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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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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 SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
Non-afl	Non-affiliated
PC	Plaid Cymru
UUP	Ulster Unionist Party

No party affiliation is given for Members serving the House in a formal capacity or for the Lords spiritual.

House of Lords

Tuesday 11 October 2022

11 am

Prayers—read by the Lord Bishop of Coventry.

Oaths and Affirmations

11.07 am

Several noble Lords took the oath or made the solemn affirmation.

2 pm

Sitting suspended.

Prepayment Meters: Pricing

Question

2.30 pm

Asked by ***Baroness Kennedy of Cradley***

To ask His Majesty's Government what steps they are taking to ensure that individuals and families who pay for their energy through a prepayment meter are not paying the highest unit prices.

Baroness Kennedy of Cradley (Non-Afl): My Lords, in begging leave to ask the Question standing in my name on the Order Paper, I declare my interest as director of Generation Rent.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, prepayment customers will benefit from both the energy price guarantee and the Energy Bills Support Scheme. Under the energy price guarantee, a typical household in Great Britain will pay around £2,500 a year on their energy bills from 1 October 2022. There will continue to be a small difference under the energy price guarantee between the unit cost for a prepayment meters and other types of payment methods to reflect higher costs to serve those customers.

Baroness Kennedy of Cradley (Non-Afl): My Lords, using a prepayment meter is the most expensive way to pay for your energy, yet they are most likely to be used by the households least able to afford to heat their home. To cope, these families severely cut back on the energy they use, but their efforts are diminished because of the impact of the rise in standing charges, which remain the same regardless of the energy used. So I ask the Minister two things. Will the Government insist that there is a winter truce on energy suppliers forcing families already struggling to pay their bills to use prepayment meters to clear their debt? Will the Government make it clear to Ofgem that the continuing ratcheting up of standing charges to cover costs over and above what the standing charge should cover is unacceptable?

Lord Callanan (Con): I am afraid that the noble Baroness is incorrect: using a prepayment meter is not the most expensive way of paying for your gas and electricity. Actually, normal credit is the most expensive way. The cheapest way is direct debit; slightly more expensive is prepayment; but the most expensive way is credit. The problem with what the noble Baroness is saying is that if we were to equalise the charges, and there is actually a higher percentage of customers who are fuel poor who are paying by direct debit, they of course would have to bear increased costs to take account of any reductions for prepayment customers.

Baroness Finlay of Llandaff (CB): My Lords, will the Government ensure that all children and seriously ill adults in receipt of the new SR1 benefit and being cared for at home are moved to the lowest energy cost tariff, irrespective of the type of meter and system of payment in place? Will the Government ensure that they are provided with emergency supplies in the event of any power cuts in their area, particularly in the winter, as power to their equipment, such as home ventilation, oxygen concentration and so on, is absolutely essential to their care at home?

Lord Callanan (Con): The noble Baroness makes a very important point. Obviously, we are doing everything we can to make sure that there are no blackouts, but if that very unlikely eventuality comes to pass, of course we will want to do all we can to make sure that the most vulnerable are protected.

Baroness Sheehan (LD): My Lords, I am sure the Minister will agree that although the situation now with the differential is not as extreme as it used to be, we could easily go back to a situation in which those on prepayment meters will be paying the highest tariff. If the Government were minded to, they could easily remedy the situation; for example, simply by removing the ability of Ofgem to set differential rates for people with prepayment meters. If they did that, that would sort the problem. Does the Minister agree that this would do the job and would get rid of the injustice whereby the poorest are being asked to pay the most?

Lord Callanan (Con): I refer the noble Baroness to the Answer I gave earlier: using a prepayment meter is not the most expensive way, and many customers choose to do it for their convenience. The licensing conditions for Ofgem reflect the cost of serving different groups of customers. Of course, we keep these matters under review, but if we equalised it, then those paying by direct debit—often those who are fuel poor as well; there is a higher percentage of customers on that level—would end up paying more. There are no easy answers to this.

Lord Forsyth of Drumlean (Con): My Lords, does my noble friend not accept that it is all very well talking about those people paying on direct debit, but we are talking about people who, if they have a bank account, are probably overdrawn and are certainly not in a position to do so? I pay by direct debit, but I do not understand why my standing charges, which are a

[Lord Forsyth of Drumlean]
major part of the costs, are going up as well as the energy costs. At a time when the Government are giving huge support to consumers and therefore to the utilities themselves, which would otherwise be facing severe financial difficulty, do we not have a bit of leverage and can we not speak up for those people struggling to pay those bills?

Lord Callanan (Con): We are helping those struggling to pay bills; I refer the noble Lord to the massive programme of support that we have put in place. These charges are set by Ofgem. I am aware that the standing charge is a controversial subject, but that reflects the network costs and other costs that every customer has to bear in addition to the unit costs of gas and electricity.

Lord Lennie (Lab): My Lords, there are 4 million prepayment energy customers in this country whose bills are not smoothed out over the year, unlike those who pay by direct debit. Ofgem figures show that prepayment customers are likely to pay two-thirds of their annual energy costs during the winter. What immediate measures will the Government take to help relieve pressures on these hard-pressed energy customers?

Lord Callanan (Con): The answer to the noble Lord's question is the massive programme of support we have put in place, which amounts to about £60 billion of direct payment support. Had we not put these measures in place, the average unit cost would have been about £6,000 per year; now it is down to an average of £2,500 per year. I emphasise that that is not a maximum but an average of the unit costs of energy that are capped under the price guarantee.

Baroness Jones of Moulsecoomb (GP): My Lords, is the Minister aware that renewable energy is nine times cheaper than fossil fuel energy? If there were not an anti-science coalition in the Conservative Party—including previous Prime Minister Cameron, who said to cut the green "stuff"—bills would not be as high and we would not be in this mess now.

Lord Callanan (Con): Happily, on this matter I can partly agree with the noble Baroness, which will shock her. Some renewables are considerably cheaper than gas-fired generation, although it varies—we are experiencing a price spike in gas at the moment. That is one of the reasons why we have in place the largest programme of offshore wind in Europe; we have the second-highest level in the world, and it is something we want to ramp up greatly, to 50 gigawatts by 2030, because at the moment it is the cheapest form of generation.

Baroness Brinton (LD): My Lords, to return to the question asked by the noble Baroness, Lady Finlay, I thank the Minister for saying that the Government will do all they can to provide a secure electricity supply, particularly to seriously ill disabled children who may be using ventilators and other equipment. My family has experience of this; when there was a cut on the south London estate where my three year-old granddaughter was—she had to have a ventilator and a heart monitor—it took over three hours before the generator arrived, even though she was on the list. The scale of the cuts, if they happen, will be of a different magnitude. It is an enormous undertaking, so I would be really grateful if the Minister could make sure that this facility is available to not just children but other people who use this life-saving equipment at home.

Lord Callanan (Con): Of course I can give the noble Baroness that assurance; we will do all we can to protect the most vulnerable. We all recognise the difficult circumstances that such people would be in, but our top priority is to make sure that there are no interruptions to supply at all. That is one of the reasons why we are ramping up efforts to make sure that we have enough energy to serve the UK this winter.

Baroness Walmsley (LD): My Lords, those renting from private registered landlords often have little choice about how they pay for their energy. I am thinking in particular of students in houses of multiple occupation, many of whom are faced with very large bills indeed. Are landlords in that situation obliged to pass on any government subsidies to those students?

Lord Callanan (Con): We certainly encourage them to do so. We are looking at the upcoming legislation, which the House will consider shortly, to ensure that not just people in situations such as houses of multiple occupation but also those on heat networks, those in temporary accommodation, et cetera, get the reduction passed on to them.

Lord Watts (Lab): My Lords, is it not the case that once again the regulators are failing the public? Is it not about time that the regulator in this case looked at standing charges again and did something about them?

Lord Callanan (Con): I assume the noble Lord is referring to Ofgem. I can assure him that it looks very closely at the balance between standing charges and individual units, but the network has to bear certain standing costs, which are independent of individual units of gas and electricity. We talked earlier in this Question about the expansion of renewables. Of course, the expansion of renewables involves enormous changes to the structure and operation of the grid to make sure that that power can be transmitted around the country, and that has to be paid for.

Baroness McIntosh of Pickering (Con): My Lords, my noble friend will be aware that those living in rural areas pay the highest cost of fuel, which is not covered by the price cap. I am thinking of oil, solid fuels and LPG. What plans do the Government have to extend the price cap to these fuels to help those living in rural areas, particularly in the north of England and other parts of the country where it is particularly cold in the winter?

Lord Callanan (Con): Of course, a number of people across the country live off the gas grid and use oil, LPG, et cetera. The noble Baroness is right that in

most cases they benefit from the electricity cap, but they do not benefit from the gas cap. We are looking at how they can be assisted. We have a commitment that they will receive an equivalent level of support and we will ensure that that is the case.

Stockton to Darlington Railway Anniversary

Question

2.42 pm

Asked by ***Lord Faulkner of Worcester***

To ask His Majesty's Government how they plan to celebrate in 2025 the 200th anniversary of the opening of the Stockton to Darlington railway, the world's first public railway to use steam locomotives.

Lord Faulkner of Worcester (Lab): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and refer to my railway interests as declared in the register.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, railways are a product of Britain's rich history of engineering innovation and the 200-year anniversary is a nationally important moment to mark and to celebrate. The DfT will work with DCMS, other government departments and the whole industry to make this event very special for workers and passengers.

Lord Faulkner of Worcester (Lab): My Lords, I welcome that splendid Answer. What response will the Government give to the submission from Sir Peter Hendy, on behalf of industry, local and national museums, the supply chain, Heritage Railway and education, for government funds to ensure that there will be a memorable series of events in 2025, including the recreation of the opening day journey of Locomotion No. 1 and the creation of a walking and cycling route along the 26 miles of the original line as a permanent legacy?

Baroness Vere of Norbiton (Con): I am grateful to the noble Lord for highlighting some of the tremendous things that we can achieve to celebrate this 200-year anniversary. I am also aware that Sir Peter Hendy is out there with his begging bowl and working his magic. I am sure he is doing exactly what we want him to do, which is bringing together all the interested parties to work with government. This is a huge opportunity to not only celebrate the heritage of our railway network but promote the wider, modern system across the country.

Lord Naseby (Con): My Lords, if we are to celebrate the 200th anniversary properly, do we not need ticket offices up and down the country? Although only 12% of tickets may be sold there at the moment, nevertheless, is my noble friend not aware that a ticket office does far more than sell tickets? They give advice, not least to parents who are going on holiday or with children, and are of course very important to the tourism industry.

Baroness Vere of Norbiton (Con): My noble friend has sort of answered the question for me. I completely agree that railway staff do far more than sell just tickets, which is why in some circumstances they need to be out and about helping people where they need the help, rather than sitting in a glass box. My noble friend is right that one in eight tickets are currently sold by a ticket office. We know that passenger needs have changed and most people nowadays use the digital system, but we recognise that, in some areas, people want the option to buy a ticket at a ticket office. No final decisions have been taken. We are listening, but we must recognise that passenger needs have changed.

Lord Wrigglesworth (LD): My Lords, having been born in Stockton—a little after 1825—and like my noble friend Lord Rodgers having represented Stockton in the other place for quite a number of years, I have a keen interest, as he has, in the success of these celebrations. I am therefore delighted to hear what the Minister has to say about the support that is being given to all the organisations already involved in preparing for them. However, would not the best and most appropriate way to recognise the wonderful achievements of railways since 1825 be to support the proposals of Northern Powerhouse Rail to upgrade and massively improve connections between the east and the west of the country and thereby achieve the levelling up and economic growth that the Government seek to achieve?

Baroness Vere of Norbiton (Con): The noble Lord will have seen the recent comments from the Prime Minister about Northern Powerhouse Rail. The Department for Transport has taken those comments very seriously indeed and is now doing an enormous amount of work.

Lord Grocott (Lab): As we celebrate our heritage railways and the tremendous achievements of British engineering across the world, does the Minister also acknowledge the importance of the heritage railway sector? There are more than 100 heritage railways in the country and 400 stations, attracting millions of visitors each year. Can I be assured that the Government recognise the importance of this sector to the local economies in which the railways operate and the special needs of the sector, not least in relation to the supply of coal? I should declare an interest as honorary president of the Telford Steam Railway.

Baroness Vere of Norbiton (Con): I am grateful to the noble Lord for reminding us of the coal issue. We will have it at the top of our minds because it is absolutely critical. Heritage railways are a key part of local tourism. They attract people not only locally but internationally. We absolutely recognise the importance of the heritage rail sector; alongside DCMS, DfT works closely to make sure that it is properly promoted.

Lord Parkinson of Whitley Bay (Con): My Lords, the National Railway Museum in York was founded in the year we celebrated the 150th anniversary of the Stockton to Darlington railway. Since 2008, it has included the excellent Locomotion museum at Shildon, which formed a key part of County Durham's bid to

[Lord Parkinson of Whitley Bay]
be the UK City of Culture for 2025. As the Government consider the recommendations from Sir Peter Hendy and others, will my noble friend ensure that this museum is supported to play its full role in the celebrations of the 200th anniversary of this great gift to the world from the north-east of England?

Baroness Vere of Norbiton (Con): I thank my noble friend for his question. I pay tribute to his outstanding service as DCMS Minister—he therefore knows an awful lot about the topic of heritage rail. He is right that we are not going to have a full celebration without making sure that all of our railway museums are fully engaged in the process. I completely agree with him that we absolutely need to ensure that railway museums across the country, including the fantastic National Railway Museum in York, are involved in the celebrations.

Lord Tunnicliffe (Lab): My Lords, I am afraid that I agree with the Minister—it is a bad habit these days. That day in 1825 was an historic one. It gave the United Kingdom first-mover advantage in this extremely important industry. It is one of the most important dates in the whole development of the Industrial Revolution, from which we as a society still benefit. I am delighted that the Minister supports the celebration of it. Will she allow in her answer that that support may involve some financial support?

Baroness Vere of Norbiton (Con): I will allow that it may involve some financial support.

Baroness Randerson (LD): My Lords, I hope I can persuade the Minister to go further than that gentle reply. It appears that the Government funded the Unboxed festival—something visited by only around 250,000 people and designated a "festival of Brexit" by Jacob Rees-Mogg—to the tune of £126 million. I think that the festival we are talking about today will be a lot more popular and resonate a great deal more with the public. So can the Minister give us a clearer indication of the size of the Government's intended financial support?

Baroness Vere of Norbiton (Con): Unfortunately, I am unable to give a clearer indication of the size of any government financial support, principally because the plans are still in development. We know that Sir Peter Hendy is working some up, but of course there will be other plans coming through from DCMS and DfT. As those plans come together, of course the Government will consider financial support.

Lord West of Spithead (Lab): The Minister has articulated very clearly how important the whole heritage scene is, particularly in the railway endeavour. Can I ask her—in her hat as Transport Minister—who is responsible for heritage and historic ships, which are crucially important for our coastal communities?

Baroness Vere of Norbiton (Con): The interesting thing is that heritage railways actually fall under DCMS. The noble Lord asked me about heritage ships. I am afraid I do not know, so I will write.

Lord McLoughlin (Con): My Lords, I declare my interest as chairman of Transport for the North. In working on transport infrastructure and investment, would my noble friend care to take us to 2025, when we will see the completion of the £100 million currently being invested in Darlington railway station. Would she like to pay tribute at this point to Ben Houchen, who managed to bring this project forward and is seeing a significant investment in Darlington railway station now?

Baroness Vere of Norbiton (Con): I completely agree with my noble friend that this Government have been reopening abandoned routes, electrifying lines, investing in high-tech, refurbishing stations and building new tracks and trains, such as the Elizabeth line. That is what we intend to continue to do.

Lord Berkeley (Lab): My Lords, would the Minister like to celebrate 2025 by telling us that we will have Royal Assent for the Great British railway legislation that we are still waiting for? It started as the Williams plan. It then became the Williams/Shapps plan, and presumably now it is going to be the Williams/Trevelyan plan. Might it ever be the Williams/Vere plan if we wait long enough?

Baroness Vere of Norbiton (Con): I do not know—perhaps in my dreams. The Secretary of State is clear that the Government's commitment to modernising rail and transforming the industry remains. We will of course legislate when parliamentary time allows.

Youth Sport Trust Report

Question

2.53 pm

Asked by ***Lord Bassam of Brighton***

To ask His Majesty's Government what assessment they have made of report by the Youth Sport Trust *PE and School Sport in England: the Annual Report 2022*, published on 26 May, which showed declining participation rates for young people in sports; and what discussions they are having with Sport England and other sports bodies to address this issue.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Kamall) (Con): Sport and physical activity are incredibly important to our physical and mental health. This Government are committed to ensuring that everyone, regardless of background and origin, has access to and benefits from quality sport and physical activity opportunities. There is no doubt that the pandemic has had an impact on participation rates for young people and we will outline the Government's plans to address this in the coming months. We continue to work across government, Sport England and the Youth Sport Trust to tackle this important issue.

Lord Bassam of Brighton (Lab): My Lords, words are fine and yesterday the Minister spoke in glowing terms of the legacy from both the Olympics in 2012

and the Birmingham Commonwealth Games. But the report paints a very different picture. What exactly does the noble Lord think has gone wrong? It is brilliant that elite sports produce role models but where is the effective follow-through in our schools to enable the simple pleasure of sport for all and the next generation of sporting legends?

Lord Kamall (Con): In my early discussions with officials from the department and talking about it not only within DCMS but across government, we have been looking at a number of the blockages, as it were. One of the schemes we are looking at is making sure that schools can open up for longer—the schools opening scheme. We are also making sure that the DfE and schools are in partnership so that they feel comfortable opening up and are able to staff those facilities. We are looking at other partnerships within communities—with private clubs et cetera—to make sure that we make as much use as possible of assets that are already there as well as upgrading existing ones.

Lord Lexden (Con): Have the Government noted that there are now more than 2,350 sports partnership schemes which bring together state and independent schools to their mutual benefit? Will the Government encourage a further expansion of these partnership arrangements, which are so valuable, to enable as many pupils as possible to achieve their sporting potential?

Lord Kamall (Con): My noble friend raises a very important point about the partnerships. We want to learn from what has worked in the previous partnerships and make sure that we continue to expand them, not only with this scheme but looking at how we address those who have trouble getting kit, for example. We are working with charities such as Sport for Change to make sure that we do it across government. We are also working with the voluntary sector as much as possible and using existing infrastructure.

Lord Addington (LD): My Lords, it is well known that people drop out of sport at the various stages of education—at 16, 18 and 21—and that people who take their sport predominantly through small clubs, because they have better linkage to them, remain active. What are the Government doing to actively support the small club sector for the amateur sports that we are talking about, particularly considering how hard they have been hit by the pandemic?

Lord Kamall (Con): During the pandemic a lot of local community sports clubs relied heavily on volunteering. We are looking at some of the challenges that they face, for example, with increased energy bills, and how we can support them. We are also looking at how we can encourage the incubation of far more projects and make far better use of existing facilities. It must not be just about elite sport, and not just about sport but about physical activity. Sometimes, children who are not so good at sport may feel a barrier to taking part, so we must find some physical activity such as cycling or walking.

Lord Hunt of Kings Heath (Lab): My Lords, is the Minister aware that during the Covid pandemic, it is estimated that over 200 swimming pools were closed, never to reopen? Given the impact on young people's ability to swim, can he assure me that in the latest round of cuts that the Treasury is insisting that Whitehall embark upon to enable the ludicrous mini-Budget to develop he will protect children's sports facilities?

Lord Kamall (Con): My department is having a number of conversations, particularly on the issue that the noble Lord raises, but also on understanding the challenges of rising energy prices and those that the sector faces. In September, the Government announced an energy bill relief scheme offering support, and during the pandemic the Government prioritised physical activity, providing £1 billion of financial support to sport and leisure. We will continue to review that to make sure that we are targeting that support as effectively as possible.

Baroness Gohir (CB): My Lords, for girls, sports inequality starts in schools, because they are not given access to sports that they enjoy, such as football. The situation is likely to be worse in deprived areas. The Lionesses have inspired girls across all communities. What more can be done to ensure that all girls, regardless of their background, have equal access to football and other sports that they want to play? Girls also want to enjoy the beautiful game.

Lord Kamall (Con): I think that we are all very proud of the record-breaking success of England's Lionesses this summer. The Prime Minister and the Secretary of State were delighted to meet some of the Lionesses yesterday, who are extraordinary ambassadors for sport. However, we must not mandate which sport is played in schools or pick one over the other. We have to make sure that there is a wide variety of sports and physical activity. Some children are put off sport at an early age because they do not feel that they are good enough and there is elite sport even within school, so we have to make sure that we increase walking, cycling and other types of physical activity.

Baroness Chisholm of Owlpen (Con): My Lords, primary schools have very few sports activities and the younger you start in sports, the better, particularly for integration. A lot of children find it difficult when they first go to primary school to integrate with their peers. Yet sport often brings them together and teaches them how to integrate and make friends. Will the Minister work with the Department for Education to make sure that something is done about sports in primary schools, because as far as I can see very little sport is played?

Lord Kamall (Con): My department is working with the Department for Education to make sure that there is school sport and activity. On the wider point, it is important to recognise that, sometimes, sport is not just about activity and getting fit but about bringing communities together where there are divisions. There are a number of projects involving people who have been excluded from school where sport is brought into

[LORD KAMALL]
the classroom to encourage them to get better results at school. A few years ago, I went to see a project where sport was used to stop young kids being radicalised. Sport is a powerful force for bringing people together and addressing some of the problems we see in our society.

Baroness Uddin (Non-Afl): My Lords, I am delighted to echo some of the questions from the noble Baroness, Lady Gohir, regarding girls' sport. What are the Government doing about the fact that one in three children leave school without learning to swim, and what will the Minister do to ensure that all sports bodies reflect this country's diversity?

Lord Kamall (Con): The noble Baroness makes a very important point. We have to make sure that sports bodies represent the whole range of our communities and are not focused on elite sports or one particular community. I was contacted last week by a project that wanted to help more Afro-Caribbean people to swim—I think it is called Black People Can Swim. It is a fantastic project. I have asked my department to look at how we can have discussions with them to help make sure that we encourage more people from different communities to get involved in physical activity and sport.

Lord Campbell of Pittenweem (LD): My Lords, I pay tribute to the authors of the report, the Youth Sport Trust, and its chief executive, Alison Oliver. They certainly know what they are talking about. Since there is to be a new regime at the National Lottery, would this be a proper moment to suggest that the focus of grants should be on young people in general and youth sport and activities—as the Minister rightly said—in particular?

Lord Kamall (Con): The Government are refreshing the sport strategy at the moment. Noble Lords who took part in debates on the Health and Care Bill will remember that we talked about the cross-government approach to sport and physical activity. We are looking at a number of initiatives for improving it. We welcome reports such as this, as they highlight the areas that we need to focus our efforts on as we work out what has worked in the past and what we need to improve. We hope to fill those gaps where they exist.

Baroness McIntosh of Hudnall (Lab): The Minister referred earlier to part of the Government's strategy being to engage schools to try to get them to open for longer. This is a noble aspiration. However, he will be aware that school budgets were under pressure long before the energy crisis hit. They are now under much greater pressure from that and from other initiatives that the Government are requiring them to undertake. Can he give us an assurance that, if this thinking is taken forward, it is not simply added to the other burdens on schools without any additional resource to support it?

Lord Kamall (Con): We are working across government on this. With DfE, we are looking at opening up existing sports and leisure facilities, including schools. We have to work with schools to work out what works for them and how we share the cost, to make sure they do not have an unfair burden on them. We are now working on the third phase of the opening school facilities programme to meet those needs. This phase will look at consistency in the school system and how to connect schools to national and local sporting activities and providers, as well as making sure that children get access to extra-curricular activities, whether at school or local sports clubs.

Baroness Bennett of Manor Castle (GP): The Minister referred to the importance of making use of existing systems and spaces. He may be aware that 80% of public space in London is made up of streets, a figure that is reflected in many other cities around the country. He may be aware of the play streets scheme, whereby neighbours get together and close streets to allow children to play out in them—and adults to get together and mix. There is also the school streets scheme. As part of Learn with the Lords, I recently visited Challney boys' school in Luton. It is desperate to get a school street outside it so that pupils can walk and cycle to school more often. Should we not ensure that those streets are far more often spaces where children can take physical exercise and play informal sports?

Lord Kamall (Con): The noble Baroness makes a very important point about the use of streets. A number of countries do this across the world. I remember going to Guyana as a young boy in 1976 and playing cricket in the street. That was the culture of sport in those days. There are also a number of existing playing fields and facilities that we want to take advantage of, but I would be far more interested in play streets. If the noble Baroness could write to me or meet me to give me more details, I would be very interested in learning more.

Russia: Tactical Nuclear Weapon Deployment

Question

3.04 pm

Asked by ***Viscount Stansgate***

To ask His Majesty's Government what assessment they have made of the risks and consequences of the deployment by Russia of a tactical nuclear weapon, and of possible responses by the West.

Viscount Stansgate (Lab): My Lords, I beg leave to ask the Question standing in my name on the Order Paper—but I wish it were not necessary to ask it.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): Likewise.

