comments made earlier by my good friend the noble Lord, Lord Cormack. I, too, would have much preferred to be with noble Lords in the Chamber. If I had, I would have pointed out to the noble Lord that the noble Baroness, Lady Bennett, is most certainly not the only Member of the House who regards the union as unacceptable in its present form. As he well knows, while I accept that all good sense tells us that there must be a close working relationship between the nations of these islands, which would probably include a customs union and possibly some form of Britannic confederation, the present relationships do not work in many ways. Those can best be encapsulated by the phrase, "Power devolved is power retained"—a feature that has raised its head on many occasions in our deliberations on the Bill. As has been acknowledged for Northern Ireland, both Wales and Scotland should have a fundamental right to determine their own future, whether in the present union, a confederal union or, indeed, the European Union. In the meantime, we should also do our best to get on with each other, co-operate on those matters in which we have common interests and avoid the excesses demonstrated by the Prime Minister in his remarks about Scotland last week.

Baroness Jones of Moulsecoomb (GP): My Lords, I will be brief. The amendments in the group are basically about protecting the environment, consumers and public health—all legitimate aims. The noble Lord, Lord Randall, made a good point when he said that, given the Government's U-turn or swerve towards green issues, these amendments can be helpful. I see no problem with the Government picking them up and saying thank you. One problem with the Bill as it stands is that they are trying to create a legal system more restrictive and overbearing than the EU single market ever was. The amendments reintroduce existing exceptions in EU law that allow the Government to pursue a sensible policy that will benefit people and the planet.

One of the delights of my experience here in your Lordships' House at the moment and over the past 18 months has been that I am not the only person banging on about the environment any more. I would like to thank everybody who has written these amendments; I support them thoroughly and I hope that the Government see them as helpful towards their green aims.

Baroness Neville-Rolfe (Con): My Lords, I must say that I am uneasy about this group of amendments because I am not sure that they achieve what many noble Lords want. This Bill is designed to provide a UK single market—like the EU's and, indeed, that of the USA—to ensure a properly functioning market that creates prosperity and economic security for our four great nations coming together in the United Kingdom under Her Majesty the Queen.

We want trade to flourish, and we want to support business interchange and the free flow of information. This helps the devolved nations, as 60% of exports from Scotland and Wales and nearly 50% from Northern Ireland go elsewhere in the UK and they all benefit greatly from a transfer of resources, mainly from London. We want trade to increase as we see more import substitution following exit from the European Union.

Public policy can be decided within that internal market framework with some variations; we have talked about that before. I support local variations, such as minimum alcohol pricing in Scotland and plastic bag regulation in Wales, which I encouraged. However, they must be limited or the single market will be undermined. Adding consumers, the environment, labour standards, public and animal health, cultural expression, regional characteristics and equality in various ways, as these amendments do—even with an opt-out where the relevant aim is already achieved, as in the amendment in the name of the noble Lord, Lord Stevenson—changes the whole character of the legislation on non-discrimination and market access. I note the contribution of my noble friend Lord Young of Cookham but I do not see how different rules on smoking, minimum pricing or the use of the Welsh language, which I very much support, would be ruled out by this Bill.

As for differential labelling, whether on crisp packets or anything else, I know from experience that having different labels adds costs and introduces logistics issues, which puts prices up for consumers. It would be much better to introduce labelling for health reasons and significant climate change reform for the United Kingdom in the way it used to be agreed in Brussels. I fear that these undoubtedly well-meaning amendments would provide a plethora of excuses to impose protectionist and other barriers between our four nations.

A source of dispute, not collaboration and harmony, across our land and a field day for the legal profession would not help us to achieve the leaps forward that we all want on the environment, standards or anything else that has been the subject of this debate.

Lord Teverson (LD) [V]: My Lords, I will speak to Amendment 11 in the name of the noble Baroness, Lady Boycott, although I am very much in favour of the amendments in the name of the noble Lord, Lord Stevenson, as well.

Devolution has not been a disaster in Scotland, Wales, Northern Ireland or, indeed, London. It has strengthened the United Kingdom, our economy and our society. My great fear is that the overwhelming application of the market access principle—with those few exceptions: life or health of humans, animals and pets or public safety and security—is far too restrictive and will mean that important parts of devolution erode and disappear over time.

As with Amendment 11 in the name of the noble Baroness, Lady Boycott, I am particularly concerned about the environment, including climate change. I will be brief on this. We heard arguments in Committee that the most important thing was maintaining strong competition in the United Kingdom. I agree with that, but, like all things in market economies, that needs to be constrained in certain ways. While we need market competition to remain strong, it is equally important in a modern economy that innovation can take place. Competition in environmental regulation and some of these other areas is equally important to stimulate innovations in the nations of the United Kingdom that others can follow when they are successful. I see that as a key part of this process: being able to keep at the same time the different ways in which the nations of the United Kingdom can interpret environmental and climate change needs.

I am delighted that the Minister responding is the noble Lord, Lord Callanan, who is the Government's Minister for Climate Change. I am sure he will be absolutely persuaded by these arguments that we need these environmental innovations to help with climate change as we move forward—as the Prime Minister wants us to, as he showed in his 10-point plan today—and to make sure we keep that progress and do it in the many ways the nations of the United Kingdom wish.

Baroness McIntosh of Pickering (Con) [V]: My Lords, I am most grateful for this opportunity to follow the noble Lord, Lord Teverson, who chairs our EU Environment Sub-Committee so expertly and courteously.

I take this opportunity in supporting Amendments 10 and 11—I would marginally prefer Amendment 10, but presumably they are for debating purposes—briefly to ask my noble friend Lord Callanan whether our understanding of the Bill as currently drafted is correct, in that it appears to be very tightly and prescriptively drawn, as so expertly indicated by the noble Lords, Lord Stevenson and Lord Anderson. Would protection of the environment or the labelling provisions proposed by my noble friend Lord Young of Cookham be permitted?

[Baroness McIntosh of Pickering]
Is my noble friend Lady Neville-Rolfe correct that, for example, the labelling provisions set out by my noble friend Lord Young would already be allowed?

My understanding is that member states such as Denmark can already provide additional information for consumers, such as the calorie content of beers and other foods, and that we have not gone that far yet. Would that be permitted under the Bill as currently drafted, or do we need the amendments in this group to be moved? That would greatly assist me understand how exactly the provisions in the Bill as drafted are to be interpreted.

Baroness Noakes (Con): My Lords, I am sure that the supporters of these amendments are motivated only by the desire to enable the devolved Administrations to do the right thing in environmental protection and all the other fine things mentioned in these amendments, though I must say to the noble Lord, Lord Stevenson, that I have absolutely no idea what "cultural expression", as mentioned in Amendment 21, has to do with the internal market.

I appeal to noble Lords to remember that the aim of this Bill is to ensure that the UK's internal market operates on a frictionless basis and allows businesses to trade in the UK with the minimum of barriers as they do now. This helps businesses in all parts of the UK operate successfully and profitably, which supports the aim I hope we all share of a healthily growing economy. More importantly, it delivers for consumers because trade barriers tend to increase costs and reduce consumer choice.

I have to say that this is not a question of whether a particular regulatory rule will itself increase costs. We can argue all day about whether, say, increasing environmental regulation will increase or reduce costs for consumers. That is not the point; the point is about having different environmental regulations in one part of the United Kingdom compared with other parts and whether that will work in the interests of consumers or against them. The answer to that is clear. If such regulations have the effect of erecting further trade barriers, the consumer takes the hit.

7.15 pm

The absence of trade barriers is also crucially important when the UK comes to negotiate new trade treaties. Our negotiating strength would be seriously undermined if the Government were not able to be clear about how the UK's own market works internally and how access would work for trade counterparties. International trade is most definitely not a devolved competence, and nor should it be if we want to stand on the world trade stage as a major player. I hope that all noble Lords would align themselves with that aim now that we have left the EU. Schedule 1 contains some significant exclusions from the market access principles. I urge noble Lords not to make exclusions from the internal market so great that, as these amendments have the capacity to do, they kill the infant internal market in its cradle.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): My Lords, the noble Lord, Lord Cormack, has withdrawn from this debate, so I call the noble Baroness, Lady Clark of Kilwinning.

Baroness Clark of Kilwinning (Lab): I speak in favour of the amendments, particularly Amendment 10, and the principle that any changes to the devolution settlement should not be made without the consent of the devolved institutions themselves and that the UK exiting the EU should not be the basis on which it is determined whether a matter is reserved. I argue that this is not the time or the circumstances in which we should be considering taking powers away from devolved institutions and overriding their wishes.

The devolved institutions were not created equal to Westminster in the devolution settlement. It has been suggested on a number of occasions today that there should be that equality, and many Peers have spoken about the need for that relationship of equals. I believe that that is the direction in which we need to be going and today's debate again highlights that that is definitely the kind of constitutional arrangement that people in Scotland are asking for, irrespective of where they stand on the independence issue.

The examples given in today's debate in relation to Wales being able to legislate on the use of single-use plastic are good at showing why this legislation is unhelpful. It has been confirmed by the Government in documents that Wales's plans to bring forward proposals to ban all nine types of single-use plastics referred to in the EU directive would not be possible if this Bill were to become law.