My Lords, President Putin's comments are deeply irresponsible. No other country in the world is talking about nuclear use. President Putin should be clear that, for the UK and our allies, any use at all of nuclear weapons would break a taboo on nuclear use

that goes back to 1945 and has held since then. It would lead to severe consequences for Russia. President Putin has launched an illegal and unprovoked invasion of Ukraine. His forces continue to commit senseless atrocities. The people of Ukraine are seeking only to restore their sovereignty and territorial integrity, and we will continue to support Ukraine's right to defend herself.

Viscount Stansgate (Lab): My Lords, I thank the Minister for that Answer. The House knows very well how terribly dangerous the situation now is, as reflected in the recent comments of the President of the United States. Would the Minister agree that the urgent priority for the UK Government, working with other nuclear powers, including China and India, should be to exert the maximum pressure on Russia not to use a tactical nuclear weapon? Would he further agree that it is in the interests of no nuclear power for nuclear weapons to be used and that, were that event horizon ever to be crossed, the world would face terrifying instability? Should we not be concentrating our efforts on trying to de-escalate the war in Ukraine?

Lord Goldsmith of Richmond Park (Con): My Lords, these discussions are happening all over the world; it is in no one's interests whatever that President Putin comes even close to realising the mindless threats that he has been making. But it is incumbent on us, our NATO allies and powers beyond NATO to reiterate the risk that Russia itself and President Putin would face were he to go down that route. I think we can all agree that the language that has been used by NATO and by our friends in America has made that very clear.

Lord Robathan (Con): Does my noble friend think that the situation in Ukraine and Russia underlines the need for, and the value of having, an independent continuously at sea nuclear deterrent?

Lord Goldsmith of Richmond Park (Con): That is very much the view of the British Government. As the noble Lord knows, we have maintained and will continue to maintain our deterrent for all eventualities.

Baroness Smith of Newnham (LD): My Lords—

Lord Singh of Wimbledon (CB): My Lords, NATO was created to contain the threat of the former Soviet Union—an entity that no longer exists. It is individual countries, not NATO, that have been aiding and helping the brave people of Ukraine. Would the Minister agree that if we were to say that we will disband NATO it might just give Putin the escape route he so desperately requires? If that does not work, it will at least show the Russian people what sort of person Putin is.

Lord Goldsmith of Richmond Park (Con): My Lords, it is precisely the existence of NATO that gives us some hope that we can check President Putin's power. NATO has been very clear, as we as an active member of it have been, that we will continue to respond to Russia's threat and hostile actions in a united and responsible way, including by significantly strengthening deterrence and defence for all allies. NATO absolutely does not seek confrontation with Russia, but it is nevertheless speaking with one very clear voice.

Baroness Smith of Newnham (LD): My Lords, when I stood to intervene a moment ago, I had planned to point out that the head of GCHQ had pointed out that any talk of using nuclear weapons was highly dangerous. I would now add to that that any talk of disbanding NATO is also highly dangerous and misguided.

I had planned to ask the Minister what lessons the Prime Minister had taken away from the meeting of the new European Political Community in Prague last week. She spoke very highly of the fact that there was collective resolve to stand up to Russian aggression. I wonder how that will be demonstrated.

Lord Goldsmith of Richmond Park (Con): My Lords, in the grimness of the situation in Ukraine and the aggression that has been brought on by Vladimir Putin, one silver lining that has perhaps resulted is that Europe really has come together and really does speak with one voice on this issue. That is reflected in so many other discussions we are having across the board with our friends and allies across the European Union.

Lord Austin of Dudley (Non-Afl): My Lords, in the light of the appalling bombardment of Kyiv yesterday, what plans do the Government have to increase military support for Ukraine? Will the Government agree with and endorse the warning issued by General Petraeus last week, who said that any use of nuclear weapons by the Russians would result in the US taking out every Russian force they could see and identify on the battlefield in Ukraine and in Crimea, and every ship in the Black Sea?

Lord Goldsmith of Richmond Park (Con): My Lords, the UK has been a proud contributor to Ukraine's heroic efforts. We have given £2.3 billion so far in military support to Ukraine, and we are committed to meeting or exceeding that amount next year. We have provided support in other forms as well, amounting to around £1.6 billion and, as the Prime Minister reiterated today, our support is absolutely unwavering. However, I think it is also clear that were Vladimir Putin to engage in the kind of abomination we are talking about today, the repercussions for him would be very serious indeed.

Lord Browne of Ladyton (Lab): My Lords, I draw attention to my interest as a vice-chair of the Nuclear Threat Initiative and the chair of the European Leadership Network. In September, Jake Sullivan told CBS's "Face the Nation" that the US was communicating

"directly, privately and at very high levels to the Kremlin that any use of nuclear weapons will be met with catastrophic consequences for Russia".

As the noble Baroness, Lady Smith of Newnham, reminded us, this morning on the "Today" programme, Sir Jeremy Fleming, the director of GCHQ, cautioned that any talk of nuclear weapons was very dangerous and that we need to be very careful about how we talk

[Lord Browne of Ladyton]
about that. So is it not best that we take Sir Jeremy's implied advice and do not keep talking up the potential use of nuclear weapons in this context?

Lord Goldsmith of Richmond Park (Con): My Lords, there is no one in the House and, indeed, the country who would welcome the threats that we have heard from Russia being realised, but it is important that we reiterate, as NATO and the UK have, that any employment of nuclear weapons would fundamentally alter the very nature of this already grim conflict. It is important that the world is clear that were the fundamental security of any NATO member to be threatened, NATO has the capabilities and the resolve to impose costs on an adversary, whoever that is, that would far outweigh the benefits that any adversary could hope to achieve. I do not believe that that is talking up the prospect of nuclear conflict, which is the very last thing that any of us wants, but it is important nevertheless that the consequences are understood across the board.

The Lord Bishop of Coventry: My Lords, what is the Government's assessment of the impact of the present threat and the potential use of tactical nuclear weapons on the wider non-proliferation regime? What measures are they taking to strengthen the long-term resilience of that regime, together with the Article 6 commitments of the NPT?

Lord Goldsmith of Richmond Park (Con): My Lords, I am not aware of an assessment that has been made by government, so I do not want to provide an answer which would, I am afraid, be off the hoof from my point of view, but I will look into this and ask the appropriate Minister and department whether such an assessment exists and, if it does, I will make sure it is made public.

Lord Stirrup (CB): My Lords, expanding on a point made by the noble Viscount, Lord Stansgate, one of the most effective ways of minimising the risk of the use of nuclear weapons in this conflict would be for the Chinese leadership to send an unequivocal message, albeit privately, to the Russians that such use would be unacceptable to them. What diplomatic measures are in hand to pursue such an outcome?

Lord Goldsmith of Richmond Park (Con): The noble and gallant Lord makes an extremely important point. While I cannot go into the details of diplomatic engagement with China on this issue or many others, the point he has made has been absolutely heard and understood and is entirely valid.

Lord Collins of Highbury (Lab): My Lords, Putin's reckless talk should be condemned by all and the situation is serious, but our focus should remain on what is happening in Ukraine. Irrespective of the distortions and lies coming from the Kremlin, now is not the time to weaken or dilute our firm support for the people of Ukraine. Can the Minister tell the House whether the Government will take further steps to strengthen Ukraine's capacity for air defence?

Lord Goldsmith of Richmond Park (Con): My Lords, we are not in any respect taking our foot off support for Ukraine. I mentioned earlier the financial and military support we have provided and hinted at the non-military support which amounts to around £1.6 billion so far. In addition to that, we are part of a process of introducing what I think is the largest and most severe economic sanctions package that Russia has ever faced. More than 1,200 individuals have been sanctioned by the UK, as well as 120 entities, including all their subsidiaries. Some 80% of the Russian banking sector is now subject to sanctions and more than 60% of the central bank's foreign reserves are frozen. We know that one of the many consequences of that package is that companies in Russia are now struggling to produce the weapons that they have been asked to produce by the Russian state.

Northern Ireland Protocol Bill

Second Reading

3.15 pm

Moved by ***Lord Ahmad of Wimbledon***

That the Bill be now read a second time.

Relevant documents: 7th and 12th Reports from the Delegated Powers Committee

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, I first thank all noble Lords with whom—together with my noble friend Lord Caine and my noble and learned friend Lord Stewart—I have been engaging on this Bill. While there may be different perspectives and views, I am as ever grateful for the courtesy extended to myself and my colleagues and for the engagement that we have had through our conversations.

This Government remain very much committed to upholding the Belfast/Good Friday agreement, which has, as we all acknowledge, for almost 25 years brought peace and political stability in Northern Ireland. Irrespective of the speeches that will follow, I believe that all noble Lords without exception share strongly in this key principle. The Northern Ireland protocol was also agreed with the objective of protecting the Belfast/Good Friday agreement in all its dimensions and, indeed, in avoiding a hard border on the island of Ireland. That was key. Furthermore, it was also agreed by both sides that it would not undermine the wish of the United Kingdom and the interests of all parties in Northern Ireland.

In practice, however, the Northern Ireland protocol is undermining the delicate balance of the Belfast/Good Friday agreement and, as we all know, the functioning of the power-sharing institutions in Northern Ireland. Indeed, the Executive are not functioning at all. The protocol has diverted east-west trade between Northern Ireland and Great Britain and it is creating fractures within the UK internal market. Again, I am sure all noble Lords would agree that this cannot be right and cannot continue. It is also impacting negatively on the everyday lives of people in Northern Ireland. It has

weakened their economic rights and contributed to the sense of a democratic deficit in Northern Ireland—a point to which I will return shortly.

This Bill gives the Government powers to address these urgent political challenges by seeking to fix the practical problems created by the protocol. It allows the Government to restore the balance of the original objectives of the protocol, thereby avoiding a hard border on the island of Ireland and—as I know to be important to all—protecting the integrity of the United Kingdom internal market while also protecting the EU single market.

The Government remain clear—a point that, again, I have shared with colleagues through engagement—that our preference would be to reach a negotiated solution to the protocol with our partners in the European Union. We have always said that we remained open to constructive dialogue and discussions with the European Union on the Northern Ireland protocol. I assure all noble Lords that this remains the case today.

Within the past fortnight, my right honourable friend the Foreign Secretary and EU vice-president Maroš Šefčovič have spoken to reiterate their shared commitment to exploring potential solutions on this very issue. I am pleased to take this opportunity to report to the House in response to a question that I received from noble Lords in advance of Second Reading, including from my noble friend Lady Altmann: I can confirm that officials from the UK and the European Union are now conducting further technical discussions on the protocol.

As my right honourable friend the Foreign Secretary agreed with Vice-President Šefčovič when they spoke recently, both sides—the UK and the EU—want to look for solutions to protect the Belfast/Good Friday agreement. That is another sentiment that I know has been echoed in contacts with the Irish Government, including between my right honourable friend the Foreign Secretary and the Irish Foreign Minister, Simon Coveney, most recently last week and over the weekend.

However, the situation on the ground in Northern Ireland remains urgent, and the Government cannot allow that to continue. We must ensure that the Government retain the ability to act in all scenarios that prevail. It is a fact, as we all know, that Northern Ireland has been without a fully functioning power-sharing Executive since February this year. The political settlement in Northern Ireland is based on respect between all communities and the consent of those communities. I know we all recognise the huge insight of a number of noble Lords and colleagues who were there when that agreement was set up and initiated. However, the protocol in its current form is undermining that delicate balance, as I said earlier, and is contributing to ongoing political instability.

The Government remain committed to the restoration of the power-sharing devolved institutions, including the Northern Ireland Assembly, the Northern Ireland Executive and the North/South Ministerial Council. We remain equally committed to preserving Northern Ireland's place within the UK and removing barriers to east-west trade. This is particularly critical during the challenging economic period that has been fuelled by President Putin's illegal invasion of Ukraine. I assure all noble Lords that the Government will continue to engage, as the Bill proceeds through your Lordships' House, with the remaining parliamentary stages of the Northern Ireland Protocol Bill, while, I also assure noble Lords, continuing to conduct technical talks and explore shared solutions with our EU friends and counterparts.

I turn to some of the substantive provisions within the Bill. The Bill allows the Government to fix specific problems with the protocol by granting powers to make changes in four main areas: first, to provide and improve the customs and sanitary and phytosanitary regime; secondly, to create a new dual regulatory model; thirdly, to ensure that Northern Ireland can benefit from UK policies on subsidy control and VAT; and, fourthly, to legislate for new governance arrangements that address the democratic deficit created by the protocol in its current form.

On customs and SPS, the Bill allows the Government to introduce a green-lane and red-lane system to remove barriers to internal UK trade. There will be no unnecessary paperwork, checks or bureaucracy on goods staying in Northern Ireland as they will move via the green lane. Businesses will be able to use this green lane as part of a trusted-trader scheme. Goods destined for Ireland or the rest of the EU will go through full EU checks, controls and customs procedures via the red lane.

The UK is committed—a point that again several noble Lords raised with me during discussions—to a comprehensive approach to data sharing with the EU under our new model, a key ask that the EU has made of the UK. We would continue to share comprehensive data on the operation of the trusted trader scheme and on goods movements between Great Britain and Northern Ireland. This would of course enable the UK and the EU to jointly monitor the risk of abuse and allow for risk-led intelligence sharing and co-operation. Data-sharing arrangements would be delivered through a purpose-built IT system, with information available to the EU in real time. This would include standard commercial data for green-lane movements and more than 110 fields of data collected through customs declarations for red-lane movements. Any trader found abusing the green lane would incur penalties and face ejection from the trusted trader scheme. We fully understand and respect the legitimate concerns of our EU counterparts and friends that the single market should be protected. These provisions in the Bill will achieve that.

The Bill will also establish a dual regulatory regime so that businesses can choose between meeting UK or EU standards, or both, should they wish to do so. This will remove the barriers to goods made to UK standards being sold in Northern Ireland and cut the processes that drive up costs for business, particularly at this time. It will help address divergence between the two parts of the UK internal market. Anyone who trades into the EU single market will still have to do so according to EU standards. This will also protect the EU single market and we are committed to ensuring that firms in Northern Ireland that benefit from access to the EU single market retain that access.

The Bill will also ensure that the Government can set UK-wide policies on subsidy control, VAT and excise, so that people in Northern Ireland can benefit from the same policies as the rest of the United

[Lord Ahmad of Wimbledon]
Kingdom. For example, at present, people in Northern Ireland are not able to benefit from VAT reliefs on energy-saving materials for homes. These reliefs help fight the cost of living and climate crises and pose no risk to the EU single market but cannot be implemented in Northern Ireland because of the protocol. At a time when a warm home and clean and secure energy are more important than ever, is it right that a typical family in Northern Ireland needs to find nearly £300 more to install solar panels? Surely that cannot be right.

Tax and spend are essential sovereign functions, especially in Northern Ireland where the UK Government play a significant role in the local economy. We will also maintain the VAT arrangements in the protocol, which support trade on the island of Ireland while ensuring Northern Ireland can still benefit from the freedoms and flexibilities available in the rest of the United Kingdom.

I turn now to the governance provisions in the Bill. Rules applying under the protocol are currently made without any say for Northern Ireland representatives and with no means to adapt them for the Northern Ireland context. In some cases, this has uniquely disadvantaged Northern Ireland, yet the rules have not been subject to any dialogue beforehand. This has been cited as symptomatic of the significant democratic deficit that I referred to. The proposals in the Bill will give businesses and consumers new flexibilities and freedoms to ensure that they are not bound to follow rules over which they have no say. Furthermore, prominent members of the unionist community in Northern Ireland have also expressed serious reservations about the role of the European court in overseeing the operation of the protocol. Unlike ordinary international treaties, disputes under the protocol can be taken to, and settled by, the Court of Justice, the court of one of the parties. The Bill will remove the domestic effect of the role of the European court where it is not appropriate. Disputes between the European Union and the United Kingdom would be settled by independent arbitration, in line with normal international dispute resolution provisions, including those in the trade and co-operation agreement.

However, the Bill would also enable the Government to implement a mechanism that allowed courts to seek an opinion from the European court on legitimate questions of interpretation of EU law, ensuring that it can still be applied where necessary, such as for the purposes of north-south trade. To be absolutely clear, the Bill seeks to change only those parts of the protocol that are causing problems and undermining the three strands of the Belfast/Good Friday agreement; it keeps the rest. We have, for example, explicitly protected the articles of the protocol that cover north-south co-operation, the common travel area and the rights of individuals, and we will maintain the functioning of the single electricity market, which benefits both Ireland and Northern Ireland.

The Northern Ireland protocol in its current from has created real problems and challenges for ordinary citizens and businesses in Northern Ireland and contributed to political instability in the region.

Lord Howard of Lympne (Con): If the Government wish to take action to remedy the situation the Minister has identified, why do they not take that action by invoking Article 16 of the protocol, which provides a perfectly legal route for such action to be taken?

Lord Ahmad of Wimbledon (Con): My Lords, I know that my noble friend has raised this point. As I have indicated, there are parts of the protocol that we believe are working. I have already alluded to the common travel area, for example. While Article 16 remains a provision that the Government obviously know is at their disposal, and can enact it if so required, we believe that the Bill seeks to present a solution to the exact issues that we are identifying and need to be addressed, but not by removing the protocol altogether. I have cited two or three reasons that are currently operational and work within the existing protocol.

To continue, we also believe that the current protocol creates new, cumbersome processes and bureaucracy for traders. It undermines Northern Ireland's position within the United Kingdom internal market and, as I said, has contributed to the diversion of east-west trade. Most urgently, it has provided an obstacle to the restoration of the devolved Government in Northern Ireland, undermining the important power-sharing institutions established by the Belfast/Good Friday agreement. The Government are continuing, again, as I said earlier, to engage in constructive dialogue with our EU partners to find shared solutions to these problems. I have referred to the discussions under way on current technical decisions between the UK and EU officials, which are a positive forward step.

Let me say again, as I said at the start of my remarks, that our strong preference remains to have a negotiated solution. However, we cannot stand by and allow the current situation to continue. We must ensure that the United Kingdom Government have the powers they need to address these urgent problems and enact lasting solutions to the problems inherent in the protocol, given any scenario. The Bill ensures that we have covered all the bases to implement what we believe are durable solutions while, to reiterate the point on the issue raised by my noble friend Lord Howard, preserving those parts of the protocol which are currently working.

I am confident that once the Bill has received Royal Assent, we will be well on our way to restoring the balance between the communities in Northern Ireland, which is integral to the Belfast/Good Friday agreement. I assure your Lordships that we continue to engage directly on the ground with businesses and communities in Northern Ireland; importantly, we continue discussions with our EU partners. The purpose of the Bill is to ensure that we have all the tools available to the Government to deal with the scenarios that we currently face, but we remain committed to finding a lasting solution.

3.32 pm

Amendment to the Motion
Moved by ***Lord Cormack***

At end insert "but that this House regrets the early introduction of this Bill, and calls on His Majesty's Government to delay further consideration

of the Bill for six months, so as to allow time to reach a negotiated settlement with the European Union".

Lord Cormack (Con): My Lords, I have never moved an amendment expressing regret before and I thought long and carefully before putting this one down on the Order Paper. I hope I speak for the whole House in saying how good it is to see my noble friend Lord Ahmad still on the Front Bench. He has come a long way since he was my Whip and we had a very amicable conversation yesterday, for which I am extremely grateful. I am glad that during his speech he referred on a number of occasions to the Government's preference for a negotiated settlement. I believe that is important and, in saying so, that it will be far more helpful for the continuance of the Belfast agreement if we come to a united position with our European friends and former partners.

I believe that many things are at stake here, primarily this Government's reputation as an upholder of international law. When we consider the serious and precarious position of the world today, underlined by those dreadful photographs in this morning's paper, we have to realise that it is very important that we work with our international friends and neighbours and that, in our relations with them, we carry forward that spirit of unity in our nation that was so manifest only a couple of weeks ago. It is not helpful, while we continue those negotiations, to have on the statute book a Bill that is, in effect, an implied threat. I believe that there is a case for a pause.

I am not advocating, and have not advocated, that this House should go against its long custom and deny the Bill a Second Reading: we have our limitations, and we must not exceed them. But we also have a specific responsibility to uphold the constitution of our country and to maintain the rule of law nationally and internationally. We also have to remember—

Lord Forsyth of Drumlean (Con): My noble friend says his amendment would allow a Second Reading but in effect it wrecks the passage of the Bill by delaying it for six months. The Bill was approved by the House of Commons without amendment; does my noble friend think that this is the proper thing for this House to do?

Lord Cormack (Con): Yes, it is entirely proper and consistent with this House's role to pause, which is all that we are doing, and my noble friend knows that. We had a long conversation the other day, and my noble friend tried to persuade me that he was right, but I am afraid that, much as I genuinely admire and respect him as a great parliamentarian, I do not agree with him on this occasion, and he knows that.

It is crucial to remember that we have a constitutional role. We are not transgressing that role by calling for a pause, as my regret amendment and that of the noble Baroness, Lady Chapman, do. We have discussed these things and decided on the best outcome today. Because the Official Opposition are not prepared to have a vote today on either their own amendment or mine, there will not be one, so far as I am concerned. But that does not mean that the arguments have disappeared or that, in the two weeks between now and Committee, we will not continually be thinking about how best to achieve a pause in the passage of the Bill while we have proper negotiations.

Lord King of Bridgwater (Con): My noble friend rightly paid tribute to the Minister and the fact that the negotiations are going forward. I think he shares the view that, if we can reach an agreement outside the protocol, that is the best way to go. But I am very surprised about the timing of his regret amendment, because it seems to me at this stage that every effort has been made to reach an agreement. Stopping the Bill at Second Reading might introduce all sorts of new elements into the negotiations. I suggest ensuring that the negotiations can continue. If my noble friend then feels that the outcome of the negotiation is constitutionally unacceptable, surely that is the moment at which he should raise this matter, rather than Second Reading. There are many weeks ahead of us for Committee, Report and Third Reading, which would be open for him to move his amendment. I understand my noble friend's constitutional point, but I completely fail to understand his timing.

Lord Cormack (Con): My noble friend is entirely entitled to his opinion, but I remind him that, until very recently—by which I mean the last two weeks—no substantive negotiations took place between March and now. My noble friend, in his great distinction, is fully entitled to have whatever view he wants, but I do not believe that to hold a sword of Damocles, as it were, in the form of this Bill over negotiations is a good idea. We would be far better negotiating with our friends and neighbours by treating them as friends and neighbours whom we totally trust. Should things go badly wrong, we will have to return to the Bill.

I remind noble Lords in all parts of the House that, in Northern Ireland, there is certainly a majority opinion—I am not talking about the DUP—reflected in the composition of the Northern Ireland Assembly, which has been elected but sadly does not meet, that the protocol should be amended but should not be ditched, and that this Bill should not pass. I have many correspondents from Northern Ireland who tell me that this is very much the general view, and certainly the general view in the business community of Northern Ireland. They want a degree of certainty and to have these matters resolved as soon as possible, but they want them resolved in a way that preserves the essence of the protocol. That is the opinion of that part of the United Kingdom. I find it very sad that the world is in such a precarious state—I refer again to those terrible photographs in today's newspapers about what happened in Ukraine yesterday. During this time, we need to try to have the sort of unity that our Prime Minister is, I believe, arguing for today in the G7—and that should apply throughout. Therefore, there is a very strong case for pausing these negotiations.

As I have said, I have had conversions with the noble Baroness, Lady Chapman; she is not going to move her amendment to a vote tonight and I am not going to push mine to a vote tonight—I make that absolutely plain here and now. However, this is not going to solve the position. Before we come to Committee,

[Lord Cormack]
we must see whether it would not be advisable to pause the Committee while negotiations continue—the Bill will have had its Second Reading, so that is not in jeopardy. I accept the ultimate supremacy of the House of Commons—as I have argued many times in your Lordships' House on a whole range of issues—but we have a role to play, and we should seek to play it.

I ask noble Lords to reflect for a moment: most of us in this House are anxious to preserve the United Kingdom as a union. We are anxious to have the closest possible relationships with other western democracies in Europe and across the Atlantic. Do not let us forget that one of the people who is most troubled by the Bill and its implications is the President of the United States, who has made his views very plain to the Prime Minister and others.

There will be no vote tonight, but I beg noble Lords to think carefully about some of these issues and to reflect on the importance of having a stable relationship and a series of agreements, which have not come about and will not come about by our seeking to ride roughshod over the principles of international law. I rest my case and beg to move.

3.45 pm

Baroness Chapman of Darlington (Lab): My Lords, nearly three years ago, Ministers and the then Prime Minister returned from Brussels triumphantly, holding the withdrawal agreement and a brand-new protocol on Northern Ireland. We were told that this was a great deal for the country, and especially for Northern Ireland. It was, we were told, the best of both worlds. Most importantly, we were told that the letter and spirit of the Belfast/Good Friday agreement had been preserved. Now, Ministers tell us that none of this really happened. They insist that the protocol—that they negotiated, signed and campaigned on—does precisely the opposite of what they claimed then, and that it is the source of the problems that they vowed it would solve. Their answer now is to take a wrecking ball to their own agreement and to ask noble Lords to support a Bill that is a flagrant breach of international law. Frankly, your Lordships' House should not have been asked to consider this Bill.