This Bill would affect the ability of the devolved institutions to regulate any goods because they would require goods manufactured in that particular country to comply in certain ways that would only be relevant for goods made in that country. Goods made in Scotland could be regulated by the Scottish Government and required to comply with regulations, but goods brought in from other countries in the UK would not be required to do so.

I listened with great interest to the noble Baroness, Lady Noakes, and I fully understand the principles that she was outlining, but that horse has bolted and that is not where we are in the 21st century in the United Kingdom. We have to recognise the very different political cultures that exist within the different nations that make up the UK, and it is in that context that we have to look at this legislation.

Will the Minister consider the specific example about public procurement regulations raised by UNISON? Would the rules on public procurement, which have been devolved to Scotland since 1998, be protected if this legislation were enacted? For social, employment and other reasons, procurement legislation introduced in the Scottish Parliament under Labour and the Liberal Democrats, as well as under the Scottish National Party, is different from that south of the border. There is a different culture in Scotland. Can the Minister outline whether those regulations would be impacted by this legislation? This is just one example of the many areas of legislation where a huge amount of work has taken place since devolution and which could be affected by the Bill. I understand that the Minister is here to represent the Government, although he will have his own views.

These proposals are cavalier and irresponsible. I ask the Government to look at these amendments and think again. This is not just about trade. It is about the

way in which we in the four nations of this country relate to each other. If we do not have the support of the devolved institutions for this approach, I respectfully suggest that this is the wrong way forward.

Baroness Northover (LD) [V]: My Lords, I support Amendment 10 and other amendments in this group. Powerful arguments have been made this afternoon about devolution. Common frameworks must continue to allow divergences within the devolved Administrations and between them and England. The Bill must not undermine this. The amendment relating to that, in the name of the noble and learned Lord, Lord Hope, was passed overwhelmingly.

At Second Reading the noble and learned Lord, Lord Judge, introduced his regret amendment by expressing shock at the Government's plans to break international law. At the end of the debate he concluded that, stunned as he had been by these proposals, he had perhaps overlooked the extent to which the Bill also undermined devolution.

In this group we flag up some of the areas in which the devolved Administrations currently have flexibility. The Bill could prevent this, as my noble friend Lady Bowles and others have pointed out. As the noble Lord, Lord Anderson, said, these differences exist in the EU, even with its powerful single market. I am not sure how deliberate the removal of the existing flexibilities has been, or whether this simply reflects that devolution is not in this Government's DNA.

I agree with what has been said about the environment. I want, briefly, to flag up public health, as did the noble Lord, Lord Young of Cookham. In the middle of a pandemic, this Bill potentially undermines our ability to move forward in this area. We see variations in public health which may well have played a part in encouraging the devolved Administrations to take more ambitious actions. The rates of alcohol-related deaths are more than 60% higher in the most deprived areas than in the least deprived. The highest rates of smoking are consistently found among the most disadvantaged. Scotland has the highest rate of alcohol-related deaths in the United Kingdom. Its Government have introduced a range of policies to address this. The Welsh Government have said that they will do more to extend non-smoking areas. This is also welcome.

These amendments seek to ensure that, when one devolved Administration move ahead of another, they can do so. We hope that they may be able to pull the others along with them. Undermining devolution is clearly one of the fundamental problems with this Bill.

Lord Naseby (Con): My Lords, I respect the views of the noble Baroness who has just spoken, but I have to say that there is little in what she said that I agree with. Amendments 21, 48 and 49 are quite different from Amendments 10 and 11. They go, in my judgment, way beyond what is necessary for a successful free trade market. Really they amount to micromanaging, and on the whole Her Majesty's Government in any form, whether it be devolved or central, certainly are not terribly good at managing commercial activities. So I suggest that those amendments are unacceptable.

Amendment 11 is one that I warm to because the environment is absolutely crucial. In that context we include climate change, which we know is affecting every nation in the world, so that is a very serious area. Whether this amendment is the right one or not is almost for the Government to decide. I care deeply about the environment. I am privileged to live outside London. I shall drive home tonight, 50 miles to Bedfordshire, and it is a very nice environment there. It is essentially a horticultural one, which brings me to the point that horticulture is changing, not least because we are looking to achieve a fair degree of import substitution. All sorts of new challenges arise from that. We virtually gave up in the glasshouse world, losing out to Holland. There is all sorts of experimentation going on—growing vegetables just in water and so on—but this is not the time to go into that.

I do worry that there are products at the margin, where there is always somebody lobbying against them. Smoking has been mentioned. I have never smoked, but I accept the current situation in which people have the right to smoke if they wish to, and there are clear frameworks in which they can follow that. Pesticides are important in the horticultural world because they affect yields; again, that is a controversial area. So I will listen to my noble friend, particularly on Amendment 11, about which I have a reasonably open mind. I know that the environment is absolutely crucial, but I do not want to see areas of our society and our market squeezed out because of some heavy lobbying from one particular group who do not like the particular industry involved.

Lord Callanan (Con): My Lords, Amendments 10, 11 and 41 would expand the list of legitimate aims used to justify where statutory requirements in one part of the UK can indirectly discriminate against goods or services from another part of the UK. So I will start by saying that the Bill provides an updated, coherent market structure which will help to avoid future complexities and prevent costs being passed on to customers through an increase in prices or a decrease in choices. An expansive list of legitimate aims would increase the potential discrimination faced by businesses or service providers, eroding the benefits of the internal market and creating damaging costs and internal barriers to trade.

The current list in the Bill is targeted to allow nations to meet their respective goals while avoiding unnecessary damage to the internal market—a point that was well made by my noble friend Lady Neville-Rolfe. For example, the Bill already includes the protection of public, plant and animal health, and in some cases, of course, this will align with the protection of the environment. However—I cannot stress this enough—the Government have repeatedly committed to maintaining our world-leading standards across a number of different areas, whether that is in consumer protection, the environment, social and labour standards or public, animal and plant health. The Bill does not undermine the great strides that we have taken in these areas, and we will continue to be at the forefront of improving and protecting our high standards.

Under this Bill, the devolved Administrations will retain the right to legislate in devolved policy areas. Legislative innovation remains a central feature and, indeed, a strength of our union. The Government are committed to ensuring that this power of innovation

[Lord Callanan]
does not lead to any worry about a possible lowering of standards, by both working with the devolved Administrations via the common frameworks programme and by continuing to uphold our own commitment to the highest possible standards. It is important to remember that the market access principles do not prevent the UK Government or the devolved Administrations adopting divergent rules for goods or services.

7.30 pm

Let me deal directly with the point made by the noble Lord, Lord Wigley, about Welsh language provision. The Welsh Government will still be able to require goods made in or imported into Wales to be labelled in Welsh, provided they are non-discriminatory. The provisions in the UKIM Bill will mean that these goods can then be sold throughout the rest of the UK under the market access principles. Those principles will simply protect against the application of new rules if they give rise to harmful barriers to trade.

Amendments 21, 48 and 49 seek to introduce broad new exclusions from these principles for goods and services and the automatic recognition principle for professional qualifications. The framing of the exclusion would allow the market access principles to be set aside if it could be shown that a measure was a proportionate means to achieve a legitimate aim, as set out in the proposed new clauses, but that list of legitimate aims is so long that it would effectively render the protections in Parts 1, 2 and 3 virtually meaningless. It would give little protection to businesses, service providers or professionals who wish to operate across the whole of the UK with a minimal regulatory burden. A regulator or legislator could justify a very wide variety of discriminatory measures using the justifications in the new clauses.

The noble Lord has attempted to remedy this with sub-paragraph (1)(c) of the new clause, which states that the exclusion can be used only if it is

"not a disguised restriction on trade".

The Government's view is that the combination of a greatly expanded list, and this new and ambiguous concept of a disguised restriction on trade would create a completely unreliable metric and make the operating conditions of the UK internal market ambiguous for UK businesses and professionals. This amendment could create a massive additional burden on the judicial system, through those seeking legal clarity on this legislative ambiguity, on a case-by-case basis, as to whether a matter is proportionate to a legitimate aim, and whether it is in fact a disguised restriction on trade.

I can confirm for my noble friend Lady McIntosh that, as I have explained on previous occasions, the exclusions and derogations we have drafted from the market access principles across Parts 1, 2 and 3 are narrow and tightly defined in order to protect the functioning of important policy areas. This protects the ability of the devolved Administrations and the UK Government to preserve the proper functioning of important policy areas, while avoiding any harmful or costly barriers to trade within the UK's internal market. The Government's view is that the internal market framework is best served by a set of clear principles which are not caveated by the more expansive legitimate aims and exclusions that these amendments introduce. Allowing such wide and undefined exclusions would inevitably lead to new barriers to trade for businesses and professionals across the United Kingdom market.

It should also be noted that our proposed regime does not require a central authority to confirm or rule on public policy matters applying to DAs—unlike the system within the EU, of course. This means that the devolved Administrations are free to set their own regulations in devolved areas for their own producers, as long as these regulations do not result in trade barriers with the rest of the UK.

I can tell the noble Baroness, Lady Clark, that public procurement is not within the scope of the Bill in relation to either goods or services, so she need not listen to UNISON in future on this matter. On her question about banning single-use plastics, we are of course committed to being a global leader in environmental protection and to maintaining our high standards in this area. In fact, the UK's plastic microbead ban came into effect in January 2018 and was a landmark step, before the EU introduced similar legislation. The Bill will preserve Wales's ability to regulate in line with its current policy for domestic producers; however, given our shared commitment to high environmental standards, it is only right that goods being sold lawfully elsewhere in the UK are not denied access to the Welsh market.

The Bill aims to ensure frictionless trade, movement and investment between all nations of the UK, and these amendments would, in our view, compromise our ability to achieve that objective. For the reasons I have provided, I therefore cannot support these amendments and I hope the noble Lord will feel able to withdraw his amendment.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): My Lords, I have received no requests to ask the Minister any short question, so I call the noble Lord, Lord Stevenson of Balmacara.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, I thank everyone who has spoken in this debate for their thoughtful and often powerful contributions. It has been a wide-ranging debate and a very interesting one. It has raised new dimensions in our debate today, and for the ones we will have in succeeding days on Report.

It made me think of two things that I want to share with the House in concluding. A lot of the problems with the Bill arise from the accelerated timetable it has gone through. The feeling I am left with after this debate is that if there had been more time for debate prior to its publication, we would not be facing the rather uncomfortable tension between the wish to maximise consumer benefit and reduce barriers to trade, which has been expressed by a number of speakers and which we fully support, and being unable to respond to local wishes in parts of the country on issues that matter to local people. We want there to be competition not only in raising standards but in innovation and finding new ways of dealing with issues of public policy that may arise.

Interestingly, various derogations and exemptions that appear in the amendments in this group mimic the concerns expressed during the Trade Bill, which we will return to later this year, and which were resolved in the Agriculture Bill, with the Government conceding that there needed to be a statement on the standards of environment, animal welfare and animal production standards in relation to the agricultural trade and products. If you add public health, social and labour standards, we are back with the lists that appear in today's amendments. I wonder why that is; I do not really have an answer. However, it might be worth more consideration. I will look carefully at *Hansard* to see whether we can find a common thread that might be picked up in later amendments, and on which it might be worth pushing for further debate if we can—or perhaps to a vote.

In passing, I am sorry that the noble Baroness, Lady Noakes, whose contributions are always of interest, was foxed by the term "cultural expression". I believe that is the term used when state aid is used to support activities that would otherwise not be possible. A reference here would be the horse race betting levy, which would otherwise be banned, or the support that this Government brought in to support the film industry, animation, high-end drama and other aspects of cultural life, building on work done initially by the Labour Government. I think that is where it comes from. If it is valid for anyone in the public sector or an elected organisation to wish to see more work, investment and activity in the green economy, for example, as the Prime Minister announced today, it is just as appropriate to say that there could be support for cultural expressions, the term used to talk about the culture industries.

The general feeling is that the Bill is too tightly constrained around how the market access provisions will work—so much so that there may be disbenefits to consumers unless people in different parts of the country can respond differently to issues they feel strongly about. As I said, I will read *Hansard*, but I feel that while the common frameworks will be able to carry most of the load of the issues raised today, they will not take us all the way and it may be necessary to return to this issue at some stage. In the interim, I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Amendment 11 not moved.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): I should inform the House that if Amendment 12 is agreed then I cannot call Amendment 13. Does the noble Baroness, Lady Andrews, wish to move Amendment 12 formally?

Amendment 12

Moved by ***Baroness Andrews***

12: Clause 8, page 7, line 1, leave out subsections (7) and (8)

Baroness Andrews (Lab) [V]: My Lords, I spoke to this amendment in an earlier group. I beg to move.

Amendment 12 agreed.

Amendment 13 not moved.

Consideration on Report adjourned.

House adjourned at 7.40 pm.

Grand Committee

Wednesday 18 November 2020

The Grand Committee met in a hybrid proceeding.

Arrangement of Business

Announcement

2.30 pm

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): My Lords, the hybrid Grand Committee will now begin. Some Members are here in person, others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear a face covering, except when seated at their desk, to speak sitting down and to wipe down their desk, chair and other touch points before and after use. If there is a Division in the House, the Committee will adjourn for five minutes.

The microphone system for physical participants has changed. Members' microphones will no longer be turned on at all times to reduce noise for remote participants. When it is your turn to speak, please press the button on your microphone stand. Once you have done that, wait for the green flashing light to turn red before you start speaking. The process for unmuting and muting for remote participants remains the same. The time limit for the first debate is one hour.

Ship Recycling (Facilities and Requirements for Hazardous Materials on Ships) (Amendment) (EU Exit) Regulations 2020

Considered in Grand Committee

2.32 pm

Moved by ***Baroness Vere of Norbiton***

That the Grand Committee do consider the Ship Recycling (Facilities and Requirements for Hazardous Materials on Ships) (Amendment) (EU Exit) Regulations 2020.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, these draft regulations will be made under the European Union (Withdrawal) Act 2018 in order to give effect to the Northern Ireland protocol in the withdrawal agreement.

The United Kingdom has already introduced European Union exit legislation on ship recycling. The Ship Recycling (Facilities and Requirements for Hazardous Materials on Ships) (Amendment) (EU Exit) Regulations 2019, approved by your Lordships' House on 29 January 2019, will come into force at the end of this year. The purpose of these regulations is to ensure that our retained legislation on ship recycling will continue to be legally operable, and to transfer functions from the European Commission to the Secretary of State.

The regulations before the Committee today are necessary to implement the Northern Ireland protocol, which addresses the unique circumstances on the island of Ireland. The Northern Ireland protocol includes provisions in Article 5 which specify that certain provisions of EU law will apply in respect of Northern Ireland. The EU ship recycling regulation is one of the provisions listed in Annexe 2 of the protocol. As a consequence, EU law will affect ship recycling facilities in Northern Ireland.

The EU ship recycling regulation transposed key parts of the Hong Kong convention on recycling of ships into EU law. The provisions apply to ship recycling facilities in the EU and to EU-flagged merchant ships above 500 gross tonnes. They do not apply to military vessels.

The main provisions of the EU regulation have applied from 31 December 2018 and include: rules about the authorisation and permitting of ship recycling facilities; the steps EU and non-EU ship recycling facilities should take if they want to be listed in the EU's approved list of ship recycling facilities, known as the European list; a requirement that all EU-flagged ships must be recycled at an approved ship recycling facility, according to a certified ship recycling plan; and a requirement that all new EU-flagged ships must carry a valid inventory of hazardous materials. The EU regulation also requires existing EU-flagged ships, as well as non-EU flagged ships calling at European ports, to carry an inventory of hazardous materials by the end of 2020.

The new draft regulations amend the 2019 exit regulations. This in turn amends the retained EU ship recycling regulation and devolved legislation which affects Northern Ireland. I stress at this point that we have consulted Ministers in the Northern Ireland Executive about the changes to the draft regulations, and they have given their consent.

This instrument makes two substantive changes. First, it amends the provisions affecting ship recycling facilities in Northern Ireland to reflect our obligations under the Northern Ireland Protocol. In particular, it prohibits facilities not on the EU's approved European list from recycling EU-flagged ships, and it requires competent authorities in Northern Ireland to notify the Secretary of State about any change in the authorisation or permitting status of their facilities. It also requires the Secretary of State to notify the European Commission of any such changes.

The impact of the protocol means that the existing arrangements for Northern Ireland facilities will remain the same at the end of the implementation period. Facilities in Northern Ireland will remain listed in Part A of the European list, which covers facilities located in the EU and in the European Economic Area. Secondly, the draft regulations will incorporate changes to reflect the fact that, by the end of this year, existing UK ships and non-UK ships calling at UK ports must carry an inventory of hazardous materials. This is a welcome development, because new ships are already required to carry a certified inventory. Applying this provision to existing ships should result in a more coherent and complete regime for the safe and environmentally sound recycling of ships.

[Baroness Vere of Norbiton]

Ensuring the safe and environmentally sound dismantling and recycling of ships at the end of their operational life has been a concern for a number of years. Many ships are currently dismantled on beaches in Asia, with little regard for human safety or protection for the environment. It is important, therefore, that we continue to have an effective ship recycling regime, which protects public health and the environment.

The changes introduced by this instrument will ensure that environmental law continues to function at the end of the transition period and demonstrates that the UK is implementing its commitments under the Northern Ireland protocol. I commend these regulations to the Committee.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): The noble Lord, Lord Berkeley, has withdrawn, so the next speaker is the noble Lord, Lord Bradshaw.

2.38 pm

Lord Bradshaw (LD) [V]: My Lords, I do not believe that this measure should take us very long. The dismantling of old ships is an extremely hazardous process and, as the Minister just said, very detrimental to the health of those involved. By the time ships are old enough to be broken up, however, they have probably dropped away from the register of the most compliant countries and from the register of companies that have strong trade union representatives to enforce compliance with the standards.