The truth is that the Bill is an abject admission of failure: first, a failure to understand the deal that they themselves negotiated; and, secondly, a failure to right the wrongs of their previous decisions. As my noble friend Lord Ponsonby of Shulbrede will outline later, the Bill is an insult to our political, legal and diplomatic traditions. Its aims and the powers it grants to Ministers of the Crown amount to nothing short of constitutional vandalism. It damages Britain's hard-won reputation as a country that plays by the rules. It divides us from our European allies when we should be walking in lockstep in the face of Putin's war in Ukraine. Further, it risks creating new trade barriers and more uncertainty for the people and businesses of Northern Ireland, and the rest of the UK, in the middle of a cost of living crisis.

There are many reasons to object to the Bill but I will focus on just three. First, the Bill will not solve the problems it purports to fix. Secondly, it is incompatible with our obligations under international law. Thirdly, it affords Ministers unreasonable, unwarranted and unprecedented powers. I shall take each one in turn.

We are all aware of the serious and difficult political challenges facing Northern Ireland today. The Good Friday agreement is an article of faith for the Labour Party: it is one of the proudest achievements of the last Labour Government, negotiated in partnership with parties and communities across Northern Ireland and with the Government of the Republic of Ireland. The institutions born out of that transformative peace are now under strain. Stormont is unable to function; months have passed without power-sharing; and democratic elections have not produced a functioning Government, meaning that the Executive cannot deliver for people during this economic crisis. This is a serious problem.

We recognise that the operation of the protocol, and the checks and barriers to trade that are an inherent feature of its design, have created problems for businesses. We accept that. Regrettably, it has heightened concerns, particularly among the unionist community, about their place in the UK, and these concerns must be heard.

As I have said on multiple occasions, this is not a one-sided issue. The EU too, as well as the UK Government, must show flexibility, but the only feasible way forward is through negotiation. Without swift progress there will have to be fresh elections in Northern Ireland and a serious Westminster Government, one with cool heads and steady hands, would work with all parties to ease current tensions.

With trust, good will, statecraft and hard work, these problems can and will be overcome. Instead, the Bill seeks to impose an unrealistic and likely unlawful unilateral solution. It is fundamentally flawed. Only a deal that works for all sides and which delivers for the people of Northern Ireland can be durable and provide the stability that businesses and the public deserve.

The good news is that the Government may finally be realising this. Last week, talks between the Government and the EU resumed. While some chose not to endorse this approach, Ministers apologised for their prior conduct in an extraordinary but welcome admission of the damage done in recent years. The Secretary of State for Northern Ireland has even said that he wants to make this legislation redundant—hear, hear to that. I welcome the Government's long-overdue conversion to the merits of negotiation, but does that not undermine the entire basis for this Bill?

This brings me to our second central objection: the Bill is by any reasonable reading incompatible with international law. Britain has a proud record as a champion of the rule of law. This transcends personalities and party politics, stemming from our unique history and legal traditions, from Magna Carta to the Bill of Rights. However, this Government are willing to rip up those traditions and override a central element of an international treaty in domestic law, despite only recently agreeing the treaty forbidding such behaviour. They argue that this Bill is necessary, yet the Secretary of State for Northern Ireland says that he is very positive about the chances of success in these new negotiations. Not only is there an alternative to this Bill but the Government prefer it, are working on it and think it is achievable.

Moreover, the Government have not exhausted all legal routes available to them under the protocol and wider agreements with the EU. We do not wish to see Article 16 triggered, but if the Government are so keen to implement safeguards, why have they not done so through the legal means at their disposal? Despite what the Minister said in response to the noble Lord, Lord Howard, Article 16 could of course be used without jeopardising the common travel area or the energy market. I ask him to look again at his argument on that point.

The Bill shows the Government are willing to break binding treaties when it suits their internal party-political objectives to do so. That is disgraceful. If they proceed with this legislation, can they be surprised if our international partners start asking themselves whether we will keep our end of the bargain? As Ministers travel the globe to challenge the actions of dictators and despots, what message does it send when they stand here, in the mother of all parliaments, proposing measures that break international law? Reputations are hard won and easily lost. This Bill tarnishes our country's reputation. That is simply not in our national interest. It is not who we are, nor is it the country we want to be. There is nothing more patriotic that this House can do than to defend Britain's proud political values and legal principles.

The Bill is also a blatant power grab. It gifts the Government extraordinary powers while denying proper scrutiny by Parliament. Ministers may use these powers whenever they feel it is appropriate, disapply other parts of the protocol, or even amend Acts of Parliament. These are some of the widest-drawn Henry VIII powers I have seen during my more than 10 years in both Houses of Parliament. I am aware that that is a blink of an eye compared to the experience of some noble Lords here today, but surely this sets a dangerous precedent for the future. Just as we should defend our nation's reputation as a law-abiding member of the international community, we should also preserve Parliament's role as a check on ministerial power.

Finally, I know colleagues are interested in the various amendments to the substantive Motions on today's Order Paper, as referred to by the noble Lord, Lord Cormack. First, let me say that I empathise with the noble Lord a great deal. If he does not mind my saying so, he has been a Conservative parliamentarian for more than 50 years and has been present in either this House or another place during all manner of political events and crises. It therefore says a lot about the Government and their handling of the protocol that he has felt compelled to table his amendments. I have tabled my own, setting out the concerns of not only the Labour Party but many noble Lords across the House. I am grateful to those who have engaged with the process of drafting it.

The Government need to reconsider this legislation. Ministers should at least report to the House on whether a pause in the passage of the Bill would be beneficial to these new negotiations. I know that many noble Lords would like to see the back of this Bill. I would, too; it is an abomination. But, however flawed, the Bill has the support of the elected House and we will proceed with it for today.

I welcome the Minister's remarks that a negotiated settlement genuinely is the Government's goal. I do not believe that that has always been the case, so his remarks to that effect are welcome. Taking that in good faith and with flexibility from both sides, an agreement is surely possible and we hope that this Bill can be consigned to history, where it belongs. It may be that Ministers reflect on today's debate and decide to take the noble Lord, Lord Cormack, up on his suggestion of a pause, but if they insist on pushing ahead with Committee in two weeks' time, we will, of course, be open to discussions with colleagues across House as to possible next steps.

To summarise, this Bill is the wrong approach at the wrong time. It breaks international law, damaging our reputation; it gives Ministers unparalleled delegated powers; and it does not enjoy the support of the majority of businesses or Assembly Members in Northern Ireland itself. The way forward is a grown-up, level-headed negotiation, not the continued threat of unilateral action, which would result in retaliatory measures that our economy could do without at such a precarious time.

We have been presented with a window of opportunity in recent days. The gap between the UK and the EU is not vast. Let us seize that opportunity and do the deal that should have been done three long years ago: a deal with the people of Northern Ireland at its heart that enables the whole of the United Kingdom to move forward and to regain our reputation as a country that acts in good faith.

3.58 pm

Lord Purvis of Tweed (LD): My Lords, over the Recess, the Minister and I both travelled to regions of the world where peace building continues to need to be nurtured and where trust is a vital commodity. The offensive nature of this Bill is that in just one measure it breaches international law, undermines our reliability for other international trade agreements, divides communities rather than brings them together and abuses proper parliamentary legislative processes to an egregious degree. The fact that it is a Foreign Office Bill—a department which is meant to promote the currency of the British word in an unreliable world—is doing immeasurable damage. I believe that the House knows it and that the Minister, who is very highly respected here, must know it too. My colleagues will expand on these areas in their contributions.

When the Government presented their protocol, they did so with somewhat of a Janus face. "Best of both worlds" and "oven-ready deal" was how it was how it was spun, but the unspun accompanying impact assessment was clear that it was neither, and far more complex.

Chapter 6 of the impact assessment at the time, on risks, states in paragraph 295:

> "An increase in uncertainty associated with the UK's regulatory or customs position with the EU could affect the business environment and consumer confidence. The costs of new checks and administration associated with the Ireland/Northern Ireland Protocol may affect the profitability of businesses trading to and from NI … given uncertainty around price changes, or the UK's and NI's relationship with the EU, consumers may decide to delay spending, reducing consumer demand for goods and services".

[Lord Purvis of Tweed]

Paragraph 302 states:

"The proposals will have an effect on all UK businesses that move goods between Great Britain and Northern Ireland, irrespective of the business's size … a 'one size fits all' approach for business trade requirements is likely to have a disproportionate effect on SMBs in particular".

Paragraph 319 states:

"This could result in higher prices for Northern Ireland consumers purchasing goods which reached Northern Ireland from both Great Britain and Ireland."

Remember, this is what the Government said would happen if it was working—not if it was not working, which is what the Minister seems to be suggesting today. Perhaps the Government thought that we would not read the impact assessment at the time, let alone remember it. Boris Johnson said that there would be no problems. Liz Truss said that the problems were "unintended". The noble Lord, Lord Frost, said that they were someone else's fault. Speak no evil, hear no evil, but see evil.

When Liz Truss said in the spring that there were "unintended consequences", the poor officials who outlined the intended consequences must have rolled their eyes. However, with the joint monitoring and systems that the Minister has outlined today, they were the very ones that were rejected by the Government at the time of the protocol. I am therefore not surprised that some want the protocol ended.

Instead, the Government say that they want to mend it, not end it. So if they mend, not end, what will be left of it? Northern Ireland will still have to operate under a foreign power's laws and have no say over them. It will still collect its taxes, still operate under its state aid rules and still have to comply with the hundreds of regulations listed in the annexe to the Brexit agreement that I spoke of in 2019.

On countless occasions, the Liberal Democrats, along with our Alliance partners in Northern Ireland, warned constructively but repeatedly that the Government knew they were in breach of the previous commitment that the Minister, the noble Lord, Lord Callanan, gave to this House in January 2019 when he said:

"We will give an unequivocal commitment that that there will be no divergence in rules between … Great Britain and Northern Ireland".—[*Official Report*, 9/1/19; col. 2222.]

We were ridiculed and condemned, especially in the House of Commons by people such as Steve Baker MP. However, today, on behalf of my colleagues, I accept Steve Baker's apology. By the way, some might be tempted to suggest that it is the fact that we have this Bill that forced Brussels' hand to return to talks; it is perhaps the welcome hand of apology from a Northern Ireland Minister.

The Minister's justification for the Bill today seems to be based on the coming to pass of the very impacts that the Government themselves said were going to happen, but that case for the Government is disingenuous as the Bill does not even address all the areas in the Government's previous Command Paper. There, they listed what they said were the problems with the protocol —not least that it would be an ongoing "democratic deficit", which, I remind the House, was a fully intended consequence. So the Government cannot say that this is the solution when it omits whole swathes of areas that they previously said were the problem.

At this point, it is worth saying that the impact of the protocol has been mixed, with some benefits for people in Northern Ireland, which has benefited from the single market. Those are not my words; they are the words of the Northern Ireland Economy Ministry under a DUP Minister. I will quote from Invest NI:

"This dual market access position means that Northern Ireland can become a gateway for the sale of goods to two of the world's largest markets … This is a unique proposition for manufacturers based in Northern Ireland as well as those seeking a pivotal location from which to service GB and EU markets … These additional benefits further enhance Northern Ireland's already strong proposition as a prime location to establish, or grow, a business".

I think the whole House wishes the Northern Ireland economy well and wishes growth for it, but the Government's legal position is that all of what the DUP Minister's department is saying is a grave and imminent peril to this country. Both cannot be right.

Describing "grave and imminent peril" is in the Government's legal position: it seems to be their case. They cite the UN International Law Commission's *Responsibility of States for Internationally Wrongful Acts* from 2001. However, Article 25 of that states:

"Necessity may not be invoked by a State … unless the act … is the only way for the State to safeguard an essential interest against a grave and imminent peril".

It goes on to say that

"necessity may not be invoked by a State as a ground for precluding wrongfulness if … the State has contributed to the situation of necessity."

The Government state that the UK has not contributed to this situation of necessity relied upon. But, of course, that is almost a risible explanation, given that the Minister at the time, in 2019, signed an impact assessment saying that they were party to it. Given that the UK has made policy decisions separate from the agreement that would have had a material impact on UK trade with Northern Ireland, such as on labelling requirements, the Government cannot credibly argue the UK has been a wholly unwitting and absent bystander to this process.

I agree with the Law Society of Scotland, which said that the Bill goes beyond what is necessary to resolve any trade problems and instead seeks to rewrite provisions in the withdrawal agreement and the NI protocol, such as those in Clauses 13, 14 and 20. When the Advocate-General winds up this debate, I would be grateful if he could clarify the Minister's assertion, in response to the intervention, that Article 16 would bring about the cessation of the whole of the protocol, rather than be a mechanism that could resolve certain elements of it. I have to say that the contradiction in the noble and learned Lord, Lord Stewart, over these two days arguing in the Supreme Court that the Scottish Government are seeking to act unlawfully but this evening defending the Government for breaking international law is jarring.

Why should this deplorable misuse of "necessity" and redefining "grave and imminent peril" worry us so much? Since I have been speaking on trade from these Benches, I am now on my seventh Trade Minister in the Lords. Every one has said "Our word is our bond" in implementing agreements. For all the trade agreements we have signed, the other side will know that they can be changed unilaterally. How can we be trusted if we choose not to use the dispute mechanisms written into

trade agreements but just bring forward domestic legislation to disapply treaty obligations? Pacta sunt servanda.

The Bill presents no baseline information on disruption, subsequent to the original impact assessment. It presents no objective assessment of overall net impact on the economy of Northern Ireland and no regulatory impact assessment contrary. This is all contrary to clear Cabinet Office guidance on legislation.

Finally, of course, the Bill reflects the Government's view of Parliament. The Law Society of Scotland has said that

"it is inappropriate to implement international agreements by regulation. That approach departs from the precedents set by the EU (Withdrawal Agreement) Act 2020 and the EU (Future Relationship) Act 2020."

I would add that it is contrary to every commitment for every trade agreement since Brexit.

I conclude by quoting these remarks:

"The Bill represents as stark a transfer of power from Parliament to the Executive as we have seen throughout the Brexit process. The Bill is unprecedented in its cavalier treatment of Parliament, the EU and the Government's international obligations … the legislative mechanism by which the Government propose to give to effect to the Bill's purpose is wholly contrary to the principles of parliamentary democracy (namely, parliamentary sovereignty, the rule of law and the accountability of the Executive to Parliament)".

That was all from the Delegated Powers and Regulatory Reform Committee of this House.

On the basis of the breach of international law, the damage to our standing and word around the world, the adding to divisions—rather than healing them—and the abuse of Parliament, the Government should think again. At the very least, we should reflect very carefully on the necessity of proceeding, given ongoing talks that we on these Benches wish well and which need to continue and conclude.

4.09 pm

Lord Ricketts (CB): My Lords, in making foreign policy, it is a good idea to think about who you might have as an ally before taking the initiative. The only world leader I can think of who might raise a cheer if this Bill became law is Vladimir Putin, because it would sow division and discord among key members of the alliance supporting Ukraine. I note the Minister's careful emphasis on technical discussions going on with the EU. I welcome that but, since the Government have also chosen to bring this Bill to Second Reading today, I want to take the opportunity to set it in the wider context of our national security.

The House is very well aware that we are at a very dangerous moment in the largest war in Europe since World War II. Putin's massive gamble is going very badly. He is lashing out at civilian targets. He is seeking to frighten Ukraine's supporters with his reckless talk of nuclear weapons—a sign of weakness rather than strength. This is a moment for unity among all those countries supporting Ukraine. That will be more necessary than ever during what will be a difficult winter.

What are the immediate prospects? My guess is that the fighting will subside when the cold weather comes and there will be stand-off along the front line. That will trigger a race against time to ensure that Ukraine is well enough funded and supported to have the upper hand when the fighting resumes in the spring.

The NATO response has been admirable. I have never known that organisation be stronger or more united than it is now. I congratulate the Government on all that they have done on that. The EU has also been more decisive than I would have expected, although it should be doing more to carry out its undertakings on financing and weapons. I gather that there has been good working co-ordination between the UK and the EU on issues such as Russia sanctions, although the Government find it hard to acknowledge that in public.

It was excellent that the Prime Minister went to the Prague summit of the 44 European countries but that is not a policy-making forum. It will meet only once every six months. There is no substitute for high-level UK-EU co-ordination in the coming months on the issues of the crisis that lie outside the remit of NATO. To take two of those issues, preventing sanctions evasion will be essential if we are to prevent Russia rebuilding its stocks of weapons using western microelectronics, and energy security and supply will be a vital issue on which we must talk to the EU.

One of the greatest risks to western strategy is Ukraine fatigue setting in across Europe as high energy prices take their toll on public opinion in many countries. Look only at what is happening in Italy with the new coalition before it is even formed, to say nothing of Orbán's antics in Hungary. What is the relevance of all this to the Second Reading of this Bill? It should be a top priority for Britain to keep support for Ukraine strong and to prevent it ebbing away. There is a real premium on solidarity. It is therefore the worst possible moment for the British Government to be pushing forward on taking powers to renege on our international law commitments to the EU. If the Bill becomes law, the EU will retaliate. Remember the very careful words from Commissioner Šefčovič, who said that enacting this Bill would undermine

"the trust that is necessary for bilateral EU-UK cooperation within the framework of the Trade and Cooperation Agreement"—

the trust that is so vital right now. Is this really the time risk a trade war with the EU, when we have a real war a couple of hours' flying time away?

I am glad that the Prime Minister has now accepted that France is a friend, not a foe, and that she and President Macron agreed in principle to a summit next year. Very good, but if the Bill becomes law, a reset with the French is out of the question, as is an improvement in bilateral relations with our other EU partners.

The noble Lord, Lord Cormack, referred to President Biden's comments to the Prime Minister, as reported by the White House. He told the Prime Minister about the importance of a negotiated agreement with the EU on the protocol. Surely what is going on in Ukraine puts everything else into perspective. It is good to know that we are having technical discussions with the EU on the protocol, but we have found in the past that threatening unilateral action does not have a positive impact on negotiations with the EU—rather the reverse. If the Government insist on pushing the Bill through and on to the statute book, it will open up new divisions with the EU and damage our reputation as a serious country in all democratic countries around the world. I strongly support the case for a pause at some stage in the passage of this Bill.

4.14 pm

The Lord Bishop of Coventry: My Lords, it is a privilege to follow the noble Lord, Lord Ricketts. I have no experience of living with the protocol and no expertise in the technicalities of the Bill. However, reflecting on it has sent me to Hannah Arendt's seminal analysis of the human condition.

Arendt spoke of the unpredictability of human life that arises from, as she put it, the "basic unreliability" of human beings,

"who can never guarantee today who they will be tomorrow";

this applies also to their successors. The remedy for unpredictability and unreliability, Arendt contended, is the faculty of promise making. Promises provide the stability that enables common life to be established and maintained in an uncertain future. As the wisdom of age-old liturgy puts it, they should be not entered into unadvisedly or lightly, but soberly and after serious thought.

The reaction to this Bill has been strong, at the root of which is a visceral sense that promises made and accepted in good faith are being unmade, and that the stability on which human community relies is being shaken. These roots go deeper. In my dealings over the Brexit years with European colleagues through Coventry's many links, I saw how many of them felt that covenants to common life, upon which they had built their futures, were crumbling beneath them, and that the British could no longer be trusted.

I recognise the complexities of applying Arendt's analysis to the Bill. There are many, of course, who regard the protocol as the undoing of promises made to the people of Northern Ireland over the generations, some enshrined in law and some in other agreements. However, I share concerns that the Bill risks not only reinforcing attitudes of distrust with European partners, including Ireland, just at the point in history where concerted action is needed between allies, but undermining our reputation in a world where future security and peace will rely on the capacity of states to make and keep their promises.

Is this not the time for a reconciliation of relationships, for the healing of the wounds of recent history, for rebuilding trust for the cause of peace? As we have heard, the new Government have shown they have seen that need and are ready to grasp that opportunity. The positive reactions of European leaders to the signals sent by the Conservative Party conference, the Prime Minister's part in the European Political Community meeting and the public comments of the Northern Ireland Minister, together with the opening comments of the Minister today, show that the protocol gives a chance to reset the relationship between the UK and EU, rather than further disrupt it.

My hope is that the problems of the protocol—which I do not doubt—will be resolved in that spirit through constructive negotiation, and that trust in the good faith of the UK will be restored. My concern is that this Bill will threaten that good work.

I was moved by the Archbishop of Armagh's sermon in Belfast Cathedral during our recent commemorations. With a diocese sitting in two jurisdictions, he knows something about the tensions between communities and how they have been heightened by the protocol. Conscious of Her Majesty's part in reconciliation between the peoples, the archbishop said:

"Reconciliation is about the restoration of broken relationships, and the word should never be cheapened by pretending it is an easy thing to achieve. By and large in the work of reconciliation most of our victories will be achieved quietly and in private".

Now is the opportune time for that quiet diplomacy, which will bear much fruit in public.

4.19 pm

Lord Forsyth of Drumlean (Con): My Lords, it is very unfortunate that the noble Lord, Lord Ricketts, should tell this House that the only merit he could see in the Bill is that it would please President Putin. That is so over the top and inappropriate. Something happens to people who lost the argument on Brexit which means that sometimes they simply cannot see the wood for the trees.

I have only five minutes, unlike my noble friend Lord Cormack, who has abused the procedures of this House by tabling an amendment at Second Reading. That is a complete abuse of how we carry out Second Readings, which are meant to be for us to discuss the merits of a Bill and not, traditionally, for us to have a vote. By tabling an amendment my noble friend is able to speak for 15 minutes, while everyone else can speak for only five. If we all did that, it would completely wreck the process of Second Reading.

I say to my noble friend, who is a friend, that to use an amendment at Second Reading to try to prevent the Government delivering the programme that was supported by the other place—this Bill was brought to this House without amendment—is a complete usurpation of what this House is about. We should remember that we are not elected in this House. They are elected at the other end of the Corridor and they are accountable to their voters. One of the things about the Bill, which is fundamental, is that it is about restoring democracy to those people in Ulster who are part of our United Kingdom by restoring their ability to vote on the laws that apply to them and on the taxation that is being levied on them without their consent.

I do not for a moment want this Bill to be the way we resolve this problem with the protocol. There is all this hindsight stuff about the protocol, what was said at the time and everything else. The fact is that none of us expected the kind of bloody-mindedness we have seen in operation in Northern Ireland, which has destroyed people's livelihoods. The noble Lord, Lord Purvis, may wave his piece of paper, but it is a duty of a Government to ensure that people living in one part of the United Kingdom are treated the same as those in other parts of the United Kingdom.

It is perfectly possible for an agreement to be reached on fair lines. The European Union is entitled to ensure that its single market is protected, just as we are entitled to ensure that our single market is protected. That is what the Government's negotiations are about. I pray that they will be successful. We are making progress. That is why, at this very moment when we are making progress, it would be completely inappropriate for this House to seek to undermine the Government's position.

The House might not want to listen to me, but it should listen to people such as my noble friend Lord King, who has been a Secretary of State for Northern Ireland. This has been a long process. The way the protocol is being implemented threatens the Good Friday agreement and the ability of people in Northern Ireland to live in peace and carry out their wishes, which, at the moment, are to remain part of the United Kingdom, where the rule of law is determined by them.

My noble friend Lord Cormack suggested that we should listen to the views of the President of the United States. What has the President of the United States got to do with maintaining the integrity of this country? I understand that there were divisions on Brexit, but that is behind us. We have taken a decision on Brexit and for once people ought to stand up for the interests of this country and not argue for the interests of Europe when we are trying to negotiate the best deal for our own people. Talk of a spirit of unity would be far more reasonable if that spirit was shown by this House getting behind the Government to ensure that they can deliver what every citizen of the United Kingdom is entitled to: the right to determine their laws and their levels of tax. I believe the negotiations will be successful and that they are being done in good faith, but opposing this Bill and abusing our procedures is no way to deliver success for Northern Ireland or respect for this House.

4.24 pm

Lord Murphy of Torfaen (Lab): My Lords, if it had not been for the United States of America I very much doubt that there would have been a Good Friday agreement. The support we had from our American colleagues and friends was immense.

I return to the necessity for the Bill, which in my view does not exist. The noble Lord, Lord Howard, quite rightly referred to using Article 16. There would not then have been any need for a Bill to be in front of us at all.

I am amazed that the Minister, who I respect immensely, referred to the protocol as if it had come down from the heavens. He denounced in his speech great parts of the protocol which his own Government created. That is the amazing part of this debate.

I want to refer specifically to the Good Friday agreement, because it has been prayed in aid by all sides in this debate in order to justify the Bill and the situation we are in now. I was Secretary of State for Northern Ireland too, and I was responsible—a long time ago; 26 years ago now—for part of the talks that led to the Good Friday agreement. I chaired strands 1 and 3 of that agreement. In so far as it was concerned, the agreement was based very largely on a couple of issues, one of which was common membership of the European Union. We were in the same club and there is no doubt in my mind that, if you read the Good Friday agreement, you will see that going right through it is reference to our joint membership of the EU. Of course that was an important issue as well.

However, the big issue, above all, was that after three years of negotiation we achieved a deep consensus among the people of Northern Ireland in order to achieve what we did. To that extent, I accept the unionist—or some unionists'—point of view that there is no consensus with regard to the protocol. Of course, very many nationalists will argue the opposite, but it remains the case that there is no consensus. There was no consensus when we started the talks that led to the Good Friday agreement in any event, and, when we had agreed it, you could not say "Well, I don't like that bit about the police", or "I don't like the release of political prisoners", as they were called, or "I don't like that side of it on the north-south agreement", or "I don't like that side on criminal justice". We had to accept the whole of it in order to ensure that there was peace in Northern Ireland, and the people of Ireland, north and south, voted in simultaneous referendums to agree to it.