I do not wish to delay in any way what is proposed. I understand that in Northern Ireland people cannot set up ship-breaking facilities that would in any way offend against health and safety or other laws that pertain to ship owning. I give these regulations my support. I do not believe that it is necessary that we should leave the European Union—we have said so many times—but I cannot find anything to which I object in the regulations.

2.39 pm

The Lord Bishop of Salisbury: My Lords, neither ship recycling nor Northern Ireland are my territory, though church is sometimes seen as an ark to gather people safely and hazardous materials are a concern for us all. It is important for Northern Ireland to thrive as best it can within the new political arrangements that are still unfolding. The purpose of this SI is clear and not controversial; it is to the benefit of one shipyard in Northern Ireland. The EU has developed a good scheme for overseeing this process and I am sure we will be glad to continue to use it.

I was very struck by the statement that an impact assessment has not been prepared for this SI, because there are no significant impacts—well, yes and no. Yes, in the narrow confines of the SI; no, because it all depends on what is being measured. Shipping is a key part of the transport carbon footprint—not just marine diesel, although, heaven knows, agreements about that internationally are hard enough to get. More and more, we are looking at the whole life cycle of manufacture, use and disposal, as the Minister pointed out in her introduction.

One impact of Covid-19 is an increase in the scrappage of car carriers, ore carriers and cruise ships. There are jobs here—more importantly there is the need to raise our ambition with regard to environmental legislation brought across from the EU. Here is a wonderful opportunity to set out our ambition for a circular economy. I hope that, come January, our sights might be raised to meet that sort of ambition. That said, the SI does not really pose a problem, but it is an opportunity to set out more of the goals that I think lie ahead of us in relation to our environmental responsibilities.

2.41 pm

Lord Rosser (Lab) [V]: I thank the Minister for her explanation of the content and purpose of these draft regulations, which contain provisions that allow for Northern Ireland's position post Brexit and the potentially divergent regulations on ship recycling that result.

The existing EU regulation on ship recycling, which seeks to ensure that ships flagged in EU countries are recycled only at well-regulated facilities, irrespective of where they are located, is, as the Minister said, one of the provisions listed in the protocol on Ireland/Northern Ireland in the withdrawal agreement. As a result, the EU regulation will continue to apply in Northern Ireland as it has effect in EU law, rather than the retained version which applies to the rest of the UK, without any further provision being made.

The existing EU regulation enabled the European Commission to set up a list of approved recycling facilities at which ships may be recycled. Part A of the list covers ship recycling facilities in a member state and Part B such facilities located in a third country. As I understand it, 41 ship recycling facilities are shown on the EU list, of which nine are non-EU facilities. There have been up to four UK ship recycling facilities in Part A of the list at any one time. However, the listing of the three facilities located on the UK mainland will now become void, but the ship recycling facility in Northern Ireland will continue to be listed under Part A of the European list. The three ship recycling facilities on the UK mainland will need to reapply for inclusion in Part B of the European list, as a non-EU third country if they want to continue recycling EU-flagged ships from next year.

The UK Government will be required to set out a list of UK ship recycling facilities and only those on the list can be used for UK ship recycling in Northern Ireland. The ship recycling facilities in Northern Ireland will need to be on the United Kingdom list before they can recycle any UK-flagged ships. The EU and UK list of approved ship recycling facilities can overlap, depending on the separate decisions of the EU Commission and the UK Government.

The draft instrument is intended to ensure that the legal framework relating to ship recycling remains legally operable, with particular regard to the protocol once the implementation period under which the UK continues to be subject to EU rules comes to an end as from the beginning of next year. As the Minister said, the draft instrument also takes account of the need under present EU regulations for existing ships to carry an inventory of hazardous materials before the end of this year. This now becomes part of retained EU law.

I have just a few questions. Where are the present UK mainland and Northern Ireland existing approved ship recycling facilities? Will the existing three UK mainland facilities be reapplying for inclusion on Part B of the European list and, if so, is there any reason to believe that they might not be accepted? Will the Northern Ireland ship recycling facility be on the UK list? Finally, is bringing into force the terms and requirements of this draft regulation likely to have any impact on jobs and workload at any of the existing UK-approved ship recycling facilities?

2.46 pm

Baroness Vere of Norbiton (Con): My Lords, I thank all noble Lords for their contributions to today's very short debate. These regulations are fairly simple, but a number of good questions have been raised that I would like to go into in a little more detail, if I can.

On the practical implications in Northern Ireland, which were mentioned by the noble Lord, Lord Rosser, although the right reverend Prelate claimed not to be an expert, it is quite useful to understand what will change in Northern Ireland, because, basically, nothing will change. The permitting regime will stay the same after the implementation period as it is now, and the competent authorities will stay the same. Each devolved Administration will continue to use their own competent authorities to approve and permit their facilities—that will happen in each region of the country.

The main difference worth emphasising is that facilities in Northern Ireland will get some benefit from this because, as noble Lords have pointed out, they will join the Part A of the European list until their permit expires. When their permit expires, it will probably be quicker and easier for them to reapply if they decide to remain on the list. Facilities in the rest of the UK will be treated as non-EU/EEA facilities and will be removed from the list. However, it is true that the three facilities that will be removed from the list can reapply to join, and they would do so under Part B. We know that that process is under way. Over time, we would expect the two lists to remain fairly closely aligned, because the standards will start off the same.

We have been in conversation with the three facilities that will need to join Part B, and we have also had reassurance from the European Commission that it will be sympathetic. For example, we have asked it to waive the non-mandatory elements of the application process for these three recycling facilities, which are: Able UK in Middlesbrough; Swansea Drydocks; and Dales Marine Services, near Edinburgh. If the Commission waives the non-mandatory elements, we expect that this will accelerate the process and, once on the European list, all UK facilities would be treated equally. However, I reiterate that this relates to a relatively small proportion of a shipyard's business.

The right reverend Prelate talked about the coverage of the impact assessment. Of course, he has been in the House long enough to know that the impact assessment covers only the regulations that we are looking at, but he is right that the marine industry as a whole has a significant impact on carbon emissions, which we need to take incredibly seriously. I am sure that the right reverend Prelate has been hanging on the Prime Minister's every word today as he outlined our 10-point plan, which includes £20 million for marine decarbonisation. That will be a really good springboard to try to look at what will work for marine. We recognise that there is an issue that we need to address. There is a longer-term strategy, *Maritime 2050*, which looks at the sector going out many decades, but we recognise that, ahead of COP 26, there is a lot that we can do. I know that the maritime sector is keen to play its part in decarbonisation, and I am very interested in looking at the various technologies that might be forthcoming that will help to decarbonise the sector as a whole.

However, on the basis of what I have said, I hope that noble Lords will feel able to agree to these regulations.

Motion agreed.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): The Grand Committee stands adjourned until 3.45 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, the hybrid Grand Committee will now resume. Some Members are here in person, respecting social distancing, others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear a face covering, except when seated at their desk, to speak sitting down and to wipe down their desk, chair and any other touch points before and after use. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, which seems quite likely, the Committee will adjourn for five minutes.

Immigration (Leave to Enter and Remain) (Amendment) (EU Exit) Order 2020

Considered in Grand Committee

3.46 pm

Moved by ***Baroness Williams of Trafford***

That the Grand Committee do consider the Immigration (Leave to Enter and Remain) (Amendment) (EU Exit) Order 2020.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the order was laid before Parliament in October and is required to enable a number of changes arising as a result of the end of free movement. First, it allows nationals of the EU, EEA and Switzerland—who I will collectively call EEA citizens—aged 12 or above, using a biometric national passport rather than an EEA ID card and seeking to enter the United Kingdom as a visitor under the Immigration Rules, to be granted such leave by passing through an e-gate, without routinely having to be interviewed by a Border Force officer.

[Baroness Williams of Trafford]

The order also allows EEA citizens, as well as other nationalities already eligible to use e-gates, arriving in the UK under the new S2 healthcare visitor route to also be able to obtain six months' leave to enter as an S2 healthcare visitor, either granted orally by a Border Force officer, or automatically by passing through an e-gate, in a similar way to standard visitors. It allows those holding a service provider from Switzerland entry clearance to enter the UK on an unlimited number of occasions during its validity, receiving 90 days' leave to enter upon each entry; and it defines the type of leave obtained by a person passing through an e-gate, thus enabling Border Force officers to examine such persons and to cancel their leave where appropriate.

The first change is needed to give effect to our established policy to maintain access to e-gates for EEA citizens resident in the UK and for visitors. Noble Lords' agreement to this order will ensure the change can be implemented immediately after free movement comes to an end and ensure the continued efficient processing of all arriving passengers in the UK.

With the end of free movement, EEA citizens who do not have an existing status or eligibility to apply for status under the EU settlement scheme will require leave to enter the UK and will be subject to the requirements of the Immigration Rules in the same way as all other nationalities who are not British or Irish citizens. This amendment does not change that but allows EEA citizens passing through e-gates to be granted six months' leave to enter as a visitor. As such, they will not be permitted to work or obtain benefits and will be expected to leave the UK, or extend their stay, before their leave expires, in accordance with the rules. Should they breach those rules, they might be liable for enforcement action, including removal from the UK.

To be clear, this new order will allow EEA citizens to be granted leave to enter as visitors for up to six months when they pass through an e-gate at a UK port of entry. EEA citizens coming to the UK for other purposes—such as work or long-term study, and those resident here—will also continue to be able to enter using our e-gates, but no change to the law is required to allow this as they will have already obtained, prior to arrival in the UK, the necessary leave to enter, either in the form of a visa, residence permit or digital status.

Noble Lords might recall that a similar amendment in May 2019 extended e-gate eligibility to visitors from Australia, Canada, Japan, New Zealand, Singapore, South Korea and the USA—the countries we now refer to as the B5JSSK—and this amendment brings the treatment of EEA citizen visitors, after the end of free movement, in line with the treatment of this group of foreign nationals.

Retaining the ability of EEA visitors to use e-gates to cross the border will be beneficial for passengers and the UK and will be important to maintain efficient flows of passengers through the border. Although the Covid-19 pandemic is still likely to mean that passenger flows are temporarily reduced in comparison with previous years, the use of e-gates will remain the best mechanism for ensuring the secure, efficient processing of EEA citizens across the UK border following the end of the transition period. It will also signal that the UK remains open for business to EEA tourists and business visitors alike.

The continued use of e-gates also needs to be seen in the context of the development of our new global border and immigration system, which makes better use of data, biometrics, analytics and automation to improve both security and fluidity across the UK border. Part of our long-term vision has always been to utilise digital technology to improve the passenger experience while maintaining security at the border. The use of e-gates is an important component of that as they provide a safe, secure and efficient means of processing arriving passengers, allowing our highly trained Border Force officers to focus their efforts on those who seek to abuse or exploit the system and wider border threats. I would also like to be clear that although this amendment enables us to allow EEA visitors to use e-gates to cross the border, it does not oblige us to do so; and as part of ensuring the UK border is operating in the interests of the UK, we will be keeping the policy under regular review.

The order also allows for permission to be granted to those who enter through an e-gate and qualify as an S2 healthcare visitor—to ensure that they obtain the correct type of leave on entry—and provides for service providers from Switzerland to use multi-entry visas. These groups' rights to enter the UK are protected by the withdrawal agreement, the EEA EFTA separation agreement and, in particular for service providers from Switzerland, the Swiss citizens' rights agreement.

Finally, the order also provides for leave obtained by a person passing through an e-gate to be treated as though it had been granted before arrival. The effect of this amendment will be to enable Border Force officers to examine persons who have obtained leave to enter by passing through an e-gate to decide whether that leave should be cancelled. This will complement existing powers already available to Border Force officers to curtail or cancel leave to enter. An example of where this might be used would be where further information, such as evidence of the commission of a customs offence, comes to light after they have passed through the e-gate and obtained their leave to enter. I commend the order to the Committee.

3.53 pm

Lord Bhatia (Non-Afl) [V]: My Lords, this instrument was prepared by the Home Office. It will ensure that the UK can continue to utilise electronic passport gates, which are described as

"a secure and efficient mechanism for travellers to cross the border, to process the arrival of citizens of current EU and EEA member states and Switzerland entering the UK as visitors after the end of the transition period on 31 December 2020".

Heathrow is a particularly busy airport, with flights arriving and leaving all the time—for almost 20 hours a day. E-gates have been a big blessing for the airport authorities there. Similar problems exist in other airports in the UK, such as Gatwick.

It is also said that:

"This SI is important to maintain security and fluidity across the UK border."

Whereas all the above makes sense and is good, we have to worry about terrorists entering the UK. With the recent events in France, security for the UK must be enhanced. There are also many migrants crossing the channel in small boats; many of them are unable to cross due to the waves, which can cause their deaths. The security of our borders is very important and I welcome this SI.

3.55 pm

Lord Paddick (LD) [V]: My Lords, I thank the Minister for introducing this draft order. Its main purpose is, to quote from the Explanatory Memorandum that accompanies it, to

"ensure that the UK can continue to utilise electronic passport gates (e-Gates), a secure and efficient mechanism for travellers to cross the border, to process the arrival of citizens of current EU and EEA member states and Switzerland entering the UK as visitors after the end of the transition period".

I want to draw the Committee's attention to the hypocrisy of a Government who campaigned to leave the European Union on the back of the slogan "Taking Back Control"—a phrase that they continue to use to this day, particularly in relation to our borders. The only way this order can be described as taking back control of our borders is that the decision to keep them open with the same level of control, or lack of it, as when we were members of the EU is going to be taken by the UK Government, rather than that decision being a consequence of being a member of the European Union.

What is more, in a vain attempt to avoid being accused of hypocrisy in the face of their promise not to treat EU citizens more favourably than those from outside the EU, the Government have weakened the UK border in relation to citizens of the B5JSSK countries—Australia, Canada, Japan, New Zealand, Singapore, South Korea and the USA—by allowing citizens from those countries to use e-gates. Not only are the Government not taking back control of their borders; they admit in their own documentation that e-gates are not secure, or at least do not deliver an acceptable level of security. Let me explain. The Explanatory Memorandum goes on to say that, with the end of free movement, EEA citizens will require leave to enter and remain in the UK

"but those coming as visitors will be able, like other non-visa nationals, to obtain leave to enter at the border for six months"

and that this instrument will

"allow EEA citizen visitors to obtain leave by going through an e-Gate. This leave will be granted for six months in the same way as it is granted to … B5JSSK nationals … who have been able to obtain leave"

by entering through the e-gate since 2019. I think the Minister explained that this happened in May 2019.

Cynics will accuse the Government of extending e-gate access to B5JSSK nationals, which was done only last year, only to avoid being accused of treating EU citizens more favourably after Brexit. The Government have previously said that the decision was made to "better manage the queues" at the UK border, but the point of the border is to keep undesirable people out of the UK—not to make it easier for everyone, including undesirable people, to pass through it. Until the changes were made, B5JSSK nationals had to hand a boarding card to a Border Force officer at the UK border, explain the purpose of their visit and how long they were staying, and prove that they had somewhere to stay and sufficient funds to sustain them during their time in the UK. I am told—the Minister will correct me if I am wrong—that approximately 3,000 USA nationals were turned away at the border annually when these checks were in place. Now there are no checks.

In the chapter entitled "The border of the future" in the Government's published plans for a points-based immigration system, they outline an idea for "Electronic Travel Authorisations" to be introduced at some unspecified time in the future. The Government claim that these

"will allow security checks to be conducted and more informed decisions taken on information obtained at an earlier stage, as to whether individuals should be allowed to travel to the UK."

Presumably, these checks and "more informed decisions" will be similar to the checks and informed decisions that Border Force officers used to undertake at the UK border, resulting in 3,000 American citizens a year not being allowed to enter the UK, and before the B5JSSK citizens were allowed to use e-gates. But what happens to UK border security in the meantime? Are the Government now saying that we will take back control of our border eventually?

Continued access to EU databases is also in doubt, particularly the electronic system that allows UK authorities to check whether an EU citizen has been convicted of a criminal offence in any EU country. Not only will allowing EU citizens to use e-gates not be taking back control of our borders; we are less likely to be able to identify criminals entering the UK.

The Government have published advice for UK citizens seeking to visit the EU next year. It states that UK citizens must have at least six months left on their passport, show an onward or return ticket, have enough money for their stay, use separate lanes from EU, EEA and Swiss nationals, and be limited to visits of 90 days in any 180 days. Meanwhile, EU, EEA and Swiss nationals visiting the UK will continue to use the e-gates and be able to stay for six months, take a day trip to Lille on the Eurostar and come back for another six months—not that there will be any way in which to check whether they have overstayed their six-month leave to remain.

Only the EU is taking back control of its borders. This Government are significantly, albeit voluntarily, giving up control of the UK border, thereby making it easier for criminals and those who want to stay in the UK illegally to enter and remain. To use an often-used government phrase, that is not what the British people voted for. I may table a Motion of Regret when this order comes before the House for approval.

4.02 pm

Lord Rosser (Lab) [V]: I, too, thank the Minister for her explanation of the content and purpose of this draft order. As we know, with the end of free movement, EEA citizens will require leave to enter or remain in the UK. The order provides for EU and EEA citizens without existing status to continue to use e-passport gates after the end of this year, and thus obtain leave to enter for six months when they are visiting the UK, as opposed to those coming to the UK to work or live, or for periods of more than six months, who will

[Lord Rosser]
require permission to enter in advance of travel. The order also allows some other groups to use the gates in relation, for example, to pre-arranged healthcare.

We are introducing this arrangement for EU and EEA citizens but, as the noble Lord, Lord Paddick, was, in effect, saying, we have apparently not yet been able to negotiate a reciprocal arrangement for UK citizens travelling to Europe. Will the Government confirm that that remains the case and, if it does, can we have an update on that point when the Government respond?

Citizens of countries currently permitted to use e-passport gates are those from Australia, Canada, Japan, New Zealand, Singapore, South Korea and the USA. To those will now be added EU and EEA countries. Do the Government keep that list under review? What are the criteria for being on the list, and for being taken off it? Are there plans to add any more countries to the list?