It is extremely important still to accept the principle that you cannot just have bits of it with which you agree. You all agree that you should agree by negotiation. Look at what is happening in Northern Ireland now: the very fact that there is no Assembly, no Executive and no north-south bodies is equally against the spirit of the Good Friday agreement, as is the case with regard to the border in the sea between Great Britain and Northern Ireland.

There is, of course, only one solution. The Minister rightly referred to the preference being negotiations. I do not agree with it being a preference; I believe it is an absolute necessity. The only conceivable way in which this can be resolved is by proper, structured negotiations —not just going across to Belfast for a couple of days and coming back—between the EU and the United Kingdom, and between the Irish Government and the British Government. Both Governments are guarantors of another international treaty, the Good Friday agreement, so it was great to see that the Irish Foreign Minister met our Foreign Secretary the other day. That is a good start. There also need to be proper negotiations between all the political parties in Northern Ireland. It is only by those detailed, structured negotiations between Governments, the EU and the political parties that this issue can be resolved.

"Ah, it's too difficult", people will say. They said that in 1998. Look at the issues that we did resolve, despite all those problems. We can resolve this one. The alternative is direct rule, and none of us wants that to occur. We are now almost 25 years on from the Good Friday agreement. That could be a means by which we could relook at it—it says in the agreement that we can review it. If we do not that, if we do not negotiate properly, and if we rely on the Bill and other things to try to sort this problem out, then the peace, prosperity and stability will indeed be in jeopardy.

4.29 pm

Baroness Suttie (LD): My Lords, it is always a great pleasure to follow the noble Lord, Lord Murphy, who always speaks with such experience, wisdom and, if I may say so, honest-to-goodness common sense.

As previous speakers have said, this is a bad and unnecessary Bill, which sets a number of dangerous precedents. As my noble friend Lord Purvis of Tweed set out so clearly in his speech, the Bill is widely considered to breach international law. It damages our international reputation and threatens the economy at

[Baroness Suttie]
a time when we are already facing economic turmoil on so many fronts. Perhaps most importantly of all, as the noble Lord, Lord Cormack, spelled out so clearly, the Bill is not something that the majority of people in Northern Ireland or the business community actually want.

Over the last few days, I have therefore found myself asking why the Government continue to insist on pushing ahead with the Bill when the new Prime Minister and her new Cabinet could have used the opportunity to withdraw the counterproductive threat that it represents. If the Bill was meant to reverse the distrust that has developed in Northern Ireland politics in recent years, pushing ahead with it, rather than using the available route of negotiations, risks alienating the majority in the Northern Ireland Assembly who want to see a negotiated settlement. Does the Minister not agree that this is a very high price to pay at a time when re-establishing trust is so vital for progress to be made in Northern Ireland politics and for the Executive and Assembly to be able to get back to work? Does he further acknowledge that recent opinion polls in Northern Ireland indicate that the majority of people want to see the protocol amended and improved so that it can be made to work?

If the Bill was meant to strengthen the Government's negotiating hand, it is very hard to understand how threatening to breach a previously agreed international treaty will encourage other future partners to trust us. It is also potentially deeply damaging to our relationships with both Washington and Brussels; that matters at a time when it is so vital for us to stand together against Vladimir Putin's increasingly appalling actions in Ukraine and, indeed, within Russia itself.

If this legislation was meant to reassure the Northern Ireland business community then it is hard to see how pushing forward with the Bill rather than concluding the negotiations as soon as possible will be helpful for providing economic certainty at this time. Businesses in Northern Ireland, as well as those businesses in Britain who work with Northern Ireland, are crying out for a period of economic certainty so that they can plan and move on from the atmosphere of uncertainty that has prevailed since 2016.

It is very welcome that Chris Heaton-Harris has changed the tone since becoming Northern Ireland Secretary. When I worked in the European Parliament, Chris Heaton-Harris was known as an MEP who understood the importance of co-operation and building trust, so it is welcome that, at least so far, he is adopting a constructive and positive approach. This is greatly to be welcomed and long overdue.

Like my noble friend Lord Purvis, I also welcome the belated acknowledgement by Steve Baker that mistakes have been made. Since 2016, politics and the economy of this country have suffered from a series of short-term fixes, primarily to deal with splits within the Conservative Party. It was never going to be possible to do all of the things that successive Conservative Governments have promised regarding Brexit but, given the global political and economic crises we are currently facing, surely this is the time for the Government to think of the long-term good and avoid yet another period of potentially disastrous, self-inflicted economic and reputational damage to this country.

I urge the Minister in his concluding remarks to pause or, preferably, drop this Bill altogether and give new impetus to the negotiations, and to make sure, for the sake of the people of Northern Ireland and the whole of the United Kingdom, that this time they succeed.

4.34 pm

Lord Jay of Ewelme (CB): My Lords, I speak today as chairman of the committee on the protocol in your Lordships' House, nearly all of whose members are speaking in the Second Reading debate today. I am only too conscious that the noble Lord, Lord Dodds of Duncairn, is speaking after me

We on the committee are united in our view of the importance of scrutinising the protocol and the effect that it will have and indeed is already having on the economy and the politics of Northern Ireland. As our latest report shows, that economic impact is hard to discern with certainty. Many of those involved in east-west trade—trade between Great Britain and Northern Ireland—are suffering. That is particularly true of small and medium-sized enterprises. At the same time, many of those involved in north-south trade are prospering. But all those who spoke to us agreed that the present uncertainty is destabilising, and uncertainty is the one thing that all businesses hate. That is why we concluded that a mutually agreed solution between the UK and the EU is the best outcome —but it will require flexibility and compromise on all sides, and it will also require trust.

I am glad that trust is now being re-established. It is a necessary, though not a sufficient, prerequisite for a lasting agreement. I am glad too that negotiations, even technical ones, have been restarted. They will be tough on some issues. On red/green channels for trade with Northern Ireland, for example, or on data transfers, the differences between the UK and EU positions do not seem all that huge to me. On other issues, such as the longer-term divergence between the economies of the UK and the EU, regulatory structures and governance issues, including the role of the ECJ, the differences are much greater and the negotiations will inevitably be tougher. But at least the negotiations have restarted and, if they succeed, the Bill before us will never be needed. But it is before us and the protocol committee of your Lordships' House has begun an inquiry into it, with evidence sessions tomorrow and over the next few weeks, and with a visit to Belfast and Newry next week.

Meanwhile, there is one question on which I would welcome advice from the Minister in answering the debate. One of the recurring themes of the Northern Ireland committee's reports has been the need for the Government to take full account of the different shades of opinion in Northern Ireland in formulating their approach to the protocol. We have heard that there is a palpable sense in Northern Ireland that their views are not fully considered. Could the Minister give us an assurance that Northern Ireland opinion will be taken into account as the negotiations proceed? Could he also say how Northern Ireland, and Northern Ireland politicians, will be involved in the negotiations themselves?

4.38 pm

Lord Dodds of Duncairn (DUP): My Lords, it is a pleasure to follow the noble Lord, Lord Jay, who chairs our committee on the protocol with such distinction.

In my view, the Bill is necessary and provides the potential for helping to resolve the crisis in the political process in Northern Ireland brought about by the protocol. There are many aspects that we would prefer were dealt with differently, all of which will need to be addressed and resolved in due course. However, it is clear that the protocol, albeit implemented only partially so far, has the following effects. First, as the courts in Northern Ireland have adjudicated, it rips up the free trading arrangements enshrined in Article 6 of the Act of Union itself. It runs completely contrary to the cross-community arrangements—not majority rule, which some people are referring to, but the cross-community arrangements—that are at the heart of the Belfast agreement, unless people want to change the Belfast agreement to majority rule. It is contrary to the consent principle. As the Minister said, it upsets the delicate balance of the agreements, and it has undermined and continues to undermine the institutions of the very agreement that it was designed and purports to safeguard.

The protocol also negates democracy itself. Up until 31 December 2020, the people of Northern Ireland, in common with the rest of the United Kingdom, were able to elect legislators to make all the laws to which they were subject. From 1 January 2021, every citizen of the United Kingdom living in Northern Ireland has had the experience of having the significance of their votes slashed as the responsibility for making the laws of Northern Ireland over vast swathes of the economy has been taken from them and given to the members of a legislature of a foreign political entity of which they are not part, and in which they have no representation—in relation not just to one statute or one area of law, but to 300 areas of law.

The outworking of Northern Ireland being subject to European Union law, while the rest of the United Kingdom is not, has massive, far-reaching, detrimental consequences, both constitutional and economic, which will get worse over time as divergence increases. Given that the rest of the United Kingdom is by far our greatest market for trade, as a result of dividing up our country in this way we have increasing friction for goods from one part of the United Kingdom to another as a result of needless checks and tonnes of paperwork, and we have divergence of trade, restricted consumer choice and increased costs. We have threats to investment through having different state aid arrangements and regimes for Northern Ireland and Great Britain, as the Minister acknowledged when we discussed this in Committee. We are denied the benefit as British citizens of the United Kingdom of UK-wide tax changes, while being subject to EU VAT rules.

As I looked around to try to describe the reality of what confronts us, the only model that I could find that comes close to fitting is the UN category of a non-self-governing territory, which is the current term for a colony. Most colonies today are largely self-governing; they remain classified as colonies because they are not entirely self-governing. That such a solution be thought desirable, or indeed workable, for part of this United Kingdom in the 21st century beggars belief.

We have heard about this Bill and international law this afternoon. Of course, nobody seems to object to the breach of international law which is at the heart of extending unilaterally grace periods or standstill. That is a breach of international law, and yet everybody seems quite content to go along with that.

The erosion of our citizens' rights to fundamental democratic rights under this protocol is contrary to international law. We should look again at Article 25 of the International Covenant on Civil and Political Rights and Article 21 of the Universal Declaration on Human Rights, which states:

"Everyone has the right to take part in the government of his country, directly or through freely chosen representatives".

That is denied to the people of Northern Ireland when it comes to legislating on large parts of the economy, and of course it violates the Belfast agreement, which commits to no erosion of democratic rights. Article 2.1 of the protocol refers to no diminishment in the rights accorded by the Belfast agreement, and those who support the Belfast agreement so vehemently should be defending what we are trying to do in restoring democratic rights to the people of Northern Ireland.

So, the greatest urgency now is to restore full democratic rights to people in Northern Ireland. We cannot defend and support the sovereignty of Ukraine—rightly so—and at the same time defend and support the trashing of the sovereignty of the United Kingdom. Whether by negotiation or by legislation, the objective of restoring sovereignty to the people of Northern Ireland, to all citizens of the United Kingdom who should all be treated equally, must be achieved, and with it the full restoration of Northern Ireland's place in the internal market of the United Kingdom.

4.44 pm

Lord Howard of Lympne (Con): My Lords, I am genuinely grateful for the opportunity to follow the noble Lord, Lord Dodds, for whom I have much respect, and indeed I have a good deal of sympathy with the concerns which he has expressed. But, as I hope to explain, this Bill is not the way to alleviate those concerns.

I also echo those who have paid tribute to my noble friend the Minister and expressed pleasure that he remains in his post, and of course I share the hope and aspirations, which have been widely expressed, that the difficulties we face can be solved through negotiation—and I welcome the fact that those negotiations are now under way. But the Government have asked your Lordships' House to give this Bill a Second Reading today, and it is our duty therefore to consider its merits.

The Government seek to justify the provisions of the Bill, which would otherwise be a clear breach of international law, by reference to the doctrine of necessity. That doctrine is set out in Article 25 of the relevant treaty, which states that the doctrine cannot be invoked unless it

"is the only way"—

I stress: "the only way"—

"for the State to safeguard an essential interest against a grave and imminent peril".

Even if it is assumed that all the other requirements of the article are met—and there are of course many reservations about that—it cannot possibly be argued that this Bill is the only way in which the state's interests can be safeguarded. It is not the only way

[Lord Howard of Lympne]
because the protocol itself provides a way, a perfectly legal way, in which that objective can be achieved. It is to be found in Article 16.

I did not properly hear the answer which my noble friend the Minister gave in response to my intervention, but if he really suggested that the problem with Article 16 was that it could apply only to the whole protocol, and that therefore freedom of movement provisions would be affected, I have to tell him as gently as I can that there is absolutely no basis for that interpretation of Article 16, which gives the Government a wide discretion as to the measures which they could take. I am genuinely bewildered by the Government's decision not to proceed by invoking Article 16. Your Lordships may be interested in the explanations for its rejection which were given to me by the Home Secretary when she was Attorney-General.

My noble friend the Minister had asked me to speak to the then Foreign Secretary, now of course the Prime Minister, about this issue. When the conversation turned to the legality of the Government's proposals, she referred me to the Attorney-General, which your Lordships may think is in itself not entirely insignificant. The then Attorney-General told me that the decision not to invoke Article 16 was a political one. The reason, she told me, was that Article 16 permits only measures which are proportionate. I should repeat that, although it will not take long for the implications to sink in: Article 16 was not invoked because it permits only measures which are proportionate. To put it very mildly, this of course reinforces the unanswerable argument that the Government simply cannot contend that the Bill is the only course open to them. It must follow, therefore, that it constitutes a clear breach of international law.

Why does all this matter? It matters because, although I acknowledge that Parliament can legislate in breach of international law, it should not do so—and it especially should not do so at the present time. Of course it is the case that, on the scale of iniquity, the Bill, for all its flaws, does not begin to compare to the invasion of Ukraine. But Ministers—our Ministers—frequently criticise that invasion on the ground that it is a breach of international law. My noble friend did it in the course of his opening remarks. The Defence Secretary, for whom I have great respect, did it in a newspaper article on 25 September. He said of Vladimir Putin:

"We take everything he does seriously, because this is a man without any scruples and any regard for international law."

The thing about the law, whether it is domestic or international, is that you cannot pick and choose. You cannot pray it in aid in one context and have no regard for it in another, so I urge the Government to think again. They can achieve their objectives perfectly legally by invoking Article 16, but if they persist with the Bill, I shall vote against it—not, of course, today—and I urge your Lordships to do likewise.

4.49 pm

Baroness Ritchie of Downpatrick (Lab): My Lords, it is a pleasure to follow the noble Lord, Lord Howard. I am also a member of your Lordships' committee on the Ireland/Northern Ireland protocol. As a resident of Northern Ireland, I firmly believe that the Bill is not the way forward. In fact, it acts as an impediment and a barrier to those negotiations. I am pleased that the negotiations between the UK and the EU have resumed, because there are issues with the protocol. I speak as someone who supports the protocol because, during and post the Brexit referendum, we always said that Northern Ireland needed to have special status—and the current UK Government negotiated the withdrawal agreement and the Northern Ireland protocol. So, as regards as any other stories that might be coming at us, we might be talking porkies, as my noble friend Lord Murphy said, and the Government should remember that they negotiated it.

There are issues with the protocol that have to be addressed properly in the negotiations—in relation to tariffs on steel and in relation to groupage and the issues encountered by the haulage industry—but these can be resolved only by proper negotiations between the UK and the EU, without placing guns on the table to act as impediments to the discussions. There are challenges and difficulties in the Bill: it is a breach of international law; Ministers are given undue powers to legislate later on to do what they wish; and it will not deal with the problems in Northern Ireland.

Over the summer, I talked to many people—including members of Newry Chamber and the Warrenpoint chamber—who operate along the border. I talked to people in industries, including Seatruck Ferries and HMT Shipping in Warrenpoint and Lakeland Dairies. For the dairy industry, which is all-island, the Bill will legislate inefficiencies into the dairy supply chain with the dual regulatory regime and certification process. The Bill does not work for primary producers, and it has the potential to undermine Northern Ireland's access to the EU single market. I have talked to the Ulster Farmers Union and, although it sees issues with the protocol, it also sees benefits.

The Bill rejects the NIP joint committee process for resolving disputes. It removes the ECJ from NIP decisions, and VAT and excise duties will be set by UK Ministers, rather than at agreed EU rates. In fact, the Bill is at variance with the Good Friday agreement because the principle of consent in that agreement centres around the issue of unity—"Do you want to be part of a united Ireland or to remain within the United Kingdom?"—and we do not need any confusion around that issue. The equality and human rights commissions, which are mandated to look after Article 2 of the protocol, greatly fear that Clauses 13, 15 and 20 will dilute those human rights and equality protections. This needs to be looked into.

Environmental organisations, such as Greener UK, believe that the Bill is

"extremely broad in scope and creates significant risk to the natural environment across the single biogeographic unit of the island of Ireland",

through the powers taken by government without parliamentary scrutiny and, above all, the insufficient protections for the natural environment within the protocol.

There are areas for negotiation: the resolution of the customs issues and controls; the need for an SPS veterinary agreement; and the solution to the EU steel tariffs in Northern Ireland. We want streamlining, with no more individual certificates for agri-food products.

Through Vice-President Šefčovič, the EU has indicated that it is prepared not only to negotiate but to provide those solutions, so let us get down to those negotiations. Only through proper negotiations between the UK and the EU will we achieve success and the restoration of our political institutions of the Good Friday agreement, which should never have been blocked or brought down in the first place.

4.55 pm

Baroness Doocey (LD): My Lords, I grew up in Ireland and most of my family still live there, so I want to concentrate on the practical implications of this Bill for ordinary people and ordinary traders on both sides of the border. A good example is Northern Ireland's 3,000 dairy farmers: together, they produce 2.5 billion litres of milk every year, in turn enabling highly valuable exports. Northern Irish dairy goes to 80 countries around the world, and although the six counties represent just 3% of the UK population, they account for 31% of UK dairy exports by value. However, a third of the milk produced cannot be processed within Northern Ireland because of a lack of processing capacity in the Province. The milk needs to be processed in the only factories with adequate capacity, which happen to be located just across the border in the Republic of Ireland. However, for milk to cross the border, a vet from Northern Ireland's food safety agency must certify that the milk meets EU standards over its whole life cycle. If it does, it can go into the Republic and come back again—pasteurised and processed—ready to go on to make money for the UK economy around the world.

However, if Northern Ireland operates a dual regulatory regime, as proposed in this Bill, products such as animal feed—some from the EU and some from the UK—are likely to be mixed up within the Province, making it impossible for vets to certify that an animal's milk genuinely meets EU standards. This means that the cow's produce will be unable to cross the border and unable to be processed. Noble Lords will be aware that you cannot just throw unusable milk down the drain because of the serious ecological issues that that would cause—doing so is rightly banned in British law. So, of necessity, a massive cull of one-third of Northern Ireland's dairy herd will be needed. Leaving aside the extraordinary economic and animal welfare implications of that process, Northern Ireland does not have the vets or abattoirs to undertake such a cull. Since the animals will not be able to be certified for export—for the same reasons that their milk cannot be certified—they will not be able to go over the border for slaughter either. It will be a Catch-22 situation, full of crushing uncertainty for Northern Ireland's farming industry. Indeed, the only certainty is that farmers will find themselves unable to repay loans they took out in good faith, in the expectation of profits from the sale of their milk. A collapse in farming incomes will follow, inevitably destroying the hard-won, peaceful sustainability of every local town and village in Northern Ireland.

The risk with which the Minister must grapple this afternoon is not just to the local economies concerned; there is also an inevitable risk that darker forces will exploit newly impoverished communities, fanning the flames of resentment and driving a wave of renewed unrest. Brexit was not supported by Northern Ireland and was opposed by the Republic. Yet both sides did everything they could to make Brexit work, and the result was the protocol. Bits of these agreements cannot be cherry-picked away: each part of an agreement is a delicate building block of Anglo-Irish relations; move one part, and you risk the whole thing falling over. And for what? After all, if the Government are serious about not having lower standards for food safety and animal welfare than the EU, they surely have nothing to fear from a Swiss-style veterinary agreement with Ireland and the EU, and nothing to gain from this absurd mess of dual regulation.

It is time for a new approach prioritising practical trading relationships, prioritising local economies and, most of all, prioritising hard-won peace over the academic sovereignty that Brexit is alleged to bring. In short, it is time to ditch this rotten Bill.

5 pm

Lord Pannick (CB): My Lords, I want to focus on why this Bill would, if implemented, be a manifest breach of international law. Let me identify first what is not in dispute. The Government are not suggesting that it would be proper to bring forward a Bill which, if implemented, would breach international law—and quite rightly so. The Government also do not dispute that the Bill would resile from important aspects of the protocol and that this would be a breach of international law, unless they can rely on the doctrine of necessity. There is also no dispute about the criteria for invoking the doctrine of necessity. Your Lordships have heard that the Government must show that their action

"is the only way for the State to safeguard an essential interest against a grave and imminent peril",

and the Government accept that necessity cannot apply if

"the State has contributed to the situation of necessity."

The Government cannot dispute these criteria, because they are set out in Article 25 of the International Law Commission's *Draft Articles* on state responsibility 2001, a codification of the basic rules of international law.

It seems to me that there are three reasons why the Bill, if implemented, would plainly breach international law. The first has already been addressed by the noble Lord, Lord Howard. The Bill is not the only way to deal with the perceived problem. The noble Lord rightly drew attention to Article 16, a mechanism in the protocol for addressing

"serious economic, societal or environmental difficulties".

I entirely agree with what he said. But there are other problems. The second problem is that there is no "imminent peril". The Government have been complaining about the protocol for many months—indeed, since soon after we signed it. And even if these fundamental difficulties were somehow to be overcome, there is a third fundamental difficulty: the Government have themselves caused the perceived problem, or at least substantially contributed to it. We signed the protocol in order, as then Prime Minister Boris Johnson said, to "get Brexit done".

[Lord Pannick]

The Minister, the noble Lord, Lord Ahmad, in opening this debate, and the noble Lord, Lord Dodds, listed the difficulties that are caused, they say, by the protocol. Well, the Government should have thought about that before signing it. The International Law Commission's notes to Article 25 point out, at paragraph 20, that the International Court of Justice has held that a state cannot rely on necessity when it has,

"'helped, by act or omission'"

to bring about the situation of which it now complains. It is elementary that a state cannot sign a treaty and then seek to resile from it on the basis that the terms it has agreed damage the interests of the signing state.

The Government then say, "Yes, but the EU is not applying the protocol in good faith"—the noble Lord, Lord Forsyth, referred to bloody-mindedness, as he put it, by the EU. But there are mechanisms for resolving a dispute about the obligations of the parties to the protocol. We agreed, by Article 12, to the jurisdiction of the Court of Justice in Luxembourg to resolve disputes. The Government and the noble Lord, Lord Forsyth, may not like it, but that is what we agreed to in the protocol.

Lord Howell of Guildford (Con): The noble Lord speaks with great authority and expertise—I have heard it often before and it is very good indeed—but does he think Articles 49, 50, 51 and 52 of the Vienna Convention on the Law of Treaties also have relevance and allow some scope to move away from the narrow confines of the treaty as it stands now, when the other parties may be breaking it in some way?

Lord Pannick (CB): I think the noble Lord refers to obligations of good faith. The answer is that the protocol sets out a mechanism, as I said, for resolving the dispute between the parties—the UK and the EU—as to whether each is complying with its obligations. The United Kingdom cannot say that the test of necessity is satisfied when the protocol sets out a dispute-resolving mechanism.

I agree with the excellent speeches by the noble Baroness, Lady Chapman, and the noble Lord, Lord Purvis: this is a manifest breach of international law and I very much hope that the noble and learned Lord, Lord Stewart, the Advocate-General for Scotland, will address these points when he answers this debate.

5.06 pm

Lord Browne of Belmont (DUP): My Lords, I support the Bill. If fully enacted, this legislation has the potential to provide tangible solutions that will free Northern Ireland from the grip of the crippling protocol arrangements and restore our rights as British citizens to trade freely with the rest of our nation under Article 6 of the Acts of Union.

Nobody who values the union supports barriers remaining in place between Northern Ireland and the rest of this nation. Equally, nobody who values devolved governance in Northern Ireland should countenance the protocol, as it has undermined the principle of consent and dealt a blow to consensus-building politics. If we do not act now, we will reach a critical point where, after the full implementation of the protocol, Northern Ireland will be subject to an ever-expanding series of laws imposed by a foreign entity without any say or vote by its elected representatives.

While the rest of the United Kingdom has secured its freedom to deregulate or go in a different direction on aid or taxation, Northern Ireland will be left behind and face fresh restrictions and challenges simply because it is tied to the protocol. The trade friction between Northern Ireland and Great Britain is fuelling the cost of living crisis in Northern Ireland and restricting consumer choice. The Northern Ireland protocol is not only unsustainable in its form but incompatible with the Acts of Union. It threatens the sovereignty of this nation and undermines devolved governance, which requires cross-community buy-in and support if it is to function fully.

As it stands, the Bill provides a clear framework to address many of the issues outlined today. It provides a framework to remove the European Court of Justice as the ultimate arbiter of the protocol, smoothing the passage of goods from Great Britain to Northern Ireland and bringing Northern Ireland fully back into the UK's VAT and excise duty regime.