We are aware that the organisation the3million has written to the Immigration Minister, expressing concern that people entering the UK after the end of this year who are protected by grace period regulations will be granted leave via the e-gates. That will inadvertently impact on their ability to exercise rights, including the right to work, given that the automatic grant of leave to remain via e-gates for EU citizens is done on the basis of no recourse to public funds and no permission to work or rent. What steps have the Government taken, or will they take, to prevent that situation arising?

The Explanatory Memorandum in paragraph 7.3, to which the noble Lord, Lord Paddick, referred, states:

"The change will benefit the operation of the UK border as a whole by ensuring that the large number of EEA citizen visitors are able to cross the border in the most secure and efficient manner possible."

However, as the noble Lord was asking, how reliable are the e-passport gates proving to be in detecting people who should not be allowed into this country? How will it be known when visitors entering via the e-passport gates do not have a right to work or rent in the UK?

Many issues and changes face our border security from the beginning of next year. Potentially serious is the likely loss of access to the Schengen Information System database. In an evidence session with the Home Affairs Select Committee last week, the Minister for Future Borders and Immigration had few, if any, answers to questions on the number of checks we make from the information system database, the proportion of people we check or which system will be there to replace it in January if our access to it ceases. Will the Government now say if the loss of access to that security database will impact on the information we have on people using e-passport gates to enter the UK, and what instantaneous checks will be available on a person arriving at our border.

Finally, I refer to paragraph 10.1 in the Explanatory Memorandum, which is on consultation. It states:

"This instrument was not subject to a consultation exercise because the Government judges that significant numbers of passengers will benefit, with only very limited impact on the experience of others."

What is that limited impact and which passengers will experience it?

4.07 pm

Baroness Williams of Trafford (Con): I thank both noble Lords for their points. Indeed, I welcome the positive comments about this statutory instrument made by the noble Lord, Lord Bhatia. The noble Lord, Lord Paddick, asked a number of questions about security and the impact of the ending of free movement and other things, while the noble Lord, Lord Rosser, made a couple of additional points, which I will attempt to answer.

To answer the first point made by the noble Lord, Lord Paddick, when individuals use e-gates, they are not routinely questioned by a Border Force officer. However, I assure the Grand Committee that our e-gates conduct a full range of security checks. The biometric check that they undertake on people's travel documents means that they are a highly effective method of detecting imposters, people with fake passports, fake facial images, et cetera. The e-gates also allow our allow highly trained Border Force officers to focus their efforts on high-risk cohorts—[*Interruption.*] I shall stop there.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, the Division Bell is ringing so the Committee will adjourn for five minutes.

4.08 pm

Sitting suspended for a Division in the House.

4.13 pm

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): Five minutes has now elapsed so I invite the Minister to continue her remarks.

Baroness Williams of Trafford (Con): My Lords, e-gates are and will continue to be able to identify pre-existing adverse information about travellers and individual subjects. Such information will be seen by a Border Force officer. If officers require information about any person's previous immigration history, the Home Office has access to data, including advance passenger information and exit check records, to verify the person's individual history. Those officers will retain the ability to exercise the full range of powers at the border, so they will be able to continue to refuse entry where appropriate to those whom they deem ineligible for entry.

The noble Lords, Lord Paddick and Lord Rosser, asked about UK citizens travelling to the EU. They will know that this is part of the ongoing negotiations, of course. For our part, we have ensured fairness in the system by setting up the EU settlement scheme so that no one from the EU is in any doubt about their rights.

On SIS II and what will replace it, those negotiations are ongoing. However, I agree with both noble Lords that having our full range of law enforcement capabilities is absolutely essential as we go through the transition period. If I may, I will get back to the noble Lord, Lord Rosser, on the impact assessment of the small number of people who will be negatively impacted by e-gates; of course, it is a small number because most people will see a positive impact from them.

The noble Lord, Lord Paddick, asked how this is different from free movement. EEA citizens and their family members will be subject to UK immigration control from 11 pm on 31 December this year on the same basis as non-EEA citizens except where they form part of the citizens' rights cohort.

In answer to the noble Lord, Lord Rosser, the new border and immigration system will see EEA citizen visitors become subject to the same Immigration Rules, criminality thresholds and travel document requirements as other third-country nationals. However, in contrast to the situation under free movement, EEA citizen visitors passing through e-gates after 31 December who do not have another form of UK status or eligibility to apply to the EU settlement scheme will be granted six months' leave to enter but will not be permitted to work or access benefits and services. They will also be expected to leave the UK or extend their stay before their leave to enter expires. Any EEA citizens arriving for work or long-term study will need to apply under our new system and obtain prior permission, just like all other non-visa nationals. Without such a permission, they will not be able to demonstrate their entitlement to remain in the UK for anything other than a visit.

The noble Lord, Lord Paddick, was concerned about repeat visits. He talked about refreshing leave to enter every six months by leaving for a short period—a point that he has talked about at length—but it is not possible to do so and obtain the same rights and entitlements as residents. Anyone seeking to abuse the system in this way would find themselves prohibited from working and obtaining benefits. If their intentions were to become known to the Home Office, they could be refused when seeking entry at the border. Further, if they seek to stay longer than six months or breach the conditions of their stay as a visitor, they may also be liable to enforcement action, including removal from the UK. That also answers the point made by the noble Lord about being able to rent.

Returning briefly to the EU treatment of UK citizens, it is not based on the EU providing reciprocal access to its e-gates for British citizens. The UK has always sought to manage its border in the country's best interest. That is why we did not join the Schengen zone and why, on leaving the EU, we are determined to enhance our ability to manage our border in a way that continues to protect the public and facilitates the passage of legitimate travellers.

Motion agreed.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): The Grand Committee stands adjourned until 5 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

4.18 pm

Sitting suspended.

Arrangement of Business

Announcement

5 pm

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, the hybrid Grand Committee will now resume. Some Members are here in person, respecting social distancing, others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear a face covering, except when seated at their desk, to speak sitting down and to wipe down their desk, chair and any other touch points before and after use. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes. The time limit for debate on the following statutory instrument is one hour.

Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020

Considered in Grand Committee

5.01 pm

Moved by ***Lord Gardiner of Kimble***

That the Grand Committee do consider the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020.

Relevant document: 31st Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I declare my farming interests as set out in the register.

These instruments are closely related as they apply to regulations relating to the common agricultural policy, or CAP. I emphasise that these instruments are minor and technical in nature. They do not make new policy or change existing policy. Instead, they will make existing policy and legislation operable at the end of the transition period.

The Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 update exit SIs made in 2019, minimising ambiguity about legacy CAP schemes by removing the direct payments provisions from previous exit SIs and clarifying that those SIs relate only to the common organisation of agricultural markets—CMO—and rural development. Amendments to direct payments provisions had already been made on exit day under the Direct Payments to Farmers (Legislative Continuity) Act 2020. There are also Northern Ireland protocol-related technical amendments, such as changing "United Kingdom" to "Great Britain".

The regulations allow the UK to comply with Article 138 of the withdrawal agreement, which provides that EU law will continue to apply after 31 December to ongoing rural development programmes and CMO operational programmes implemented by producer organisations until those programmes end.

The regulations amend provisions concerning public intervention and private storage aid schemes, which offer financial support when market prices for agricultural products fall below thresholds laid down in legislation. Currently, the schemes allow the European Commission to buy commodities then publish its decisions using implementing Acts. This instrument allows Defra and the devolved Administrations to make these decisions, which will then be published on GOV.UK.

[Lord Gardiner of Kimble]

The instrument makes amendments to retained EU law relating to devolved aspects of producer organisations in the Fruit and Vegetables Aid Scheme to ensure that the scheme continues to operate in the UK post the transition period. This scheme provides funding to producers to encourage collaboration, increase competitiveness and improve the quality and quantity of produce grown.

The instrument makes other amendments to retained EU law to ensure that Defra and the devolved Administrations can continue to obtain certain production and price data from those in the supply chain, as they do currently. This information is used for market monitoring purposes.

Finally, this instrument also tidies up aspects of other retained EU law; for example, it changes "Exit Day" to "IP completion day" or reflects updates to EU law.

I turn to the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020. This instrument amends provisions of retained EU CMO legislation in the reserved areas of regulating anti-competitive practices and agreements; international relations; import/export controls; and the regulation of intellectual property. It ensures that, post transition period, these functions can be carried out by the Secretary of State. It also amends retained EU law concerning reserved provisions of producer organisations in the fruit and vegetables sector and ensures that functions relating to the recognition of producer organisations in this sector can continue to be exercised by the Secretary of State. It will also omit references to transnational POs within retained EU law, as they are no longer relevant in a domestic context, and updates a reference in relation to contractual negotiations in the milk sector.

On wine, the instrument ensures that protection of designations of origin, geographical indications and traditional terms in the wine sector operate effectively and that Great Britain is able to process domestic and third-country applications for such matters. It will also ensure that the UK is compliant with the rules of the WTO. It will give the Secretary of State the power to approve or revoke protected wine names and terms on the domestic GI register and approve or deny applications already made to the EU. It will also enable the Secretary of State to make administrative decisions involved in processing applications for protected wine names or terms, amending those protections and the use of those terms on the label of the product. It also revokes EU-implementing Acts that duplicate information in the protected designations of origin and protected geographical indications register.