The Bill must pass and its regulation-making powers be fully deployed as quickly as possible to avert impending political crisis in Northern Ireland. We must not waste any more time talking about checks. The economic problem is not the checks but the paralysing cost implications of applying third-country certification burdens on the qualitatively very different consignments of goods that flow within economies—as with Great Britain-Northern Ireland trade—rather than between them, which make trading uneconomic.

If the protocol were ever implemented economically—let us not forget that, thankfully, it never has been because of the grace periods—hauliers have made it absolutely clear that the certification costs associated with taking goods from Great Britain to Northern Ireland would make that undertaking uneconomic and Northern Ireland's supply chains would break down within 24 hours, creating an existential economic crisis for part of our United Kingdom.

Similarly, the political problem is not at root the checks, but the fact that the people of Northern Ireland have been degraded as a result of their right to make laws in some 300 areas being taken from them. The value of their vote has been diminished. Every time a new law is opposed on Northern Ireland by the EU, the human rights provisions in the Belfast agreement with respect to political engagement are violated. That violation cuts to the quick—the knowledge that, while the people of England, Wales, Scotland and the Republic of Ireland must have the right to stand for election or vote to elect people to make all the laws to which they are subject, the people of Northern Ireland must be subject to the unique and deeply distressing indignity of being told that they do not always deserve to be afforded the same level of respect.

The Bill may be needed—and needed urgently—and I strongly urge all noble Lords to pass it today, and certainly without any six-month delay. Quite apart from anything else, this will strengthen the Government's negotiating hand, while a six-month delay would simply weaken it. I support the Bill.

5.11 pm

Baroness O'Loan (CB): My Lords, I served as a member of the sub-committee on the protocol under the excellent chairmanship of the noble Lord, Lord Jay. As has been repeatedly stated, the Bill constitutes a breach of the international obligations into which we entered freely. If we do not comply with those obligations, we will do great damage to our reputation and those who come to negotiate with us in the future will remember. We will not be trusted.

The Delegated Powers and Regulatory Reform Committee stated in its 12th report that

"the legislative mechanism by which the Government propose to give to effect to the Bill's purpose is wholly contrary to the principles of parliamentary democracy (namely, parliamentary sovereignty, the rule of law and the accountability of the Executive to Parliament)".

Indeed, the powers given to Ministers would permit a future weakening of protocol Article 2, which provides for the preservation of the Good Friday agreement "in all its dimensions" including its human rights and equality safeguards.

The sub-committee's first report identified serious problems in how the protocol was being applied. It also pointed out that the search for solutions up to that point had been hampered by fundamental flaws in both the UK and the EU's approach The report concluded that unless urgent steps were taken to correct this, Northern Ireland and its peoples would become permanent casualties in the post-Brexit landscape. The situation now is that the people of Northern Ireland are becoming casualties in that landscape. So are those GB businesses which, having developed trade links with Northern Ireland, have now decided because of the additional cost that future trade with Northern Ireland is not sustainable at present.

The committee's second report said:

"The economic data necessary to conduct a comprehensive statistical analysis of the impact of the Protocol on Ireland/Northern Ireland is not yet available. Nevertheless … the economic impact is becoming clearer … Our witnesses have described a dichotomy of experience, characterised by one as 'feast or famine'".

Northern Ireland's economy includes a significant percentage of SMEs, and it has been established that many firms in Great Britain are now refusing to, or are reluctant to, trade east to west because of increased bureaucracy, the need for enhanced staff resources, increases to cost and delivery times and reduced flexibility. The inevitable increasing regulatory divergence between the UK and the EU is also a cause of uncertainty and concern, as are the effects of Brexit.

Trade from north to south has undoubtedly benefited from the protocol. Sectors of the economy, such as the dairy and meat-processing industries, depend on complex cross-border supply chains on the island of Ireland. Damage would be caused to those sectors should access to the EU single market be lost. The committee's report therefore says that the overall impact of the protocol on the Northern Ireland economy remains uncertain.

Witnesses to the committee have told us what is needed to resolve the difficulties underpinning the negative economic impact of the protocol. There is creativity and determination among them in resolving the difficulties, which appear to be fundamentally bureaucratic. What is necessary now is constructive dialogue underpinned by a determination to reach resolution on the many issues that have arisen. What is not needed is the effective emasculation of the protocol, which has already resulted in multiple infringement proceedings against the UK by the EU. As the noble Lord, Lord Pannick, said, there are provisions in Article 16 of the protocol which provide safeguards against

"serious economic, societal or environmental difficulties".

These should be utilised effectively by the UK and the EU.

It is important to state that the protocol has not caused civil disturbance of any significance in Northern Ireland. People want to see the problems resolved. There is significant concern that, although the Government state that there will be no diminution as a consequence of the Bill in the rights protected under the Good Friday agreement, this is not the case. Can the Minister tell us what consideration was given to compliance with Article 2 of the protocol in the context of this Bill?

Finally, on the position of Northern Ireland within the UK, I accept that significant concerns have been presented to your Lordships. I acknowledge the fears and concerns that underpin this position. However, because the UK voted for Brexit, some accommodation has to be made for the situation resulting from Northern Ireland's land border with Ireland—a land border that is not readily amenable to customs and other checks. Northern Ireland is in a unique position: it has access to the EU single market yet remains a constituent part of the UK. Properly worked, this could be a significant advantage for all our people in the UK.

Northern Ireland needs stability, a working Assembly, vastly improved public services and many other things. All these could happen if the protocol can be made to work. It is in both the EU's and the UK's interests that this should happen. It is in nobody's interests that the Bill should pass and the consequential years of disruption to UK-EU trade should occur, nor that we should be tied up fighting battles against the EU in the CJEU for years, at a time when we need to restore our national economy and care for all our people.

5.17 pm

Baroness Bennett of Manor Castle (GP): My Lords, I begin by noting the level of engagement with the Bill in your Lordships' House, both in numbers and the weight of years of experience. I was tempted to ask the Library to make a calculation of the total but I decided that that was not a good use of public funds; the level of concern about the Bill is obvious.

That was reflected in the opening speeches from the Front Benches. I agree with almost every word from the noble Baroness, Lady Chapman of Darlington. She clearly identified that the Bill will not solve the problems it purports to address; that it breaks international law, as many noble and noble and learned Lords have said; and that it gives unprecedented powers to Ministers at a time when we have seen a great many Bills go through in your Lordships' House—and that is just in my three years here—that, it was already being said,

[Baroness Bennett of Manor Castle]
gave unprecedented powers to the Executive; now, they are largely law. We have an overweening Executive, unprecedented in history—and what an Executive.

The speech of the noble Lord, Lord Purvis of Tweed, was notable in bringing out the second point in that list: the breaking of international law. It did not so much bulldoze the Government's arguments for just cause for their actions as grind them into tiny fragments so that they lay on your Lordships' House like a layer of sand.

As the noble Lord, Lord Ricketts, outlined, this is happening at a critical point in this age of shocks. He highlighted the geopolitical shocks, but I would add the broader climatic and environmental shocks. The UK remains the chair of the COP climate talks. Many are hoping, perhaps against hope, that we might play a significant, positive role in the COP 15 biodiversity talks, which are finally soon to start. The destruction of legal principles that the UK has historically played a big part in creating can only damage not just our place in those talks but the entire progress of those crucial endeavours.

I said that I agreed with almost everything that the noble Baroness, Lady Chapman, said; where I would differ is her stress on the reason for not voting today—that magical incantation that we are the unelected House. Your Lordships' House has already had cause to ponder that lack of election does not mean lack of responsibility and that a significant number of the matters increasingly coming before us could best be labelled, in the purest sense, a conscience vote. Perhaps we should look back to what happened with the internal market Bill when, with the leadership of the noble and learned Lord, Lord Judge, this House took a firm stand.

Many of the practical arguments against this Bill have already been powerfully made, but in part I chose to devote a considerable chunk of my week to this debate because I wanted to demonstrate the wide breadth of concern across this House. Many of the speakers with whom I am agreeing in opposing this Bill are not people with whom I have broad, general agreement across a wide range of issues, but the broad view of the House is obvious, and I agree with it.

I also consulted the Green Party Northern Ireland because I think it is important—crucial indeed—that all the communities in Northern Ireland are represented here in your Lordships' House. Like so many others, it stressed that the Bill amounts to a near-complete unilateral rewrite of what is supposed to be an internationally binding treaty. Article 4 of the withdrawal treaty explicitly prohibits this type of legislation. More, it is clear that the scale of the provisions in the Bill is not necessary and risks making the problem worse. Very directly, what is proposed will create further difficulties for Northern Ireland businesses. The only businesses that will benefit will be GB firms which ship to Northern Ireland. I think the noble Baroness, Lady Ritchie of Downpatrick, made this point very clear.

The only sensible solution to the clear problems with the current arrangements—which, let us not forget, since the Minister referred in his introduction to the democratic deficit, are subject to a consent vote in the Assembly in 2024—is one that is managed through negotiation and mutual agreement. I note that that has been very strongly stated by the Northern Ireland Business Brexit Working Group, which represents, among others: the Dairy Council, the Federation of Small Businesses, Hospitality Ulster, the Institute of Directors, the CBI NI, Logistics UK, Manufacturing NI, the NI Grain Trade Association, the NI Meat Exporters Association, the NI Food and Drink Association, the NI Chamber of Commerce and the NI Retail Consortium. We need negotiation and a negotiated settlement, not this Bill.

5.23 pm

Lord Howell of Guildford (Con): My Lords, I cannot pretend to offer any better ideas than anybody else about how to get Stormont going again but I must say that I sense a change of mood now in this whole situation and some welcome changes too in the wider context of the issue which, even if they are medium term or long term, can feed back positively into the immediate. So while the world drifts dangerously towards nuclear war with Russia and the Chinese carry out extending their sphere of influence and subverting Commonwealth members, among other countries, and while we are, as my noble friend Lord Skidelsky said in a remarkable speech last night in this Chamber, in effect in a war situation, I feel we can at least say that here in the British Isles there is one age-old problem that may just possibly be moving forward on the right lines.

Why do I say that? Let me enumerate some positive aspects, while not denying the negative ones. First, we are seeing distinct signs of a change of tone both in Brussels and in London, and of course in Dublin in recent days. The argument about the protocol—the one that says that one side wants changes in the protocol itself and the other side says it agrees to changes in the way it is administered but cannot open the protocol itself—is a classic diplomats' dilemma. In the right atmosphere it really ought to be resolvable by our proverbially efficient and effective diplomatic service, with ministerial guidance, of course.

And what exactly creates that atmosphere? Let me start with a rather personalised point. We on this side have a colleague, Steve Baker MP, who is very able but also a renowned hardliner on most things. He is now newly holding the job of Minister of State for Northern Ireland—which happens to be exactly the job that I held 50 years ago. He has discovered, as I did when I went there at the height of the violence, that there are legitimate interests all round which he and others like him had not shown sufficient respect to. He said that it was time to rebuild the UK's relations with Ireland and make sure that the two countries went forward as "closest partners and friends".

That tells me that the talks that are about to begin will at least start on the right note, and that, despite all the aggro about the Bill, about which we have heard a considerable amount this afternoon, it is all part of a subtle and delicate negotiating positioning which could succeed. We should be very careful—I do urge my friends and other noble Lords—about barging into and upsetting what is going on. That is why, although there is plenty of room for doubts, I shall support the Bill tonight and the vote that goes with it if we have one, and why I hope that we can be spared any further, sadly misinformed if well intentioned, American advice on this matter.

However, it is in the longer-term developments where I feel the best hope is growing and where wise unionists of any shade should face reality and, if they are skilful, take their opportunities from this situation. As I said, the mood in Dublin is clearly changing. Ireland is a rich and talented neighbour nation that we should now look on with the greatest respect and treat as our major partner in the British Isles—which we have not always done in the past, to put it mildly. Before this protocol drama began, there were even signs that the forward thinking in Dublin was to be associated with the Commonwealth. We had several meetings to that effect in Dublin. Of course, that could also be part of the glue of the future as well.

Today, Ireland is far readier to drop the endless battle about old-style reunification by violence and by claim and think about different and far more constructive kinds of unity between separate communities with two capitals on the island. Issues such as energy and transport—for Ireland is one electricity market—bind both parts together, but there are also legitimate separate and lasting identities which keep them apart. With census results showing that Northern Ireland has more Catholics and Protestants for the first time, and with Sinn Féin majorities on both sides of the border, of course the conversation will change, and we will hear more about border polls. That will have to be faced. I myself bear some responsibility for that, having taken the Northern Ireland (Border Poll) Act 1972 through the House of Commons under the late Willie Whitelaw, which of course was reaffirmed in the 1998 Good Friday agreement and which Ted Heath talked about as

"a system of regular plebiscites."

The latest survey by LucidTalk in August showed that those wanting reunification remain a clear minority. The clever unionist co-operation with Sinn Féin in Belfast can build on that to give Northern Ireland a permanent, stable and prosperous position in the future, as a constitutional part of our United Kingdom but also a good—a very good—neighbour of the Republic.

5.29 pm

Baroness Kennedy of The Shaws (Lab): My Lords, like so many others, I oppose this Bill because it contravenes the rule of law. First, there is this flagrant breach of international law and its serious implications for our global reputation. Others have mentioned our invocation of international law when we are denouncing Putin's conduct in relation to Ukraine. How can we—as I sought to do last night—condemn China for its conduct towards Hong Kong in breach of the Sino-British agreement, an international treaty, when we are breaking an international treaty ourselves? It is this sort of shocking conduct which I am afraid will do great damage to our reputation around the globe for law and our commitment to it.

The Government claim the defence of necessity. The noble Lord, Lord Pannick, has very effectively demolished that. There has to be grave and imminent peril, and that is not the situation here, as the history of this Bill relates.

In addition to breaching international law, this legislation also puts at risk other legal obligations. I remind the House that the protocol was designed to do more than protect economic interests; it had a number of objectives, one of which was to protect the Good Friday agreement "in all its dimensions". The House will remember that concerns about human rights and equality have always been at the heart of the conflict in Northern Ireland, and a lot of work has gone into addressing those problems—I do not have to explain what I am referring to. As a result, we have seen the creation of important legal remedies, as well as institutions such as the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland, both of which have expressed concern about this Bill.

Article 2 of the protocol provides that the UK has continuous obligations regarding human rights and equality in Northern Ireland. It provides that there shall be "no diminution of rights". No diminution means that the people in Northern Ireland had rights before the UK left the European Union and these cannot be reduced as a result of Brexit. Rights can only stay the same or advance; they cannot regress.

As we know, Article 2 does not stand alone. It is supported by and must be interpreted in the light of other provisions of the protocol and the withdrawal agreement. In particular, there is an obligation on the United Kingdom for what is known as dynamic alignment in certain situations. That means keeping Northern Ireland up to date with developments in European Union law. Let me emphasise: protected rights in the Good Friday agreement that are underpinned by EU law may not be diminished as a result of Brexit and have to keep up with EU advances. Article 2 of the protocol gives that overarching guarantee. However, Clause 14 of this Bill provides that Article 13(3) of the protocol, which is on dynamic alignment, is to be disapplied immediately. Clause 20(2) provides that, in proceedings relating to the protocol, a court or tribunal is not to be

"bound by any principles laid down, or any decisions made … by the European Court".

I am afraid that that does involve a departure. It is important to understand that this Bill ranges more widely than undermining only the trade and customs provisions of the protocol. The Bill presents a real danger to the protection of human rights provisions because of the powers that it gives to Ministers, which are not confined to trade. I remind the House of the law of unintended consequences. It could have serious implications for the citizens of Northern Ireland and their rights. That is yet another reason why this Bill should be abandoned.

Lord Moylan (Con): My Lords, I do not want to put the noble Baroness on the spot. However, since she is speaking of rights, does she have any answer made by the noble Lord, Lord Dodds of Duncairn, that the protocol itself abridges the democratic rights of the people of Northern Ireland as guaranteed by the UN declaration and the European convention in the making of their own laws?

Baroness Kennedy of The Shaws (Lab): I agree with the noble Lord, Lord Dodds, that the Bill is ill-conceived and does not consider the ways in which the overlapping provisions create real difficulties for the democratic rights of the people of Northern Ireland.

5.34 pm

Baroness Meacher (CB): My Lords, I rise to speak not as an expert on Northern Ireland but simply as a member of the Delegated Powers Committee. I happen to be half Irish, which explains why I am very interested in this Bill, but it is not why I am speaking.

As other noble Lords have said, this is a Bill of exceptional constitutional significance, and yet it is a skeleton Bill that confers on Ministers powers to legislate in the widest possible terms. I cannot improve on the statement in the committee's report on this Bill that

"The Bill is unprecedented in its cavalier treatment of Parliament, the EU and the Government's international obligations".

Of course, the most appalling aspect of this is the Government's apparent willingness to breach international law. The noble Lord, Lord Howard, and my noble friend Lord Pannick superbly explained precisely why this Bill is a breach of international law. I would really like the Minister to respond to that point.

This Bill unilaterally disapplies specific areas of the protocol and makes matters far worse by delegating to Ministers powers to disapply further areas of the protocol in UK domestic law. Clause 22(2) is explicit that Ministers can disregard the UK's international obligations under the Northern Ireland protocol or any other part of the EU withdrawal agreement. The extent of that delegation is quite breathtaking.

As other noble Lords have pointed out, Britain has a proud history as an example to the world of a country which at all times and in all circumstances respects the rule of law. This Bill threatens to undermine that precious reputation. For this reason alone, this House should not proceed to Committee stage on this Bill as it stands.

While recognising that the worst feature of this Bill is its disregard for international law, I will focus my remaining remarks on the extraordinary delegation of powers to Ministers. The fact is that every one of the 19 powers in the Bill allows Ministers to make any provision that they could make under an Act of Parliament, including modifying by regulations the Bill itself once it has become law.

As the Bill stands, Ministers could by regulation impose or increase taxes, create retrospective laws, create serious criminal offences, or amend the Human Rights Act 1998, for example. These are surely extraordinary and unacceptable powers. Whenever a Bill seeks to achieve any of those objectives by delegated powers, the Delegated Powers Committee pulls them up and draws attention to it. However, the wholesale nature of the matters in this Bill is completely unprecedented.

In their memorandum on the Bill, the Government frequently refer to powers being exercised to make "technical and detailed" provision that is best suited to regulations. However, to suggest that powers are just technical or detailed when they unilaterally depart from a major international agreement in a highly controversial area of law is outrageous. I hope the Minister feels able to comment on this aspect of the Government's memorandum.

I could go on, but I have said sufficient to explain why I will support any Motion which seeks to defer consideration of this Bill to allow time for the Government to continue negotiating with the EU to resolve all remaining issues arising from the protocol. Very relevant here is the fact that Northern Ireland industry representatives are generally satisfied with the protocol if the relatively limited remaining issues can be resolved by negotiation. The southern Ireland Government have also indicated that they regard the outstanding issues as manageable through negotiation. The Minister made clear that the Government's preferred way forward is through negotiation. For the sake of the reputation of this country and out of respect for the supremacy of Parliament, I plead with the Government to withdraw the Bill.

5.38 pm

Baroness Nicholson of Winterbourne (Con): My Lords, I rise to support the Bill. As a former Member of the European Parliament—

Lord Triesman (Lab): I am sure the noble Baroness will get a go.

Viscount Younger of Leckie (Con): My Lords, to clarify, there has been a bit of a swap. It is the turn for the noble Baroness, Lady Nicholson. We will then hear from the noble Lord, Lord Triesman.

Baroness Nicholson of Winterbourne (Con): My Lords, I rise to support the Bill. As a former Member of the European Parliament and a current member of the UK-EU Parliament Partnership Assembly, I recognise fully the vast amount of work that the European Commission, the Council of Ministers and the European Parliament—let alone those in Belfast, Dublin, Westminster and Whitehall—have put in to produce the protocol as it stands originally. I recognise the dismay at any alteration, which was fully expressed, faithfully received and partially explored in the first recent plenary of the newly created UK-EU Parliament Partnership Assembly, itself a satisfactory Brexit creation.

Yet despite these important views, I believe strongly that today's Bill is not just important but in fact essential, and I question why, when by careful negotiation we enabled a workable, indeed, a sound solution for Gibraltar, we failed so profoundly to care for the UK citizens of Northern Ireland. This was indeed a political failure and one of such profundity that it demands the immediate and urgent reparation that today's Bill offers.

I worked successfully on many pieces of legislation in Brussels and Strasbourg with our Irish parliamentary colleagues. I know of the deep and continuing relationship that our two nations enjoy. I was in Dublin, by coincidence, when the Anglo Irish Bank collapsed. I saw at once the immediate action of the Bank of England to save the currency. I saw too the magnificent way in which successive Irish Governments handled the EC structural funds. Indeed, I applaud the leading role that Ireland has played in demonstrating to many other member states how structural funds can be correctly and properly used, with benefits for their whole populations.

Yet despite these splendid things and powerful, historical ties, I know too that Ireland cannot afford to embrace Northern Ireland—I believe that it is now €1.2 billion—and that Northern Ireland is and will

remain an integral part of the UK. I say that as one who has three great-grandfathers who, in both Houses, voted against the disestablishment of the Church of Ireland in an attempt to keep Ireland all together in 1869. Our respect for Northern Ireland is complete, but in the haste of Brexit we agreed a wrong piece of legislation with major, negative results for a part of the United Kingdom.

Today's Bill, unamended by the other place, should go straight through in your Lordships' House as well. Indeed, we will recall that Lord Salisbury declared more or less 150 years ago in 1869 that decisions made in the Commons are based on the will of the country and that they should not be overturned in the House of Lords. I support that view, which is exactly what my noble friend Lord Forsyth said and is perhaps the argument against my noble friend Lord Cormack.

Many of us recall the awfulness of the civil war. Brighton was just the tip of the continually erupting volcano, which took life, limb, safety and happiness from so many before the blessed Good Friday agreement. We should not look back but go forward. I remind Ministers that continuous referral to Parliament for the widest of powers that they are granted in this Bill will restore confidence in the EU that we here serve the people and that, as a Parliament, we are omnicompetent and committed entirely to turning back a wrong step if we take it. I support the Bill unhesitatingly.

5.43 pm

Lord Triesman (Lab): My Lords, I thank the noble Lords, Lord Howard and Lord Pannick, for providing us with an unanswerable case that this is a breach of international law. Many of us will want no part in a breach of international law. It is an unmoveable bedrock of what we do.

The noble Baroness, Lady O'Loan, provided a serious agenda for what can and should take place in the negotiations, which I also hope will be successful. But I have tried to reflect—particularly as I thought I would be following the noble Lord, Lord Frost—on what negotiators from the Foreign Office do when they set about the business of negotiating. One of the first things you do is think about what tools are available to you. For the most part, you cannot send a gunboat or threaten people with God-alone-knows-what. You have to go and argue on the basis of pragmatism, honesty and the expectation that you will keep your word and try to find something that is a suitable balance.

The noble Lord, Lord Forsyth, said that we should not be obsessed with history. One of the first things that happens in any negotiation is that you think about what has gone before, because if you have not understood that you have a pitiful chance of analysing what might bring the contending parties together. He was advocating negotiations between four year-olds who go into a room and shout at each other.

My noble friend Lord Murphy made the absolutely right point that all such negotiations tend to end in a compromise, which is why I hope the next negotiations will be successful. Revisiting all the issues will unquestionably take time; it was not an accident that they took time in the last iteration. They may involve the same parties, who may make it difficult, and they will unquestionably end in another compromise, because that is what happens in any negotiation. If you go in with the same tools—good faith, pragmatism and, critically, your honesty, your word being your greatest and maybe your only real asset, and recognising that the rule of law is fundamental—then you have some chance of producing a new agreement and a new compromise, and compromise is what it is.

The rule of law is important for all of us in another way. We are a country that depends on inward investment, which is attracted because people believe that we have a satisfactory rule of law. That is not on the big occasions but on every occasion when you want things to be litigated by honest and trustworthy people.

I agree with much of what has been said, not least by my noble friend Lady Chapman about the subsections, because those are also critical. However, I conclude with a point that I know will cause offence, but I am from north Tottenham and I do not mind trying to say things as I see them. It is astonishing that the Minister should have argued that it is the breakdown of the arrangements in the Parliament of Northern Ireland, in the power-sharing agreement, that has produced the peril that we apparently now face. Who is refusing to take part in power-sharing in Northern Ireland? It is arguably the most extreme right-wing party anywhere in the United Kingdom, the DUP—members of that party will not like it, but I am afraid that is my view of who and what they are. They have decided that they will not take part and that the efforts that could be made across health, education and other areas should not proceed. That is a dreadful and scandalous thing to do. I say that straightforwardly. I would never have contemplated doing anything like it.

The noble Lord, Lord Ahmad, has been welcomed back, and I welcome him—up to a point. That point is this. He is a Foreign Office Minister, and he will go out and negotiate again in the wider world. People will ask the question, as they always should of all of us: is his word to be respected? Is he capable of going back on fundamental promises that have been made? I appeal to him, because I like him, not to lose his reputation recklessly, because he is in danger of doing so.

5.48 pm

Lord Bruce of Bennachie (LD): My Lords, on 9 November 2019, Boris Johnson stated categorically about his oven-ready EU deal and the protocol:

> "There will be no forms, no checks … You will have unfettered access."

I was covering the Northern Ireland brief for these Benches at that time and I was astonished. I knew that the protocol meant that checks would be needed, and I knew that the Government and the Prime Minister knew. I immediately checked the government website and there it was in black and white: information as to what customs and excise rules would apply, where to find online forms from HMRC, and advice as to whether the extra processing would require the appointment of agents or recruitment of extra staff. That was on that same day that Boris Johnson made that assertion.

It was starkly clear that "Get Brexit Done" was a great electoral slogan for a weary electorate, but at its heart it was, and is, a deliberate deception. Yes, we are

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no longer a member of the EU, but we are trapped in no man's land. It was always clear that the border arrangements guaranteed by the Good Friday agreement would be prejudiced by Brexit. Indeed, the Good Friday agreement was predicated on continued UK membership of the EU.

Within the EU, for most practical purposes, the island of Ireland was united with free trade, joint services and an open border. The protocol secures the open border by requiring Northern Ireland to operate within the rules of the EU but, inevitably, with the rest of the UK operating outside the EU, goods travelling between GB and Northern Ireland need to be contained within Northern Ireland and the UK, or to be identified as moving into the EU. This inevitably requires checks. The issue cannot therefore be unfettered access but, through negotiation and a combination of trust and technology, to allow movement and trade with the minimum of cost and bureaucracy.

It appears that some of the ideas behind this Bill point in that direction, but the mood music of hostility and belligerence of recent years has left little room. Like others, I welcome the change of tone in recent days, but if it is just a softening-up for a deal without substantive movement, I doubt it will succeed.

It has been suggested that Brexit was a simple solution by simple people to address a complex problem. In a post-pandemic economy, with soaring inflation and the costs of a European war, to choose to erect significant trade barriers with our principal local market is a self-inflicted harm. Now is surely the time for a little humility from those who led us down this route.

I accept that, currently, there is little appetite to reverse Brexit, although the advantages are minimal and the downside is huge. But there is an expectation of constructive, non-confrontational engagement with our friends and allies—because that is what they are—in the EU to reduce friction, ease trade in goods and services and rebuild trust. The Brexit vote was narrow. Nearly half of those who voted wanted continued membership of the EU. They are surely entitled to expect constructive and friendly relations and practical engagement, especially in Northern Ireland and Scotland where clear majorities voted to remain. This should lead to full participation in Horizon and revisiting Erasmus, which Turing does not come close to in money or practice. It must ensure arrangements to allow for as free access as possible for our creative industries and professional services. This will fall short of the arrangement we enjoyed within the EU, but surely can be better than the current impasse.

We have just witnessed the SNP conference in my home city of Aberdeen. Just as those who campaigned to leave the EU decried everything about the EU and Europe as a justification for their argument, so the SNP loses no opportunity to demonise everything British. Only by leaving the UK, it claims, can Scotland flourish—while being in complete denial of its abysmal failure in every single aspect of its governance of Scotland.

It is abundantly clear that Brexiteers had no clue as to how to move the UK to a better future outside the EU. This is confirmed by the report of our Delegated Powers and Regulatory Reform Committee. It looks like the biggest abuse of executive power since the UK became a constitutional monarchy. The Government want sweeping powers without any indication of how they would use them. So, either they have a comprehensive plan which they do not wish Parliament to see, delete, debate or amend, or they have not the slightest idea of what they are doing—or probably both. That should be a clear warning that to trust Scotland's destiny to the independence-obsessed and incompetent SNP would be an existential risk. But this Bill will do nothing for the UK's economy, the unity of the United Kingdom or our standing in the world, and it should be abandoned.

5.53 pm

Lord Kerr of Kinlochard (CB): My Lords, I find the Bill rather shocking, and I fear that we have to stand up and be counted and send it back to the other place. I find it shocking in four distinct ways. First, there is the point made by the noble Lord, Lord Howard. The protocol is an integral part of the withdrawal treaty. I share a lot of the distaste that the noble Lord, Lord Forsyth, expressed for the protocol. I think that the democratic deficit point is real. But it is an integral part of a treaty that the noble Lord's Prime Minister negotiated and signed, which was commended to this House and the other House and which we voted for and ratified—and this country does not break treaties it signs: pacta sunt servanda. It has been demonstrated by the noble Lords, Lord Pannick and Lord Howard, that the doctrine of necessity simply does not apply in this case. Ours is an honourable country, which means that we cannot, in my view, approve the Bill.

Secondly, it is a power grab by the Executive. This point was made by the noble Baroness, Lady Meacher. It is astonishing to see our Delegated Powers Committee pointing out that the power grab is

"unprecedented in its cavalier treatment of Parliament".

As the noble Baroness said, the Bill allows Ministers to do by regulation anything that normally could be done by an Act of Parliament, including amending provisions that have been enacted. That is autocracy. That is not a parliamentary system.

Thirdly, it is an act of self-harm. The withdrawal treaty is the foundation on which the trade and co-operation treaty is built. I do not see how the 27 could continue to allow us the TCA's duty-free access to their market if we had broken our word and torn up the foundation treaty. I applaud the Prime Minister's rapprochement with President Macron in Prague, but the Bill would destroy any chance of building grown-up relationships with our neighbours in continental Europe. The EU has held off so far, but it would have to say "See you in court" and it would have to take retaliatory measures—a point made by the noble Lord, Lord Ricketts.

Fourthly, the noble Lord, Lord Browne, argued that having the Bill's provisions on the statute book would strengthen our hand in the current negotiations with the EU—and I am very glad that the negotiations have at last restarted. It is argued that having the gun on the table will concentrate EU minds. I am afraid there are two fatal flaws in that argument. First, the EU would resent and resist being blackmailed. It would have to, if only for reasons of precedent. Secondly, the gun is at our head. If it goes off, it is we who suffer.

What about Northern Ireland? This Bill would seriously damage Northern Ireland if our Government were to use the powers it confers on them. Northern Ireland would be out of the single market and all-Ireland links would be broken. As the noble Lord, Lord Jay, said, business in Northern Ireland really wants an end to the current uncertainty. That is the most important thing for business in Northern Ireland. Northern Ireland does not want the end of the protocol. Northern Ireland wants the end of uncertainty.

So each of these four facts seems to me to be sufficient to require us to ask the other place to think again. Cumulatively, the case is overwhelming. We have to stand up and be counted.

5.59 pm

Lord Hay of Ballyore (DUP): My Lords, as the Minister indicated earlier, we are debating this Bill against a backdrop of political instability in Northern Ireland, due in no small part to the European Union's intransigence over the Northern Ireland protocol and, regrettably, an inability, so far, to find a workable solution to the issue. Many in this House will remember opposition to the protocol, and from the very beginning we said it would be bad for Northern Ireland, simply would not work and would be a direct threat to the long-term political and economic stability of Northern Ireland.

The Northern Ireland protocol is not only an economic barrier in terms of trade in parts of this sovereign nation; it is a barrier to consensus and devolved government in Northern Ireland. As a party, we are committed devolutionists and I assure the House that we want to see the Stormont institutions up and running. The sooner this issue is dealt with, the sooner an Executive can get back and the Assembly can function properly once more.

The first priority of your Lordships' House and the other House, and of any United Kingdom Government, must be the protection and integrity of this United Kingdom and its people. The Bill before the House offers a framework to deal with the real problems that the protocol has created in Northern Ireland for some time. If enacted, the Bill has the potential to provide a solution that will restore the rights of the people of Northern Ireland, as British citizens, to trade freely with the rest of this nation under Article 6 of the Act of Union.

The Bill before us is also essential to protect the integrity of the United Kingdom market and the constitutional integrity of this nation. Such uncertainty and disruption are unnecessary. They are problematic in the long term and potentially bring into question the very future of the institutions that so many claim they understand, respect and hold dear.

In this Bill, I believe, we have a workable solution available to us to address the serious issues now. Fundamentally, the Bill is about addressing the consensus that has created political instability in Northern Ireland. To dismiss the Bill before your Lordships' House or to change it drastically would be to dismiss the consensus that formed the foundations for a durable Government in Northern Ireland. By supporting the Bill, we will go some way to ensuring that Northern Ireland's place in the United Kingdom is finally restored. We will also go some way to protecting the delicate politics of consensus in Northern Ireland.

I believe that the Bill is the only route to restoring constitutional balance as well as eliminating the trade barriers created by the protocol, and the only path to stable and sustainable government in Northern Ireland. Much of what will happen in the coming period in Northern Ireland will be shaped by the attitudes and decisions taken by this House and the other place. We are supporting the Bill.

6.03 pm

Lord Clarke of Nottingham (Con): My Lords, by far the most important reason for opposing this Bill is the fact that it is a clear breach of international law and gives Ministers powers to free themselves from parliamentary supervision in future, on an unprecedented scale. This has already been eloquently and authoritatively set out by many speakers, so I do not propose to dwell on it. I agree entirely with everything that everybody from my noble friend Lord Cormack onwards has said on that subject, and I think it would be a great blow if we were to pass legislation of this kind.

I thought in the 1990s and the 2000s—that more optimistic time—that one of the greatest things happening across the globe was the development of a rules-based international order, which gave us all great hope that we should have a more peaceful future. I never imagined that the United Kingdom would contemplate defying the rule of law—moving away from the basis of international order in a treaty with its closest allies and friends—in the way now being contemplated, but there we are. As I said, many Members of this House have eloquently set out that case, and I am sure many Members of the Government are secretly, privately, very worried about their being party to this.

Moving on to the actual politics of it, remember how we got here. The policy now being put forward is not that of a Conservative Government, unless the new Government are a total reversal of their predecessor. Boris Johnson was very proud of the agreement he reached after it was negotiated by the noble Lord, Lord Frost. There were long negotiations and no doubt about what had been negotiated. They had found a solution to the Irish problem caused by the Good Friday agreement and the fact that you cannot safely have controls on the border—something rightly sacrosanct to both the Republic of Ireland and the United Kingdom Government. They came up with this marvellous remedy that Northern Ireland would remain in the single market and the customs barriers that would inevitably follow from our withdrawal would be, first, along the English Channel between Dover and the continent, and then down the Irish Sea, with the Northern Irish having the advantage to many parts of its economy of being able to remain in the single market.

That was the policy; it should be the policy still. The part that changed was changed by the policy of the Democratic Unionists. They are the authors of this Bill, as already very eloquently expressed in this debate by the noble Lord, Lord Dodds, and his colleagues. They demanded the pistol. Theirs is the finger on the trigger because they used it as the basis for not joining

[Lord Clarke of Nottingham]
a power-sharing Executive in Northern Ireland, causing the crisis. Boris Johnson immediately started changing his position once this happened. Within a week or two, he was making statements about what he had just signed—which were plainly incompatible with the policy contained in what he had just signed. From then on, so long as the Democratic Unionists would not join the power-sharing Executive, we have gone on and on until the stage we have reached now.

I do not doubt the Democratic Unionists' sincerity on the symbolism of a customs border down the Irish Sea; they have always been consistent. But I think there is another reason behind the DUP's position: the party has just done badly in Ulster elections and is using the Northern Ireland protocol as its explanation, as it would say—excuse, I would say—for not joining a Northern Irish Executive under Sinn Féin leadership. Sinn Féin should be entitled to the First Minister's position. They are all nodding away at me. They still hold that pistol and the Government—

Lord Dodds of Duncairn (DUP): I am very grateful to the noble and learned Lord for giving way since he has made a direct accusation. I reassure him and the House that the Democratic Unionist Party would have no difficulty in re-entering the Executive with a Sinn Féin First Minister. We do not like that outcome but we will do that if the protocol is sorted out, so let us not go down a blind alley or a false argument as far as that is concerned.

Lord Clarke of Nottingham (Con): I am extremely reassured to hear that but it is still "if the protocol is sorted out". Who will decide whether the protocol is going to be sorted out? Who will determine the negotiating position of British Ministers in their discussions with the European Union? It will be the noble Lord, Lord Dodds, and his Democratic Unionist colleagues. The British Government will not—and, given the policy now, cannot—sign up to anything unless the Democratic Unionists agree because they will not achieve their aim of getting back to power-sharing. This is an impossible position.

We should have had a softer Brexit, but the hard Brexiteers took over. We should have stayed at least in the customs union, but that is now water under the bridge. The fact that we have come out is causing difficulties at Dover as much as it is in Belfast; it is causing damage to the United Kingdom economy just as it is to sections of the Northern Ireland economy—although some are lucky enough still to be in the single market and benefit from that. The only way out, as everybody has said, is sensible negotiations, but negotiations on the British Government's own terms. They should get the DUP onside if they can, but we cannot allow the whole thing to be dictated by the sincere opinions of the Democratic Unionist Party, as it has been so far to get us to this position.

6.10 pm

Lord Bew (CB): My Lords, I support the Bill. I speak as a remain voter, a strong supporter of the Good Friday agreement—I supported it when it was not quite so fashionable as it seems to have become—and a civil rights marcher.

However, I support the Bill and I shall explain my first reason. There is an international treaty, and under Article 1, paragraph 5 of that treaty, the Good Friday agreement, which is lodged at the United Nations, a sovereign Government have the responsibility to deal with the alienation of one or other community. A few weeks ago, because of the effect on the aspirations of the nationalist community, we passed the Irish language Bill in this House in the spirit of that international treaty. The Bill today is designed to reach out to the unionist community, which is alienated on the subject of the protocol, and is designed to offer some comfort.

Mode of address is everything in politics; it is very important to say that. I have never felt more Irish than when listening to this debate today. The Irish expression "The day that's in it" came to mind; to give your Lordships the English translation, "Timing is everything in politics". There is talk of suspending the Bill for six months. Obviously, I listen more to the Irish media than other Members of this House, but when the Taoiseach says the negotiation now going on is in good faith and the Foreign Minister says the Bill is not an issue causing blockage, the only effect will be to disrupt the attempt to mollify the alienation of the unionist community on this issue, but we are committed under an international agreement to act just as we did with the Irish language Act a few weeks ago. That would be the only effect of a delay. These negotiations are well ahead. It might conceivably have been argued that the negotiations would be affected in a bad way, but there is absolutely no such effect. It is important to say that.

The noble Lord, Lord Howard, raised the issue of Article 16. The truth is that at this moment—again, "The day that's in it"—it would be ridiculous. These negotiations were started at various times. Eminent international lawyers have said the Government's approach needs Article 16. The Government's approach is basically right to protect the Good Friday agreement, but you have to explore all routes, and Article 16 may yet return, but at this moment it would be absurd. It would cause irritation in Dublin. Timing is everything in politics, if I may say so.

I turn to illegality: pacta sunt servanda. There is more than one treaty involved. I have already tried to explain this. In fact, there are three international treaties, including the 2017 joint agreement—which, by the way, talks about unfettered access, which apparently we are not allowed to expect but is in that international agreement.

The point about the 2017 agreement, as the Irish lead official Rory Montgomery has said, is that basically the Irish Government were ceded by the British Government sole control of the Good Friday agreement. It is a two-sided agreement; not only that, but as a sovereign Government we have more responsibilities than the Irish Government. That set the template for the difficulties in all the subsequent agreements that we are now trying to resolve. It is how we got into this place and we are now trying to sort it out. It is messy, but the negotiations are now in play. The Bill was launched in June and passed in the House of Commons, and the EU has not said, "Oh my God, this is so brutal, we can't talk". I am not saying we are talking

because of the Bill—although I know plenty of people who believe that—but I am certain that you cannot argue that the Bill is preventing this negotiation. That is how it is going to be resolved.

In conclusion, I want to say a word about international agreements. On 12 March 2019 the Brexit Secretary—with, he said, the sanction of the Attorney-General—said the Good Friday agreement was the prior agreement. In the event of subsequent agreements being in conflict with that agreement, the UK reserved the right to resile, under the Vienna convention, from the Good Friday agreement. That may be bad law, but it was that Attorney-General in the May Government. Nobody actually knows what international law is on this, to be absolutely honest; I do not want to be too brutal about it, but nobody does know. I am simply saying that the argument in play now is exactly the original argument. For some time now, three years or more, the UK Government have been saying, "We have two treaties to work with here and the Good Friday agreement is important to us". We have heard from the noble Lord, Lord Jay, that the east-west dimension of that agreement is not working under the protocol and therefore we have a problem. So the UK Government's position is, at least in that limited sense, a consistent argument.

As I keep repeating, under that protocol the UK Government have special responsibilities, which the Irish Government do not, to address the alienation of communities. I could accept the argument that some of the Bill is a bit cack-handed or not to everybody's taste, but the fact that the Government are making a separate, desperate effort to address the alienation of one community is entirely within the logic of their international obligations. It must be understood that the treaty is in the United Nations and has no other possible meaning.

I have a few words for those in the Democratic Unionist Party. I understand that they feel that a lot of civilised opinion among the commentariat in Northern Ireland is willing them to fail, and I totally accept the good-faith remarks from the noble Lord, Lord Dodds, today. For example, in the few days before the Bill was introduced, the commentariat said it was never going to happen—but nobody then apologised in the collective wisdom of Northern Ireland. I understand the irritation with all that, but it is the case that on 27 June the DUP explicitly stated in the House that in the event that the Bill passed the Commons on its Second Reading, there would be moves towards the return of devolution. No such moves have happened. This is the vulnerability, and it is why the noble and learned Lord, Lord Clarke, is able to raise the issue of good faith. Ultimately, I accept that good faith—but no such move has happened.

The consequence is that we are likely to be moving towards an agreement between the EU and this country, and those in the DUP will be excluded from the terms of it. They will just be the passive recipients of whatever comes down the line and they will lose the place that they rightly hold—Northern Ireland, by the way, is a co-premiership—under the recent election results in the institutions of Stormont. It is time to think again about moving. I know there are all kinds of issues, but it is time to think again about moving because the centrist vision that their leader is now putting forward cannot be achieved if there is a bitter and resentful election, which is extremely likely to follow if we do not move quickly.

6.18 pm

Lord Lilley (Con): It is a privilege to follow the noble Lord, Lord Bew, who has made the important point—strangely ignored by all the lawyers who have spoken so far—that we are subject to conflicting international agreements that cannot be reconciled without breaking, in part, some of them.

We all agree that there should be no infrastructure or checks at the border between Northern Ireland and the Republic. Why? Not just because they would disrupt trade but because they would be a provocation to republicans and would probably be blown up, threatening the whole peace process. By the same token, we should all agree that there should be no border between Great Britain and Northern Ireland. It disrupts a far larger volume of trade and, as we have seen, it is provocative to unionists and is gravely undermining the Belfast agreement. As it happens, Article 6.2 of the protocol commits both parties to avoid infrastructure at the ports and airports of Northern Ireland to the extent possible—but the EU ignored that and actually invoked legal procedures to require the introduction and building of checkpoints at Northern Ireland ports.

The EU's only legitimate interest in the protocol is to protect its internal market. At present, the threat to its market is imaginary, and in the future any threat would only come from third-country goods which incur a lower tariff to enter the UK than the EU tariff, from goods, if any, which are subject to lower standards in the UK market than are required under EU law, and a minority of those two groups of goods which are actually destined for the Republic. If this Bill provides an equal, or possibly greater, protection against these pretty minor threats, the EU has no pragmatic reason to insist on retaining the complex procedures envisaged under the protocol. Moreover, under Article 24 of the WTO Trade Facilitation Agreement, to which all EU states adhere,

"where two or more alternative measures are reasonably available for fulfilling the policy objective",

the least trade restrictive measure must be taken—an obligation which the EU is in fragrant breach of.

But some in the EU have an illegitimate reason for hanging on to the protocol, which is to make sure that Britain suffers for Brexit. That raises the question: can we lawfully, unilaterally, replace the Northern Ireland protocol by other measures which meet the EU's legitimate objectives, avoid a hard border and protect the Belfast/Good Friday agreement? I believe we can do so.

First, the sole justification for the protocol was to uphold the Belfast agreement. As the former Lord Chancellor pointed out, the very first article of the protocol says:

"This Protocol is without prejudice to the provisions of the 1998 Agreement".

So, as he said, the Belfast/Good Friday agreement takes precedence over the protocol. The UK, as guarantor of the Belfast agreement, has not just a right but a duty to ensure that, where the protocol threatens the

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Good Friday agreement, it is changed—preferably by agreement, but if not, otherwise—as envisaged in Article 13 of the protocol.

Secondly, the protocol is intrinsically temporary; the EU itself said so. It said that no permanent agreement with a member state can be reached under Article 50—only temporary and transitional relationships. That is why we had to leave first before we could negotiate the permanent trade and co-operation agreement. The then Solicitor-General told Parliament:

"article 50 of the Treaty on European Union does not provide a legal basis in Union law for permanent future arrangements with non-member states."—[*Official Report*, Commons, 3/12/18; col. 547.]

So, he went on, if someone were to mount a challenge to the protocol on the basis that the EU said that Article 50 is not a sound basis for a permanent agreement,

"I tell you frankly, Mr Speaker, they are likely to win".—[*Official Report*, Commons, 3/12/18; col. 555.]

That was pretty emphatic advice from a lawyer. If the EU now repudiate that doctrine, then the protocol was negotiated in bad faith, which itself is grounds for us to replace it.

The reason the protocol is undermining the Belfast agreement is that it lacks the consent of the unionist community, who see it as undermining the Act of Union itself. Indeed, the court in Northern Ireland has ruled that the protocol "subjugates" the Act of Union.

What should a state do if it finds that its obligations under one treaty conflict with those under another treaty or with its own constitutional law? Let me answer that question in the words of the European Court of Justice in the Kadi case. The court affirmed that,

"although the Court takes great care to respect the obligations that are incumbent on the Community by virtue of international law, it seeks, first and foremost, to preserve the constitutional framework … it would be wrong to conclude that, once the Community is bound by a rule of international law, the Community Courts must bow to that rule with complete acquiescence and apply it unconditionally"—

what is right for the EU is surely right for the UK too.

In short, we have a right and a duty to replace this protocol—preferably by agreement; if not, unilaterally—under EU law because it is temporary, under the EU's own doctrine that international obligations must be subordinated to supreme constitutional laws by the Act of Union, under the protocol itself which says that the Belfast agreement takes precedence over the protocol, and under the WTO Trade Facilitation Agreement, of which the EU is in breach. So I support this Bill.

6.24 pm

Lord Bach (Lab): My Lords, I am a simple soul, and the argument put forward by the last few very eminent speakers is not one which persuades me. The reason that persuades me that this is a bad Bill which should never become law is that it will not only allow Ministers excessive powers—which have not yet been defended by anyone so far, so I look forward to what the Minister has to say about that—but also put us at serious risk of breaking the rule of law. And it is that, as a simple lawyer a long way back, that concerns me, and I have not heard an argument yet that says that that is a wrong argument.

Of course the other parts of the Bill are astonishing—the Henry VIII powers I have mentioned and the potential effects on human rights too—but, as far as the rule of law is concerned, I remind the House that this is the second time in less than six months that the Government have sought such powers. Noble Lords will remember perhaps how this House resisted on a number of occasions earlier this year that part of the Nationality and Borders Bill which also represented a breach of our obligations under the very well-established refugee convention to which we have always been signatories, and this too was an attack on the rule of law. At length, the Government got their way and the offending clause stayed in the Bill, which is now—shamefully, I would argue—an Act of Parliament. But as my noble friend Lady Chakrabarti said, as she moved for the last time her amendment, if the House of Lords does not defend the rule of law, what are we for? I think that issue arises again today.

And now we have been asked to do it again. The Government claim necessity in law, and the arguments that we have already heard in this debate have shattered that proposition in this particular case. Has there been enough thought, or any thought, by the Government of the difficulty to the reputation of our country and what it stands for, and has done for a long, long time? Does it matter to the Government that other countries will already be reluctant to take our word on anything if we can so callously breach obligations? Why should they listen to a word that we say?

Of course, we all hope for an agreement in the current negotiations, but to me it is essential that we must be firm: we must as a House tell His Majesty's Government that this Bill is unacceptable. I want to quote—and I have warned him that I am going to—from the noble and learned Lord, Lord Brown of Eaton-under-Heywood, who said on the occasion that I was just referring to, when that last Bill became an Act of Parliament:

"There are not many issues that it is worth going to the stake for, but surely the rule of law is one."—[*Official Report*, 27/4/22; col. 299.]

Sometimes we just have to say no.

6.28 pm

Baroness Wheatcroft (CB): My Lords, yesterday much of the debate in this Chamber concerned the havoc in the markets caused by the Government's mini-Budget. Confidence in the UK's financial stability has been badly shaken. The cost is huge for ordinary people in this country with mortgages, and the rest of us will all be paying. But this morning the rout continued: the Bank of England had to wade in again to try and restore a degree of confidence.

Imagine how that loss of confidence in the UK would be compounded if we were to unilaterally tear up an international treaty. Now, it may be, as the noble Lord, Lord Bew, suggests, that international law is not always very clear, but when the noble Lord, Lord Howard of Lympne, the noble Lord, Lord Pannick, and the noble Baroness, Lady Kennedy of The Shaws, all see things from the same point of view, I tend to think that they might be right. If this Government so clearly state that the UK's word is no longer its bond, then what does it mean for the value of our bonds, which are already being trashed?