I turn to the Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2020 and the Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2020. The majority of the amendments made by these instruments relate to the implementation of the Northern Ireland protocol and references to Northern Ireland as it will remain aligned to the EU under the protocol. Amendments are also being made to a small number of the transitional provisions, either to align with the Government's border operating model, which introduces new border controls for the movement of goods between Great Britain and the EU in three stages until July 2021, or because they were introduced on the basis that the UK would leave without a deal and are no longer required.

The Secondary Legislation Scrutiny Committee drew the attention of the House to the department's explanation for why poultry meat imports from the EU would not require an optional indications certificate for a period of 12 months. Optional indications refer to the use of labelling terms concerning farming or chilling methods. I would like to apologise as the department's explanation did not provide sufficient context on checks relating to poultry meat marketing standards and this may have caused concern, but it has since been clarified with the committee and the department has asked for a correction to be issued.

I reassure your Lordships that, although the specific matters are not covered by these regulations, the Government remain committed to high environmental protection, animal welfare and food safety standards.

These statutory instruments, which are predominantly technical in nature, provide clarity in the context of continuity. For those reasons, I beg to move.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, the noble Lord, Lord Loomba and Lord Dodds of Duncairn, and the noble Baroness, Lady McIntosh of Pickering, have withdrawn from the debate. I call the next speaker, the noble Baroness, Lady Bakewell of Hardington Mandeville.

5.08 pm

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, I thank the Minister for his introduction to this group of statutory instruments and for his time in the briefing. The first instrument, as he said, relates to agricultural payments and is very much a tidying-up process. As the Explanatory Memorandum states, it was first debated in the Commons and should have been debated within 28 days in the Lords but, due to Prorogation and the general election, this was not possible, hence we are debating it today so that payments and other matters can move forwards smoothly after implementation day.

The regulations relating to the Northern Ireland protocol provide protection at the end of the transition period, and there is also continuity of certain rural development and CMO schemes after the transition period. How long are those rural development schemes likely to run into the future and how soon will they be assimilated into the environmental land management schemes, if at all?

The second SI deals with agricultural products and wine. Protected designation of origin, or PDO, and protected geographical indication, or PGI, are extremely important for producer and consumer confidence. It will be essential for the Secretary of State to use his powers to alter these with extreme caution. In particular, the geographical indications, or GIs, in relation to wine will need to comply with WTO obligations, as the Minister has already said.

While it might be tempting to rebrand fortified wine as amontillado or sparkling wine as champagne, I think the consumer would soon notice the difference. This would be a retrograde step, as our excellent English wines are able to compete under their own labels. Can the Minister confirm that marketing of our own-produced wines will be the main thrust of the Government in this regard?

The SI makes specific reference to imports of wine and quality policy. What are the arrangements likely to be for geographic indicators on exports? Are these covered in this SI, or will there be an additional SI for that purpose? GIs are of great importance to our wine and spirit producers as well as to those making products using milk.

The third and fourth SIs are again needed to ensure that the Northern Ireland protocol can be implemented. Would it be premature to ask the Minister just how many SIs that relate to ensuring the Northern Ireland protocol is safeguarded we will debate before the end of December? It would be useful to know.

In relation to the fruit and vegetable producer organisation aid scheme, the Explanatory Memorandum states that groups of growers will still be able to come together with the aim of planning production, concentrating supply and making them stronger in the marketplace. The Minister may have answered this, but I shall ask him again anyway: is the transnational producer organisation likely to interfere with this process?

Provisions for the import of hops and hop products are to be amended to align with the border delivery model. What proportion of hops used in the brewing industry in the UK is imported from third countries and what proportion is grown in the UK? Originally, EU forms and certificates from third countries were to be accepted for two years. However, this period has now been shortened to 1 July 2021. How will that affect the UK brewing industry?

On chicks and hatching eggs, can the Minister say which third countries are importing these products into the UK? I also have concerns about the use of optional indication certificates for poultry meat imports, as Defra has stated that we do not currently enforce poultry meat marketing standards. I understand that this relates to labelling as to the method of rearing, such as "free range". However, many third countries do not have the same stringent animal welfare standards as the UK. I feel certain that consumers will want to be aware of these imports.

Lastly, I refer to paragraphs 2.6 and 2.12 of the Explanatory Memorandum to the miscellaneous amendments regulations, which refer to imports of beef and veal from third countries. It may be that the third countries referred to are the same as those which import chicks and hatching eggs but, again, I ask the Minister which they are.

As the Minister said, the Secondary Legislation Scrutiny Committee has drawn these matters to the attention of the House as it believes they are of considerable interest to the public at this time, especially as the poultry meat marketing standards are currently not being enforced and as a 12-month transitional period is needed to enable the future import regime and associated checks to become operational. I agree with the committee's view.

I am happy to support the four statutory instruments but look forward to answers to the questions that I have posed to the Minister.

5.14 pm

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for his introduction and the helpful briefing that he organised beforehand. When we agreed to take all these SIs in one go, I do not think I realised just what a complicated task we were setting ourselves, because there is an enormous amount of detail in them and they all seem to be connected and to overlap. I therefore have a number of questions, but I fear that I may be referred to other SIs to find the answer.

As my colleague Daniel Zeichner pointed out in the Commons, the Explanatory Memorandum says that Defra does not intend to consolidate the relevant legislation at this time. All I would say is: "Good luck" to the person who eventually takes that task on because of the complications that we can all see before us.

We also face once more our old enemy the correction of previous drafting errors. This is an ongoing saga. Can I suggest to the Minister in all good faith that we need some kind of standing procedure to deal with all the errors that are coming to light and may well come to light in the coming months, rather than having to revisit SIs one by one as we are at the moment?

Turning to the individual SIs, I have a few questions. The first SI makes provision for public intervention, private storage and aid to continue at times of market failure. The proposal is that this should be done administratively, rather than by political decisions. The Minister has clarified that this administrative decision will be published on the Government website. However, given our recent experience of market failure in the collapse of dairy prices, which was a hugely political event, can the Minister explain whether that would be the sort of thing that would be decided as an administrative decision and whether there would be any parliamentary oversight of decisions such as that? Would Parliament have any say on that at all?

This SI also changes the provisions for fruit and vegetable producer organisations. The Minister clarified in the other place that there were 34 in total and four are believed to be transnational. Am I right in understanding that those transnational producer organisations will not be able to apply for support, even if the majority of their production takes place in the UK? Have those affected producer organisations been informed of this change, and are they content with it?

The second SI proposes changes to EU retained law to enable the Secretary of State to approve or cancel protected designations of origin and protected geographical indications for wine. This SI only deals with wine, so I presume that other protected designations are dealt with in other SIs. The SI says that there is not expected to be any significant impact on business. Given the UK's growing wine industry, which I think we would all accept has been curtailed by EU regulations in the past, will it give our wine producers more flexibility in the descriptions of the wines that they are

[Baroness Jones of Whitchurch]
able to market? Is it envisaged that we would have the UK equivalent of appellation contrôlée as a UK quality standard in future?

What UK body will replace the Commission in registering PDOs and PGIs? Will it be British only or include Northern Ireland? Will UK products such as wine remain registered in the EU or will they have to be re-registered to access the market at the end of transition?

The third and fourth SIs address issues arising from the transition from EU import certificates of conformity to those aligned with the border delivery model. It seems strange that the dates for ending the transition period for these certificates for beef and veal labelling is different from that of hops, hatching eggs and chicks. I refer to the excellent note from the Secondary Legislation Scrutiny Committee on this issue. When it asked Defra about this, it was told that some provisions were made to align with the border delivery model, while other timescales meant that there would be a delay for a two-year transition,

"in order to allow policy teams to deliver the necessary IT system changes and recruit additional HMI inspectors".

Three obvious questions arise from that. First, are some of the border issues so complicated that they need a two-year IT project to complete? Is there any danger of further delays, as we have known in the past, with the IT system not being up and running by that date? Secondly, are the HMI inspectors referred to specialist border inspectors, or is it envisaged that there will suddenly be a huge extra volume of work when the transnational arrangements end—which is why it is being staged, to enable those extra recruitments to take place? Thirdly, has sufficient thought been given to the extra burden on businesses importing across the border which might import mixed cargos with different deadlines for the forms and certificates?

The Secondary Legislation Scrutiny Committee also drew our attention to the fact that the UK does not currently enforce poultrymeat marketing standards. I am very grateful that the Minister has clarified, after our pre-meeting with officials, that that is not so much the case and that a clarification has been issued. I thank him for that. However, if poultrymeat is imported from a third country, does that mean it could still say that it was free-range or organic, and that would not be checked? Could it claim not to be chlorine-washed when it has been? I understand from our pre-meeting that little or no poultrymeat is currently imported using these optional descriptions. Can the Minister clarify whether that might be expected to change in the future? These seem to be quite common terms so it is surprising that there are no imports using these labels now. Could unregulated poultrymeat be mixed with other products and given a misleading description? Can the Minister explain what is meant by that explanation? The SI also refers to the organic certificators' group having been consulted. Is it now content with the proposals?