There is so much to detest about the Bill, not just its contempt for international law. This afternoon, we have heard from so many Members about why it is at risk of breaching international law and is about to breach so many of the rights of Parliament. The noble Lord, Lord Forsyth, said that the Bill was about restoring democracy but, as the noble Baroness, Lady Chapman, pointed out, the Bill gives so much power to the Executive and shows such little respect for Parliament that it is an insult to democracy. The noble Baroness, Lady Meacher, pointed out that it is seen as pushing Henry VIII powers further than they have ever been pushed before.

The protocol is not perfect but the threat to impoverish the UK and Ireland, north and south, that we would sustain if we went ahead with the Bill would be appalling. Trade between these countries has flourished post pandemic. For the first seven months of 2022, imports of goods from Northern Ireland to Ireland are actually running 93% higher than in 2019. As the noble Baroness, Lady O'Loan, pointed out, what Northern Ireland has is the possibility of the best of both worlds. If we can get a negotiated solution to the problems with the protocol, Northern Ireland is the winner.

The Bill not only jeopardises that but contains provisions which are simply not workable. The proposed dual regulation route for regulated goods is deemed a killer by those in agribusiness, in particular; they simply could not cope. As the noble Baroness, Lady Doocey, said, dual regulation would decimate the Northern Ireland dairy industry. According to the British Irish Chamber of Commerce, the bureaucracy involved would be increased to unmanageable levels.

It is really encouraging that technical negotiations have resumed between the EU and the UK; it is in the interests of both to sort this out. That should be possible; the EU already has veterinary agreements, for instance, with New Zealand and Switzerland. Why not the UK? That would enable Northern Ireland to continue trading without the onerous bureaucracy. The Specialised Committee on the Protocol is already mandated to address any issues with implementing the protocol. If its powers were strengthened, it would be able to respond effectively to the problems perceived by business and provide speedy solutions to smooth cross-border trade, while showing respect for the EU single market.

This may look like a fudge, but fudge is the only way to solve what was always the core problem of Brexit: how to have a border without a border—impossible, so fudge it. Unfortunately, the noble Lord, Lord Frost, whose name is on the speakers' list, is not here this afternoon. I was hoping he would be able to tell us why he supports the Bill when it was only on Christmas Eve 2020 that he tweeted:

"I'm very pleased and proud to have led a great UK team to secure today's excellent deal with the EU."

It was not a great deal but, having agreed to it, it is now incumbent upon our Government to make the best of it and not further damage our international reputation.

6.34 pm

Lord Morrow (DUP): My Lords, I was really fascinated when I listened to the noble Lord, Lord Bew, asserting that no one really understands international law. I noticed that there was no challenge when he said that. The noble Lord is someone for whom I have a high regard and high respect. He does not always agree with me and I certainly do not always agree with him, but that does not diminish my respect for him in any way.

When this Bill was in another place, the right honourable Hilary Benn MP said:

"Let us not forget that Northern Ireland is in a unique and favourable position compared with my constituents, precisely because it has access to both the market of the United Kingdom and the market of the European Union".—[*Official Report*, Commons, 20/7/21; col. 1014.]

The more I have thought about his comment, the more troubled I have become, and the more I wonder whether Mr Benn and those making similar assertions have really thought through the full implication of their position. I do not accept for one moment that the protocol is an economic benefit—in a five-minute speech, it will not be possible to go through all that—but to humour Mr Benn, let us assume for a moment that he is right.

What is the effect of encouraging the people of Northern Ireland to be reconciled to sacrificing their vote as it relates to 300 areas of the lawmaking to which they are subject in return for economic gain? The dignity of our politics is based on the fact that people are ends in themselves, not means to an end. The idea that the guarantee of our equal value—our equal citizenship—can be appropriately traded to any degree as a means of becoming rich is about the most disturbing thing I have ever encountered in all my political life, which now extends to about 50 years. It amounts to encouraging us to sell our political souls for economic gain. That we in this Parliament should be brought so low when we regard our historic commitment to political freedom and democracy is, to say the very least, shameful.

I could quote any number of our great political thinkers to illustrate this point but lest anyone suggest I am too parochial, the importance of keeping friendly with France has already been mentioned here today. I will thus quote a French person by the name of Montesquieu, whose celebrated *The Spirit of the Laws* AJ Carlyle summarised thus: that in a free state every man and woman who is considered to have a free spirit should be governed by himself, or herself, and therefore the people as a body should have the legislative power but as this is impracticable, the people must act through their representatives, chosen by local election.

The right to participate in your Government, rather than being a passive recipient, is of course also provided for by international law—whoever understands that. The right to political participation can be found in provisions such as Article 25 of the International Covenant on Civil and Political Rights and Article 21 of the Universal Declaration of Human Rights, which states:

"Everyone has the right to take part in the government of his"

or her

"country, directly or through freely chosen representatives … Everyone has the right of equal access to public service"

in their country. The people of Northern Ireland have lost their ability to take part in the government of their country in relation to some 300 areas of law. They can no longer stand for election to become

[LORD MORROW]

legislators and make laws in these areas or elect a legislator to represent them in this task because, under the Brexit arrangements, these laws are now made for Northern Ireland by the EU—a polity of which it is not a part and in whose Parliament it consequently has no representation whatever.

In Northern Ireland, of course, these points are greatly compounded by the additional protections of the Good Friday or Belfast agreement, which sets out

"the right to pursue democratically national and political aspirations".

This additional protection for the integrity of the vote in Northern Ireland reflects our troubled history, where sadly in the past some have been persuaded to trade the ballot box for the bomb, and the need to ensure that the value of democratic engagement is never demeaned or eroded.

Furthermore, the hands of the UK Government are prevented from acquiescing with the erosion of the value of the vote by reallocating the making of their laws in some 300 areas to a polity of which it is not a part and in which it has no representation at all, courtesy of Article 2 of the protocol, which states:

"The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union".

The meaning is clear. There can be no diminution of the rights of people in Northern Ireland to pursue democratically national and political aspirations from the 1998 level that the Good Friday agreement protects. Yet every time legislation is placed on Northern Ireland by the EU legislature, in which Northern Ireland is not represented, the Good Friday agreement is violated. That surely should concern us all, not least those who are strong advocates for the Good Friday agreement.

6.40 pm

Viscount Hailsham (Con): My Lords, I rise to express my opposition to the Bill. I am opposed to it both in principle and in detail. Because other noble Lords have developed the arguments, I will confine myself to a summary of my views.

First, I believe that the Bill is a serious breach of our treaty obligations. It will do great damage to our international reputation and thus to our interests. I do not believe that the doctrine of necessity has any application to the present situation. The reasons were eloquently expressed by my noble friend Lord Howard and, incidentally, by Mrs Theresa May at Second Reading in the House of Commons. It should therefore be noted that two former leaders of my party are against the Bill.

We are dealing with treaty obligations entered into very recently, in a treaty that, as most people—other than the then Prime Minister, apparently—correctly understood, created restrictions on trade between Great Britain and Northern Ireland. Such restrictions are the direct consequence of the hard Brexit favoured by present Ministers. To renounce obligations voluntarily undertaken, in full knowledge of their significance, is a serious breach of faith and an act unworthy of this country. A reputation for probity, once lost, is very hard to regain.

Secondly, the Bill confers on Ministers numerous powers to do by secondary legislation what should be done by primary legislation. It enables Ministers to abrogate most of the most important articles of the protocol without any effective parliamentary process. All the regulations will be unamendable, and most will be subject only to the negative procedure. The House should perhaps note that our Delegated Powers Committee recommended that 12 clauses or subsections should be removed from the Bill.

Thirdly, the Bill defies the majority opinion in Northern Ireland. Most Assembly Members, and the public, if the polls are correct, favour the retention of the protocol, albeit modified. The DUP should realise that a failure to compromise on its part will imperil political stability in Northern Ireland and damage the wider interests of the United Kingdom. For that, it will be directly responsible—I agree with the noble Lord, Lord Triesman. Being part of the union involves obligations as well as rights. Moreover, the House should note, from the speech of Sir Jeffrey Donaldson at Second Reading, that enactment of the Bill will not by itself lead to the restoration of the local institutions.

Fourthly, the passage of the Bill could trigger some form of trade war with the European Union, our biggest, nearest and most important partner. In the context of the present political and economic difficulties, this would be an act of extraordinary folly.

Fifthly, I treat with the greatest caution the judgment and underlying views of the leading advocates of the Bill. Most of them either were advocates of Brexit or have since advocated an exceptionally hard form of Brexit. These policies have done, are doing and will continue to do immense damage to this country's interests.

So the way forward lies in negotiation, to seek a consensual outcome to the difficulties that exist. We must work with, not against, our neighbours in Europe. The present mood music is modestly encouraging, but a willingness to compromise on the part of the European Union is unlikely to survive the enactment of the Bill. If a consensual outcome proves impossible, the provisions of Article 16 could and should be triggered. Although that would be undesirable—I agree with my noble friend Lord Howard—it is at least compatible with our treaty obligations. Those in summary are my views. I cannot and will not support the Bill.

6.45 pm

Baroness Crawley (Lab): My Lords, I am pleased to follow the noble Viscount, Lord Hailsham. Our spirits, battered by the dreadful war in Ukraine, were lifted last week on learning that meaningful technical talks have finally resumed on efforts to resolve the dispute between the Government and the EU on the protocol. Of course, we all wish them well. None of us here is saying that the present situation with customs and the movement of goods between GB and Northern Ireland is not a problem on the ground for many Northern Ireland businesses and for even more Northern Ireland consumers. In that spirit, thanks must go to the noble Lords, Lord Dodds and Lord Morrow, for organising the briefing on this with Peter Summerton today.

However, what many of us are saying is that the Bill is a barely legal, dangerous decoy in the efforts to find a solution to those problems. It also puts in jeopardy the Good Friday agreement. Should the Bill ever become law, it would unilaterally disapply provisions of the agreed Northern Ireland protocol in domestic law. It would give Ministers extraordinary delegated powers to change whichever bits of the protocol they just do not like, as my noble friend Lady Chapman said in her forceful contribution. As many noble Lords have said, the Lords Delegated Powers and Regulatory Reform Committee is so concerned about the sheer scope of these powers that it recommends their removal from the Bill.

The Government are of course aware that the Bill will lead to a shirking of their international legal obligations, but they maintain that this is justified in international law by the doctrine of necessity—rather than invoking Article 16, as the noble Lords, Lord Pannick and Lord Howard, my noble friend Lady Kennedy and others have said. The doctrine of necessity has been invoked before, in Pakistan in 1954, to validate the extra-constitutional use of emergency powers. It was invoked in Grenada in 1985 to legalise a court that was trying people for a coup against Maurice Bishop. It was invoked in Nigeria in 2010 to create an acting president and commander-in-chief of the armed forces. Are we really saying that the situation in Northern Ireland, however problematic, justifies a doctrine used in the past for coup breaking and the instigation of martial law? I do not think so, and neither do most people and businesses in Great Britain and Northern Ireland.

The committee on common frameworks—our chair, my noble friend Lady Andrews, is here—looks at building the new UK single market post Brexit. When it took evidence from businesses and farming organisations operating in Northern Ireland last year, the messages we received were mixed. Yes, we heard about great frustration with the hold-ups and the lack of certainty on the movement of goods from GB to NI, leading to real logistics costs and investment difficulties. But we also heard acceptance of the economic model of the EU single market operating in Northern Ireland to protect that precious land border. We even heard some acknowledgement of the benefits for Northern Ireland businesses of being in the unique position of having access to two major worldwide trading markets, as the noble and learned Lord, Lord Clarke of Nottingham, powerfully pointed out and the noble Lord, Lord Morrow, has just decried.

Since the publication of the EU Commission's non-paper of October 2021, which was dismissed as irrelevant by this Government, we have seen very practical examples set out by the EU to find solutions to the needs of Northern Ireland business—examples informed by EU discussions with those businesses and a willingness to move quite far on inspection reductions and certification. However much we want to ensure that the businesses and consumers of Northern Ireland are dealt with fairly and with justice, this wretched Bill will not do that, and it needs go no further.

6.51 pm

Lord Hannay of Chiswick (CB): My Lords, the Bill we are debating today is deeply flawed, on grounds of both practice and principle. Moreover, it is a completely unnecessary piece of legislation, as anyone can see who takes the trouble to read the report of the Northern Ireland protocol sub-committee of your Lordships' House, chaired by the noble Lord, Lord Jay of Ewelme, which was published just before the Summer Recess. That report makes it clear that, on the main issues dogging the implementation of the protocol—the need for a fast-track procedure and the safeguards protecting the EU's single market in Northern Ireland for trade in agri-food products—the gap between the Commission's and the UK's positions is now very small. That seems to be the view of the Commission; is it that of the Government? If so, what is the rationale for this objectionable piece of legislation?

The practical flaws in this legislation are pretty obvious. It is said by the Government to be designed to bring the Commission to accept the UK's version of the protocol. Has it had that effect? There have been no meaningful negotiations since February, so it does not seem to be working terribly well. Negotiations are now at last beginning; I noticed that the Minister described them as "technical contacts", which was not terribly encouraging. I hope—we must all hope—that they succeed in bridging those rather narrow gaps that remain because, if the activation of the unilateral measures provided for in this Bill lead to retaliatory action by the EU, both Northern Ireland and the rest of the UK will be left worse off for an indefinite, open-ended period until another lot of negotiations begin.

It is also said by the Government that unilateral action is needed to safeguard the Good Friday agreement—an objective shared by every noble Lord who has spoken. But will this course of action be helpful or will it make things worse? The latter view seems to be that of the Irish and US Governments, the Commission, the non-unionist parties in Northern Ireland who hold a majority of seats in the Assembly and of most reasonably objective observers. Clearly, the views of the unionist community must be listened to with care, but the principal party on the unionist side of the Northern Ireland divide, the Democratic Unionist Party, actually bitterly opposed the Good Friday agreement, so may just possibly not be the best judge of what is now needed to safeguard it.

Then there are the considerations of principle against the course of action proposed. These are, if anything, even more compelling than the practical ones. We are being asked to approve unilaterally changing the protocol in a way for which there is no provision in the text negotiated and ratified by the Johnson Government, and which the manifesto that won the Government their majority in the other place said they were committed to implementing.

What then should we think of the so-called "doctrine of necessity" set out in an official document published in conjunction with the laying before Parliament of this Bill and purporting to provide the legal justification for the UK to unilaterally break the terms of the protocol? If the doctrine does exist—which I seriously question in anything like the circumstances of the Northern Ireland protocol—it presumably applies potentially to all the UK's international commitments and obligations, ranging from the UN charter to Article 5 of the Atlantic alliance to every other commitment

[Lord Hannay of Chiswick]
entered into and ratified following parliamentary approval. That is absurd and extremely dangerous. The doctrine of necessity was the doctrine that President Putin applied when he invaded Ukraine and the doctrine to which President Xi would turn if he wished to use force against Taiwan. We should have nothing to do with a doctrine which is so clearly the very antithesis of the rules-based international order to which the Government continue to pay lip service while ignoring its implications.

Overall, this is an unnecessary Bill which, in its present form, will do more damage than good and which thus requires radical amendment or not to be pursued at all.

6.55 pm

Lord Godson (Con): I rise in support of giving the Bill a Second Reading and as another member of the Sub-Committee on the Protocol on Ireland/Northern Ireland, chaired by the noble Lord, Lord Jay, to whom I pay tribute for his role as chair and for his remarks.

This is also the first time that this House has assembled to discuss the affairs of Northern Ireland since the demise of my late noble friend Lord Trimble. I know it will unify the House to pay tribute to him; he was a friend to many here across many divides. More particular to this context, Lord Trimble's last great cause was opposing the Northern Ireland protocol and the legislation required here today. He did it for many good reasons, not least of which was his view that it constituted a very serious undermining of the Belfast/Good Friday agreement, for which, with the late John Hume, he became a Nobel laureate—the last Nobel laureate for peace to sit in either House of Parliament. He played a key part in the design of that power-sharing model: strand one on the internal governance of Northern Ireland, strand two on north-south and, perhaps most significantly for today's purpose, strand three on the east-west dimension. All were underpinned by the principles of consent and, perhaps even more importantly in light of the legislation we are discussing today, parity of esteem.

More particularly, the late Lord Trimble negotiated the strengthening of those east-west institutions so that they were defined not solely by a relationship between Dublin and London but by a relationship between Belfast and London and between the other component parts of the devolved settlement in Edinburgh and Cardiff. It also provided Irish recognition of unionist identity and aspiration, as conversely it provided for recognition of many aspects of Irish culture, notably the Irish language.

It is significant that the recent book *One Good Day* by David Donoghue, the Irish head of the Anglo-Irish Secretariat in Belfast at the time of the Good Friday agreement, makes this very point. He writes that the Ulster Unionist Party

"could contemplate North/South bodies only as a by-product of an expanded East/West relationship … Unionists regarded such a"

British-Irish

"Council as a necessary counterweight to the North/South institutions which nationalists wanted. We had no fundamental difficulty with this. We understood the need for unionists to see their identity given institutional expression."

I was particularly grateful for the earlier comments of the noble Baroness, Lady Chapman, acknowledging Tony Blair's part in the forging of that settlement. Whatever differences and controversies there may be about his legacy—not least in the Labour Party—there is, as the noble Baroness said, no difference on this matter. It is important for this purpose: Tony Blair understood the late Lord Trimble's concerns, when he was the Ulster Unionist Party's leader, on consent for north-south co-operation and, above all, on the importance of the east-west relationship. More to the point, he became a persuader for that east-west relationship because he knew that it was key to David Trimble forging the 1998 Good Friday agreement.

That agreement, with power-sharing, north-south co-operation and strong guarantees for the east-west relationship, is therefore not only part of David Trimble's legacy; it is part of Tony Blair's and the Labour Party's legacy as well. Indeed, he could describe strand 3 as comprising Northern Ireland and the rest of the UK, with no mention—incorrectly, if I may say so—of an Irish dimension.

The protocol has damaged this key relationship, as noble Lords all recognise. East-west co-operation is now uncertain. Goods are subject to all kinds of checks and delays, and even a prohibition designed to protect north-south co-operation, without regard to the implications for the east-west relationship. That is not the basis for the harmonious relationship envisaged in 1998. It also, as indicated, contradicts the principle of parity of esteem for both communities. After all, if trade is important for the north-south dimension, it is equally important for the east-west dimension. This Bill is therefore a necessary corrective for rectifying the damaged relationship and restoring the balance—the delicate balance, as many speakers have pointed out—of the Belfast/Good Friday agreement. I welcome it wholeheartedly.

7 pm

Lord Birt (CB): My Lords, I start by observing that today's debate has seen the House of Lords at its very best, all sides expressing their arguments with force and conviction. We were particularly privileged to hear the blunt political appraisal of the noble and learned Lord, Lord Clarke of Nottingham, and my noble friend Lord Bew's intense and passionate plea to the DUP—I hope they heed it.

Like many others, I am fundamentally opposed to this Bill. Echoing my noble friend Lord Kerr, I oppose it for four reasons. First, as has been commonly observed throughout this debate, the Bill is unlawful. The whole weight of legal opinion is that the protocol cannot be overturned under the doctrine of necessity. The unexpected duo of my noble friend Lord Pannick and the noble Lord, Lord Howard, argued that case with ferocious persuasiveness. They are supported by a former head of the Government's own legal department, who described the Government's defence of it as "hopeless", and that surely represents the consensus.

Acting unlawfully is not just wrong but, as others have observed, gravely damaging to the UK's reputation internationally. Following the death of Her late Majesty the Queen, virtually the whole world was reminded of

the power and, indeed, majesty of our constitutional settlement; of Britain's path-finding route to democracy; of our solemn, centuries-long commitment to the rule of law. The rest of the world made perfectly clear during our period of national mourning just how much they respected us and admired that tradition. The calamitous mini-Budget has done untold damage to the UK's reputation for fiscal probity. Please, may we not further sully our reputation by breaching a solemn and long-negotiated international treaty.

Secondly, the Bill is deeply offensive to Parliament, conferring as it does breathtaking delegated powers for Ministers to override much of the protocol without Parliament's express consent.

Thirdly, passing the Bill will damage our relations with the EU when we should be doing everything possible to repair them after the bruising experience of Brexit. Overturning the protocol risks retaliatory action, affecting trade with our closest neighbour, our principal trading partner and one of the world's largest economic blocs, with six times our GDP. A trade spat with the EU would certainly be a further blow to UK growth.

Fourthly, beyond trade, Putin's anarchic bellicosity has driven home just how important it is for Europe to stick together, not least because history tells us that we will not always have a President in the White House as ready to defend Europe as Joe Biden.

Northern Ireland is where the Brexit rubber hits the road. Maintaining an open border with the Republic while exiting the EU was and is an enormous challenge, well explained by my noble friend Lord Jay and eloquently by the noble Lords, Lord Dodds and Lord Browne. There are real difficulties and they need to be addressed.

The Good Friday agreement was an enormous achievement, as the noble Lord, Lord Godson, just reminded us. Ultimately, it is a credit not just to Tony Blair but to all the sides involved, and we will find a solution to the conundrum of Brexit in Northern Ireland, which we must resolve, only by repeating that process of dialogue—not least with the patently well-intentioned participation of the Irish Government. Of course, the DUP must have a place at the table, but I gently urge the DUP to remember that 56% of the people of Northern Ireland voted in the referendum to remain in the EU, and that a clear majority of the Northern Ireland Assembly have declared themselves content in principle with the protocol, so the DUP must be ready to give and take too.

This Government are now very practised at U-turns. I express the hope that they will soon withdraw this highly destabilising Bill and choose instead the path of negotiation and reconciliation.

7.06 pm

Lord Tugendhat (Con): My Lords, I begin by congratulating my noble friend Lord Cormack on his amendment and on the way in which he introduced it. Unfortunately, I missed many of the speeches that followed because I was engaged, with the noble Earl, Lord Kinnoull, in a committee meeting upstairs, but I was back in time to hear the noble Lord, Lord Kerr, express his amazement that a British Government should seek to renege on an important part of the treaty that they had negotiated freely, had brought before Parliament and had supported in Parliament. I agree very much with him on the significance of such an action.

I really do not believe that any Prime Minister before Mr Johnson would have introduced such a Bill. I am certain that one Prime Minister who would never have introduced such a Bill, or contemplated such an action, was Margaret Thatcher. I was a witness to many of her disputes with the European Union and one of the most striking features of her approach to these matters was that she believed in the rule of law and always rejected advice to break the law. Thankfully, we have moved on from Mr Johnson and I congratulate the Truss Administration on embarking on serious talks and negotiations with our friends in Brussels and Dublin. I also wish Ministers well in their efforts to sort out matters in Belfast, where the DUP has made such a strong link between the protocol and participating in the governance of the Province.

The EU itself has made constructive proposals, so the atmosphere is quite different from what it was only a short time ago. It seems to me vital, both to the UK's national interest and, I would argue, to western cohesion in the face of Putin's war, that the negotiations to which I have just referred should resolve the outstanding issues relating to the protocol. In the face of the escalating Ukraine war and the economic and energy disruption that it is causing, it would be the height of irresponsibility for the British Government to allow the Northern Ireland protocol to drive a wedge between us and the EU, and between us and our friends in Washington.

In these circumstances, I simply cannot accept the Government's reasons for rushing ahead with the Bill at the present time. Suggestions that it will somehow encourage the EU to reach agreement—that a sword of Damocles hanging over the EU will bring it to heel—bear no relation to any conceivable reality. Far better would it be to negotiate in earnest, as I believe the Government are seeking to do, and demonstrate their good intentions by putting the Bill on ice in the hope that it will not have to be proceeded with any further once an agreement is reached.

I certainly support my noble friend Lord Cormack's amendments. Should they come to the vote, whenever that should occur, I hope the House will support him too.

7.10 pm

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, having listened to the debate thus far, I appreciate that DUP-bashing can be a popular exercise for some noble Lords, but I can tell them that we have a good, strong back. But the fact is that not one unionist political party or elected representative in Northern Ireland supports the Northern Ireland protocol. Whenever you speak about the DUP, you are talking about unionism collectively. Noble Lords should never forget that. I also remind the House that the Northern Ireland Assembly is built on the premise not of majority rule but of cross-community consent, which the Northern Ireland protocol does not have.

The human rights provisions in the Belfast agreement provided the people of Northern Ireland with the right to

"pursue democratically national and political aspirations".

[Lord McCrea of Magherafelt and Cookstown]
Article 2 of the protocol obliges the UK Government to ensure that there is no diminishment of any Belfast agreement rights following Brexit. Yet the protocol challenges these rights of the people of Northern Ireland head-on, slashing the value of their vote.

I will quote from a letter I received from a lady in Northern Ireland:

"I am eternally grateful for the work of Ulster's pioneering 19th century female human rights campaigner, Isabella Tod and those who followed her in the early 20th century, like Dora Mellone … My concern, however, is that the work of these great civil rights campaigners is being undermined, and that my civil rights are being infringed, by the Protocol. Tod, Mellone etc did not campaign for us to have the vote, only for the meaning of that vote to be substantially eroded compared with people living in Great Britain or in the Republic of Ireland. That, however, is the effect of the Protocol because in some 300 areas of law, in relation to which I previously was represented through my legislators, I have now become voiceless. This has immediate, direct and distressing equality implications because it means that I no longer enjoy equality with respect to UK citizens living in Scotland, Wales or England or indeed with citizens of the Republic of Ireland. In the same way UK citizens in Scotland, Wales and England can stand for election … or elect MPs to make their laws in the 300 areas, so too can citizens of the Republic … vote for TDs, Senators and MEPs to make laws in all these areas. The citizens of Northern Ireland are, therefore, uniquely discriminated against."