On a slightly different issue, perhaps I may ask a follow-up question on the application of the Northern Ireland protocol. In a recent SI debate, the noble Lord, Lord Goldsmith of Richmond Park, revealed that 72 border posts were proposed between Northern Ireland and Britain. Is there a list now of where those posts will be based? Are they fully staffed—with trained staff—and ready to be operational at the end of the transition period? Do those trained staff include the specialist inspectors who would have to deal with the checks on the imported fresh food produce that the SIs specifically relate to? I look forward to the Minister's response.

Lord Gardiner of Kimble (Con): My Lords, I thank the noble Baronesses for their contributions and important questions on some of these matters. I agree with the noble Baroness, Lady Jones of Whitchurch, that although the regulations are detailed they are intended, as I have explained, not to change policy but to ensure that there is operability in this area as we move forward.

On the point about consolidation, I am very grateful that I am not a specialist in parliamentary drafting, because this would be a mammoth task. I very much take on board the noble Baroness's point about errors. We all regret when there is an error. Having worked with officials, I think they would apologise to the noble Baroness and to us all, but the pressure is sometimes very intense and these things happen. I regret any error that is made, but the most important thing is to be open about it and correct it as soon as we can. The opportunity that arises now, given that we must attend to these SIs, is to be very straightforward and say that there were a number of errors which we are attending to with these SIs. We should not say that the SIs have been brought forward only to deal with errors because they have not.

The noble Baroness, Lady Bakewell, referred to the length of time of rural development programmes. Some long-term agri-environment and forestry agreements will still be live after the closure of the current Rural Development Programme for England because of the time taken to deliver the environmental benefits from the programme. She also referred more generally to the protected designations of origins and the protected geographical indications after the transition period. These regulations, along with other instruments, will allow Great Britain to administer and enforce the GI schemes and to ensure that the United Kingdom meets its WTO obligations.

On some other points raised about the relationship to our exports, it is important to say that there are GIs for our exports also. Once awarded GI status, a product name is added to the relevant public GI register, thereby providing a basis for protection against any misuse of the name. I reassure the noble Baronesses that this level of protection will apply to all UK GIs. The register will also contain GIs protected through the withdrawal agreement and trade agreements. This domestic protection will enable us to secure reciprocal levels of protection for our wine products on export markets.

Domestic wine production is a growth sector in England and Wales. The noble Baroness, Lady Jones of Whitchurch, referred to domestic wines. These regulations maintain the operability of retained EU law, which is the status quo. Our aim is to ensure that imports of third-country wines continue unaffected while continuing to increase domestic wine production.

Existing EU GIs, such as Champagne, will continue to be protected in GB through the withdrawal agreement. We cannot use that name for UK sparkling wines. However, our producers are carving out a strong niche for high-quality sparkling wines and I observe, for example, that two Champagne houses are investing in English vineyards.

The noble Baroness, Lady Jones, asked about the ramifications for transnational groups in the UK. There are four such groups, three in England and one in Northern Ireland. We have kept DAERA fully informed and are working with affected producer organisations to ensure that they are aware of the impact on their business and to help them plan for the future. Transnational POs can still come together, but EU-based members will no longer be able to claim under the aid scheme after the end of the current programme.

The noble Baroness, Lady Jones, raised an important point, which we have discussed, about the definition of administrative decisions and ensuring that what might be described as political decisions are not made under the auspices of administrative decisions. Those decisions have limited scope and do not choose the recipients of the intervention or which sectors to intervene in. They are decisions that, following a tendering process, set rates for buying in commodities under public intervention and for private storage aid, and then allow publication of the rates to be offered. Those decisions are made according to clearly prescribed criteria in the CMO regulations. For example, the tendering procedure is clearly laid down in regulations and the quantities, periods and prices involved are subject to overall limits. The amendments in this instrument would allow the tendering procedure to open and the decision on the maximum price to be published, without requiring legislation to open the procedure and publish the price. It is important to emphasise the narrowness of the scope because I agree with the instincts that the noble Baroness outlined. Changes to these rules and amounts would require legislation and parliamentary oversight. The amendments in the instrument do not introduce new processes or powers, or enable the relevant authorities to do anything new. Instead, they ensure that the relevant authorities will be able to continue operating those clearly prescribed mechanisms, as they do currently, and in a timely fashion, after the transition period.

I turn to some of the remarks relating to the Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations and the No.2 regulations of the same name. The noble Baroness, Lady Bakewell of Hardington Mandeville, asked about beef and veal. My understanding is that in 2019, 6.8% of the beef and veal imported into the UK came from the following non-EU countries: Uruguay, Australia, Namibia, Brazil, Argentina, Japan, New Zealand, Chile, United States of America, UAE, Botswana and Paraguay. The remainder of our imports came from the EU. While the regulations cover only technical requirements for age on slaughter labelling, and when the terms "beef" or "veal" should be used, I reassure both noble Baronesses that separate legislation concerning high production and animal health standards will continue to apply to beef and veal imported into Great Britain after the transition period.

As I have said before, in all our trade negotiations we will maintain our high environmental protection, animal welfare and food safety standards. These will not change.

The noble Baroness, Lady Bakewell, also asked about importing hatching eggs and chicks and the welfare standards of the country of origin. For hatching eggs and day-old chicks, 85% of our imports come from the EU and we remain committed to high standards of animal welfare and food safety in the future, as we do now.

The noble Baroness, Lady Bakewell, asked about a percentage in relation to hops. I am afraid the detail I have is that we were a net importer of hops and hop products to the worth of £60 million in 2018, while producing £14.1 million-worth ourselves. When I looked into this, one issue was the fact that hops have distinct flavours. We are therefore keen to ensure that there is a continuing ability for production of beer in this country which uses that variety of hop products, although when I studied those figures I thought that there might be some scope for further domestic production. Having looked into that, it is important to ensure that we have that range of hops for our beer production.

The noble Baroness, Lady Jones of Whitchurch, asked about transitional provisions. Funnily enough, in discussing these matters I am obviously seized of the fact that there is this range of dates. I queried this strongly and what we have done—I think this is right—is to have reviewed this on a sector-by-sector basis, to see where it would be practical and possible to align with the border operating model. In doing so, this has resulted in a varying number of end dates. The noble Baroness made a point about having confusion for businesses being the last thing we would want to do. I reassure her that we have actively engaged with businesses ahead of laying these instruments and have updated the relevant guidance on GOV.UK. In fact, representatives from all the sectors have welcomed the provisions, as they allow for appropriate adjustment.

For instance, with regard to the two-year transitional provision concerning EU certificates for fruit and vegetables, I understand we will be using this time to implement upgraded computer systems, as was alluded to, while bolstering our Horticultural Marketing Inspectorate numbers and working with the EU to implement an improved inspection service procedure for member states. After 31 December, the free movement of goods from the EU will end; inevitably, additional checks on imports and additional inspectors will be required. We are working with the APHA to ensure that we have the right calibre of inspectors. That will clearly be important.

The noble Baroness, Lady Jones of Whitchurch, asked about organics. I understand that the UK organics certifying groups are content with the provisions we have brought forward.

In relation to poultry meat marketing standards, I have drawn attention to the correction we made. I reiterate my apologies for it not being sufficiently in context in an earlier version. Although food safety regulations are not covered under these instruments, I reiterate that the Government remain committed to promoting robust food standards and existing food safety provisions, which will of course be retained in the retained EU law. No products other than potable water have been approved to decontaminate poultry carcasses, and this will remain so.

[Lord Gardiner of Kimble]

I am mindful of the time so I will be quick in addressing a number of other points. On the Northern Ireland protocol, I am sure that there will be other statutory instruments where, in part, the protocol and the changes following it will need to be applied to other statutory instruments that I bring forward.

I should say, as an aside, that I inquired whether we should have a Northern Ireland protocol SI so that all these matters could be wrapped in it. There was a suggestion that it was rather better to deal with them according to subject matter rather than in that way. If that might have been a suggestion of the noble Baroness, it was one with which I had sympathy, but it was then suggested that it would be more consistent to deal with the whole area of points of concern.

There are one or two further detailed points to cover. On impact, we have worked strongly with businesses because we are conscious that, because of the changes, we need to work with them. We are doing so—that is very important—so that they are aware of the changes and understand why we have a different range of dates to ensure that there are adjustments that work constructively.

If there are any other points, I might receive some information and will write to the noble Baronesses. At this juncture, and mindful that I have already taken a little too long, I commend the regulations.

Motion agreed.

Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020

Considered in Grand Committee

5.36 pm

Moved by ***Lord Gardiner of Kimble***

That the Grand Committee do consider the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020.

Relevant document: 31st Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2020

Considered in Grand Committee

5.37 pm

Moved by ***Lord Gardiner of Kimble***

That the Grand Committee do consider the Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2020.

Relevant document: 33rd Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2020

Considered in Grand Committee

5.37 pm

Moved by ***Lord Gardiner of Kimble***

That the Grand Committee do consider the Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2020.

Relevant document: 33rd Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, that completes the business before the Grand Committee this afternoon. I remind Members to sanitise their desks and chairs before leaving the Room.

Committee adjourned at 5.37 pm.