Can anyone in this House support or accept that? When we read that letter in the context of the human rights provisions in the Belfast agreement and the obligations in the protocol on the British Government to ensure that there is no diminution of those rights because of Brexit, the case is unanswerable.

I make an economic point. The EU thinks we should be happy because we are offered reduced checks of 80%. If checks were reduced by 90%—

Baroness Ritchie of Downpatrick (Lab): I thank the noble Lord for giving way. Does he accept that the DUP is currently preventing the restoration of all the political institutions in Northern Ireland at a time when the people are facing a cost of living and cost of business crisis and urgently need local governance to make decisions?

Lord McCrea of Magherafelt and Cookstown (DUP): I accept that the DUP has made it abundantly clear that it will not go into the Executive. Have no doubt about that; let the House hear it clearly. I will refer to the speech of my right honourable friend, the leader of our party, on Saturday to his party conference.

As I was saying, if checks were reduced by 90%, it would make no difference because they are not the problem. The problem is the paperwork, which still has to be done whether a consignment is checked or not. Some might respond, "Why is that such a problem? Different countries export to each other all the time. Why should treating Northern Ireland as a third country in relation to the rest of the United Kingdom be economically devastating?" To answer that question, we have to understand that, although we talk about living in a globalised economy as if it was all one, in reality, while there are all manner of links between different state economies, the links within them are none the less qualitatively quite different.

Shipments in lorries between countries tend to be of one product in bulk; as there is only one product, you need only one set of paperwork, which is manageable. However, for shipments in lorries within integrated economies, the contents are quite different. Rather than being overwhelmingly one product, they tend to include multiple products, which means that if you try to treat them as exports, they need multiple pieces of paperwork. That costs money. It is why a number of firms state that they do not believe they can trade with Northern Ireland if the protocol goes on and is furthered by the desire for its full implementation.

Finally, because of time, since it has been raised today, I draw noble Lords' attention to where the DUP stands. Our leader made this clear on Saturday:

"Let me be clear—either the Prime Minister delivers the provisions of the Protocol Bill by legislation or by negotiation and ensures that our place in the United Kingdom is restored... or there will be no basis to re-enter Stormont."

That is clear. He continued:

"On this issue it is not words but actions we need to see and we will judge any outcome on the basis of actions not words."

I say this to the Government tonight: get on with dealing, get on with action, enable us to get on with being equal citizens within the United Kingdom and let our people prosper.

7.17 pm

Lord Frost (Con): My Lords, I thank noble Lords, in particular my noble friend Lady Nicholson, for allowing me to speak out of sequence so that I could give evidence to the European Affairs Committee. I reassure my noble friend Lady Wheatcroft that I have been following as much of this very important debate as I can. It is a huge pleasure to be here to support the Government on this Second Reading of the Bill.

The House heard my views on the sad deterioration of the situation in Northern Ireland many times when I was on the Front Bench. I do not need to repeat them, as many noble Lords have made the point this afternoon. Clearly, the attempt to apply the protocol is no longer delivering the original intention of supporting the Belfast/Good Friday agreement, but undermining it. Unionism has lost confidence in it, the status quo is highly unstable and risky, and change is needed.

That change is needed for economic as well as political reasons. Those who argue, as some have today, that Northern Ireland is benefiting from the protocol are simply wrong. Since the entry into force of the protocol, the UK's economy has grown by 7.5% and Northern Ireland's by 5.5%. PMI surveys in Northern Ireland have been consistently lower than the UK's, and have actually been negative in the last four months. Exports from Great Britain to the EU have grown faster than those of Northern Ireland to the EU, which suggests that the supposed export boom from Northern Ireland to Ireland is a bit of a fantasy or an artefact of trade diversion. The Government are well within their rights to try to remedy this situation and bring forward this Bill. I note that it passed the other place unamended; that fact must influence the approach taken in this House.

The Government have made their view clear too, in their statement on 13 June, that the Bill is

"justified as a matter of international law."

Of course, it is possible to find lawyers who take a different view—we have heard many distinguished lawyers today—but the Government are entitled to

proceed on the basis of their own legal analysis, and that analysis is not disproven just by the existence of alternative opinions.

This Bill is essential not only on its own merits but in order to strengthen the hand of the British Government in their negotiations. If a negotiated agreement can be reached, that is obviously much better, but it is very hard to see that an agreement that does not amend the protocol very significantly will do the job. I work on the assumption that it is the intention of the Government to achieve a negotiated settlement of that level of ambition. The Prime Minister said in Parliament on 7 September that she preferred a negotiated solution, but

"it does have to deliver all the things that we set out in the Northern Ireland Protocol Bill."—[*Official Report*, Commons, 7/9/22; col. 237.]

Some of the more recent mood music from the Government has been less clear-cut on that point, so perhaps in winding up my noble and learned friend the Minister will confirm that is still the Government's approach and that they are not looking to endorse a negotiated settlement that delivers less than that. On the assumption that is still the Government's policy, it is absolutely clear that they will need this Bill to deliver it. I will conclude by saying why.

As has been pointed out on several occasions and is well known, I was responsible for negotiating the protocol as we now have it. That negotiation, such as it was, has an important lesson for today. The crucial point is that any negotiation, if it is to find the right balance between the parties, needs to have a meaningful "walk away" option for both sides. We did not have that in 2019. This Parliament and this House had passed a law prohibiting us from leaving the European Union without a deal. The choice we faced, therefore, was on the one hand to see the endless continuation of negotiations with the EU from a position of weakness, some subversion of our efforts by Members of this Parliament and others in the political scene and perhaps see the referendum overturned altogether, or on the other hand do the best deal we could, accept the risks, and deliver the referendum result. I make no apology for choosing the latter, even though our forebodings have been amply justified by events.

The point of this Bill is to avoid that situation being repeated. If this Bill becomes law, the British Government—

Lord Hannay of Chiswick (CB): Will the noble Lord confirm that what he has just said amounts to saying that he was negotiating under duress in 2019 and the duress was applied by the British sovereign Parliament?

Lord Frost (Con): I have made the point many times that we were operating within the constraint of a law that usurped the functions of the Executive and prevented us conducting negotiations. I have made that point many times, and I make it again today.

If this Bill becomes law, the British Government will regain agency over events. If they cannot reach an agreement through negotiation, they will be able to use the powers in this Bill to correct the current unsatisfactory situation under international law. The incentives on both sides will still be to reach agreement, but there will still be a "walk away" option, which means that a proper negotiation can take place.

If noble Lords prevent this Bill passing, they will put this Government into the same position I faced in 2019. Once again, there will be no "walk away" option. The Government will have to try to get the best negotiated outcome that the EU will allow them to have. They will be a petitioner for the EU's grace and favour, not a negotiating partner. If the Government are not happy with what is on offer, the outcome will be even worse—the continuation of the current unsatisfactory situation and the current protocol.

I urge noble Lords not to make the same mistake as in 2019. Give the Government the powers they need to conduct a meaningful negotiation. Do not make them a supplicant in Brussels. Allow them to get the job done.

7.24 pm

Baroness Goudie (Lab): My Lords, I am a member of the European protocol sub-committee under the chairmanship of the noble Lord, Lord Jay, who tries to guide us at every meeting with great diplomacy. It is a great pleasure to serve with my colleagues on that committee. I welcome my great friend the noble Lord, Lord Ahmad, to the Bench and am so pleased that he is still here answering on this and on other issues—not just on PSVI for us today, or the Year of the Girl, but on this issue too. I further thank all those outside organisations which have sent very helpful information and offered to have meetings.

The Northern Ireland protocol is part of the EU withdrawal agreement—a formal, international treaty—that attempted to deal with several specific problems that Brexit generated for relations between Ireland and the United Kingdom, between Northern Ireland and the Republic of Ireland, and within Northern Ireland. Overall, the protocol has three main objectives: to preserve the integrity of the EU's single market, ensuring that Ireland's relations with the rest of the UK remained significantly unaffected; to prevent the creation of a hard border between Ireland and Northern Ireland; and to protect the Good Friday agreement in "all its dimensions". As part of protecting the Good Friday agreement, Article 2 of the protocol aims to ensure that there is,

"no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement"

that deals with these issues.

The Northern Ireland Protocol Bill would break international law by the unjustified, unilateral breach of an international treaty with the European Union and thereby threaten a trade war between the UK and the EU. One central purpose of the Bill is to unilaterally disapply the trade and customs provisions of the protocol, which require some customs and regulatory checks on exports from Great Britain to Northern Ireland, but it also gives "extraordinarily sweeping powers" to Ministers —to quote Theresa May—and weakens the Article 2 protections for human rights in Northern Ireland. I have heard much evidence of this in the committee.

The Bill is unjustified. The legislation is unnecessary, because the purpose could be achieved through negotiation. The resumption of talks between the UK

[Baroness Goudie]
and the EU, halted since February, is welcome, and I hope that they will continue. The comment last Thursday by the Tánaiste that the implementation of the protocol might have been "a little too strict" allows a willingness to compromise.

The protocol does not threaten the Good Friday agreement, as alleged by some unionists and the Government; its main purpose is to protect it. Some have argued that the Good Friday agreement requires the consent of unionists to any significant political change in Northern Ireland, arguing that the protocol is designed to offset the dangerous impact of Brexit in such a change. That contradicts the fact that the consent of the people of Northern Ireland as a whole was not deemed necessary for Brexit itself; now it is held that the consent of one of Northern Ireland's minorities is needed for an aspect of its outworking. There is nothing in the Good Friday agreement that requires that, although the protocol itself requires the consent of the majority of the Assembly after four years—cross-community consent if possible; otherwise a simple majority. The protocol will be subject to a democratic vote in Northern Ireland.

The Government have to seek to justify their breach of international law by reliance on the doctrine of necessity, which allows some breaches of treaties if an essential interest is threatened by grave and imminent peril. That is hardly the case and, as David Lammy argued when the Bill was first debated,

"there is not a serious Queen's Counsel in the country who would support the use of the doctrine of necessity in the way in which the Government have sought to use it."—[*Official Report*, Commons, 27/6/22; col. 51.]

The Bill weakens Article 2 of the protocol and hence allows a diminution of human rights in Northern Ireland. This is absolutely vital. As we have noted, human rights and equality protections are included in Article 2 of the Northern Ireland protocol to prevent the diminution of rights protections in Northern Ireland after Brexit and to provide remedies in local courts for breaches of this obligation. It references the list of human rights and equality provisions in the Good Friday agreement and backs them up by specifying the EU legislation that underpins them. The UK Government have claimed that the Bill does not undermine these provisions of the protocol, but that is not the case. It is true that the Bill excludes Article 2 from some of the powers that the Bill provides to Ministers to revoke other provisions in the protocol. But this apparent protection is misleading, because the Bill fatally undermines the operation of Article 2 in several other critical respects.

Because of time, I will just say that we have a piece of legislation involving a breach of the international rule of law itself, which is unnecessary and unjustified, which could provoke a disastrous trade war and which allows for the weakening of the structure of human rights and equality which underpin the Northern Ireland peace process. It should not be supported.

7.30 pm

Lord Thomas of Gresford (LD): My Lords, I, too, am a member of the Sub-Committee on the Protocol on Ireland/Northern Ireland, under the excellent chairmanship of the noble Lord, Lord Jay.

The noble Lord, Lord Frost, has just demonstrated to us that he would not get an O-level in the constitutional law and practice of the United Kingdom. He told us that this unconstitutional Bill was drafted to strengthen the UK's bargaining position with the EU. It is an attempt to bully the EU into making changes to the Northern Ireland protocol. In saying that, he of course concedes that the UK lacks bargaining power against the 27 other members of the union. The UK does not have a large enough shillelagh.

However, there are problems. The noble Lord, Lord Dodds of Duncairn, referred to the barriers to trade, while the noble Lord, Lord Godson, took the opportunity to praise Tony Blair for his understanding. On 9 June 2016, in the course of the referendum campaign, Tony Blair, speaking in Londonderry, said that a vote to leave would mean that the only alternative to controls on a land border

"would have to be checks between Northern Ireland and the rest of the UK",

which, he added,

"would be plainly unacceptable as well."

This was described by the then First Minister, Arlene Foster—then leader of the DUP—as "a deeply offensive scare story", but it came true.

We are all familiar with what happened. In October 2019, Mr Johnson described his deal as

"a good arrangement … with the minimum possible bureaucratic consequences".

This was in direct contradiction of a contemporaneous document drawn up by the Treasury, which warned that

"customs declarations and documentary and physical checks … will be highly disruptive to the NI economy."

That was the advice he had received. But he advised traders to throw paperwork into the bin. Famously, he said:

"There will be no border down the Irish Sea—over my dead body."

But there is, and he is politically no more.

The noble Lord, Lord Howard of Lympne, raised the point—the noble Lord, Lord Pannick, followed him—that there has been no attempt to trigger the dispute resolution mechanisms contained in Article 16. It would have forced the UK into detailed negotiations with the EU, not breaking the protocol but taking place within its architecture. Instead, the Government promoted Article 16 as though it were a nuclear threat that, if employed, would obliterate the protocol altogether.

In particular, the DUP and, as the noble Lord, Lord McCrea, told us, all other unionists were misled into believing that the protocol was everything—"Break the protocol"—and that triggering these unremarkable dispute resolution procedures would somehow end the virtual border in the Irish Sea. As a result, they continue to block a new Executive, perhaps hoping for a rerun of last May's election when time runs out on 28 October. However, as the noble Lord, Lord Howell of Guildford, pointed out, there have been demographic changes. Indeed, the last opinion polling on 25 July in no way pointed to a resurgence in DUP or unionist support. The Alliance Party is on track to overhaul them.

Why has the agreed machinery of Article 16 not been used? What Boris Johnson agreed through the withdrawal agreement, of which the protocol is a part, was that any issue of EU law arising in Article 16 arbitration procedures should be decided by the European Court of Justice. The Conservative Party opposite has a completely irrational hatred for that court, despite UK advocates having historically the greatest degree of success of any EU country before its judges. Mr Johnson pushed this concession through Parliament with his majority because they did not understand what he had conceded. In all probability he did not understand it, either, but the noble Lords and noble Baronesses opposite strewed flowers in his way. But they do not have to pick up Johnson's leavings by continuing with this mis-sold Bill which shames our country. They can start again.

Take the European Court of Justice. In a debate entitled "Brexit: Dispute Resolution and Enforcement", I suggested that the Government should negotiate for

"a special chamber of the European Court of Justice"—

they have the power in their constitution to create one—with an equal number of UK and EU judges. As I said, it could deal with

"disputes arising out of the special circumstances of our leaving the EU".—[*Official Report*, 17/10/18; col. 466.]

I developed that argument at the time and will not repeat it, but that solution would deal with the issue that the CJEU is the court of one of the parties to a dispute.

If the current Prime Minister wants to make her mark in history in the limited time available to her, she should withdraw this ignominious Bill and get down to sensible negotiations immediately. Trade barriers and the democratic deficit are genuine problems that must be resolved by agreement fashioned with good will. In the past two weeks, her Government appear to have been making a start.

7.36 pm

The Earl of Kinnoull (CB): My Lords, recently, the work of the European Affairs Committee has been heavily overshadowed by the Northern Ireland protocol. While work on the protocol itself is carried out by our sister Northern Ireland protocol committee, we concentrate on the many other matters that remain open in the large and complex relationship between the United Kingdom and the European Union.

Many things are in the deep freeze. To name a few examples, there is the unresolved position on the Horizon programme, the unresolved agreement for regulatory co-operation in financial services and the issues relating to the movement of both creative professionals and people in education. The 32 committees set up under the withdrawal agreement and the trade and co-operation agreement are not operating at full pace to adjust matters to the benefit of all concerned because of the protocol impasse.

The circumstances where a Bill along the lines of the one before us might be warranted would be, I feel, very dire. I do not believe that we are even close to such circumstances today. I note with optimism the recent warm words from many of the parties involved in discussing the protocol and the restarting of discussions between the principals. However, this Bill is before the House and I will briefly comment on three areas that I feel need amendment.

The first concerns the sanctity of treaty. We have recently discussed in this Chamber a number of times recently the importance of living up to treaty obligations and obligations under international agreements in general; it has been a strong theme this afternoon. In my regular interactions with my opposite numbers as chairs of the European affairs committees of other European countries—and that goes a lot wider than just members of the European Union—in particular as the UK has assumed such a leadership position in the current war in Ukraine, the most common comment made to me is of the importance of the UK especially showing leadership in living up to the spirit and letter of international agreements.

In the Ukraine/Russia context, there are many international agreements that all depend on: the NATO treaty, agreements over sanctions and agreements relating to energy, for instance. The rules-based order within the western liberal democracy world depends on the leading players showing example. This point has been made to me by pretty well every country's representative I have met in recent times. We meet formally as chairs of European affairs committees face to face four times a year; thus I feel it is important in these circumstances to underline the UK's commitment to the sanctity of treaty and to living up to the letter and spirit of international agreements, including in this Bill.

The second area concerns the involvement of Parliament in the making of, or the variation of, international agreements and treaties. In the period before Brexit, the UK citizen in the street had the benefit of parliamentary representatives being able to scrutinise international agreements at the European Parliament level and, through the operation of the scrutiny reserve resolutions, the Westminster Parliament level—both from the start of the negotiating process and throughout it. Indeed, many here today will have served on the European Union committee structure and will have engaged in the scrutiny of international agreements. In addition to those meaty scrutiny arrangements, the CRaG arrangements allow for limited scrutiny processes right at the end of the agreeing of a new treaty. Following Brexit, this scrutiny structure has fallen away, and we are left only with the highly unsatisfactory CRaG processes.

The European Union Committee scrutinised the many new trade deals concluded by the United Kingdom during the Brexit period—I think there were just under 100—and in June 2019 we wrote a report, *Scrutiny of International Agreements: Lessons Learned*, in which we laid out a firm recommendation as to how international agreements could and should be looked at by both Houses of Parliament. This Bill would see major changes to an international agreement being made simply by decision of a Minister without any reference to Parliament. For the reasons in our report of June 2019, I do not believe that is right. Something akin to what we then recommended should be instituted and the Bill amended accordingly.

Thirdly, and finally, I come to the importance of dealing with the various traditions and groupings in Northern Ireland in an even-handed way with good

[The Earl of Kinnoull]
consultative approaches. As we have heard from many speakers today, this approach is the secret of the great success of the Belfast/Good Friday agreements, which use this approach consistently in their mechanisms. The very first report of the EU Committee after the Brexit vote in December 2016 was *Brexit: UK-Irish Relations*. We commented on the importance of that dynamic very heavily in that report. I reread the report over the weekend and I have to say that it is as fresh today as it was in December 2016.

I do not feel that the Bill today makes this simple and effective approach a commitment for a Minister. In his opening speech, the noble Lord, Lord Ahmad, made it clear that there was a considerable consultative process but this is another instance where the face of the Bill must have the comfort that even-handedness and consultation will remain at the heart of any changes. Perhaps the Minister could comment.

7.42 pm

Lord Garnier (Con): My Lords, there is much to be learned from the speech of the noble Earl and I am grateful to be able to follow him.

I want to refer to the report of the Delegated Powers and Regulatory Reform Committee on the Northern Ireland Protocol Bill. There one can find 11 devastating and fundamental criticisms of the Bill, not one of which has been satisfactorily been dealt with by the Government outside Parliament, in the other place or, I fear, despite his charm and undoubted integrity, by my noble friend the Minister earlier today. That any relatively short Bill, but certainly one of such legal and constitutional importance as this one, should provide so many powerful reasons for criticism is shocking, although, since the change of Prime Minister in July 2019, perhaps unsurprising. One might have hoped that his departure would have made a difference. As for my noble friend Lord Frost's suggestion that the Bill gives the Government agency, I am, unusually, lost for words.

The Bill is the ugly constitutional twin of the ill-starred UK Internal Market Act, which in December 2019 the then Northern Ireland Secretary admitted deliberately broke international law. This Bill breaks the same treaty but adds to that by permitting government Ministers to make laws, to amend them or to disapply them and our treaty obligations. That Secretary of State is now the Lord Chancellor, the guardian in Cabinet of the rule of law and our constitution. What is the point of making treaties if our Government think they matter only at and for the moment a Prime Minister signs them? What is the point of Parliament if elected Members of Parliament are prepared to delegate to Ministers the most important constitutional duty they have—to make considered statute law and to hold government to account? Of course I understand the politics affecting the Bill, but is it not ironic that it requires your Lordships' House to uphold democratic and constitutional propriety?

Of course, some will say that the end justifies the means: that the preservation of the union of the United Kingdom is more important than constitutional or legal purity. Even if one tries to ignore the slippery slope that suggests, it is a false dichotomy. As the Minister of State for Northern Ireland, my honourable friend Mr Steve Baker, recently accepted, extravagant posturing is less productive than diplomacy. The end does not justify the means, because the means are not the road to the desired goal. Worse, if we want to throw petrol on the angry fire of communalism and of separatism within the United Kingdom, look no further than this Bill for the jerrycan.

7.45 pm

Lord Howard of Rising (Con): My Lords, whatever one may think of Northern Ireland politics, peace and political stability is thanks to the Belfast/Good Friday agreement. It is quite clear that this is being damaged by the protocol and it has resulted in political chaos. This Bill is designed to address the political challenges.

Just recently it has become apparent that the European Union recognises the problems created by the protocol, which has resulted in a softer attitude from the European Union. The Bill we are discussing today has been a key element in this change of attitude. It is essential for the sake of a harmonious solution to the Northern Ireland situation that His Majesty's Government have the Bill to add strength to their arguments. It is this which has encouraged the EU to recognise how the protocol is making the Good Friday agreement unworkable. As my noble friend Lord Lilley pointed out, it is contrary to the intention of the protocol. If I may quote:

"Nothing in the Agreement should undermine the objectives and commitments set out in the Good Friday Agreement."

To argue against the Bill and therefore against the Government's ability to seek a solution, as has been done today, is to work against a harmonious solution. I urge all noble Lords to get behind the Bill for the sake of everyone concerned: the European Union, Northern Ireland, southern Ireland and the United Kingdom. When my noble friend Lord Cormack argues for a delay to allow a negotiated settlement, he is only reducing the chances of such a settlement. This country is no longer part of the European Union, and to oppose the Bill will not change that.

7.48 pm

Lord McDonald of Salford (CB): My Lords, no matter his verbal dexterity and acknowledged charm, the Minister was unable to present this Bill as anything other than what the noble Lord, Lord Pannick, called "a manifest breach of international law". Many noble Lords taking part in this afternoon's debate have urged the Government to reconsider. I add my voice to theirs, for three foreign policy reasons.

First, the UK's reputation for standing by the agreements it signs is as important to its standing in the world as the excellence of its Armed Forces. For my whole career at the Foreign Office, the UK made the case for a rules-based international order. Without rules—all rules, not just the ones you like—the strong do what they will and the weak suffer what they must. Many of the foreign diplomats on the other side of the negotiating table in my career were unhappy with British advocacy of rules; they pointed out that my wily predecessors had written many of those rules expressly to suit British purposes. Now, the Government

propose to set aside an agreement which they co-wrote less than three years ago. At the very least, we invite bemused puzzlement.

Secondly, the Bill not only damages our overall reputation but specifically damages relations with key external partners. We have definitively left the European Union but it remains our neighbour. We benefit from a constructive relationship with our larger neighbour. Brussels has repeatedly made clear two things: first, its willingness to negotiate implementation of the protocol, and, secondly, its settled view that a unilateral move to set aside the protocol would be seen as an act of bad faith. We hear a lot these days about a reset in London's relations with Brussels, about improved atmospherics and better personal relations. This Bill imperils all that and the Government must know it. If the Bill passes and is implemented, the EU would feel justified in retaliating; after all, it has warned us often enough that that would happen.

Thirdly, the noble Lord, Lord Cormack, referred to the President of the United States and the noble Lord, Lord Forsyth, disputed the importance of his role. Yet President Biden identifies himself as an Irish Catholic. He takes a close interest in what happens in all of Ireland. His Administration have signalled repeatedly their unhappiness with this unilateral action. Having left our regional club, the views of our main ally and partner should loom even larger in our calculations.

Parliament is sovereign but it is not immune from the consequences of its actions. Although Parliament can pass this Bill, it should weigh the international consequences before doing so. If the Government are wise, they will drop the Bill. Negotiation, without the threat of unilateral action, would be far more likely to deliver the result which everyone in your Lordships' House desires.

7.51 pm

Baroness Altmann (Con): My Lords, I thank my noble friend, his department and our Whips for their engagement with my serious concerns about this Bill. I have great sympathy with my noble friend on the Front Bench; I cannot imagine he has been in a very comfortable position recently given what is contained in this Bill. As my noble friends know, I cannot support this Bill but I am delighted that there are negotiations and that we are, I hope, going to be able to reach some kind of negotiated settlement.

The UK that I have grown up in and that I love, and that so many global nations respect, is a parliamentary democracy that defends the rule of law and the international rules-based order; it has a reputation for integrity, trustworthiness, honesty and morality. This Bill undermines all these traditional elements of our international standing. I am ashamed that this legislation is before us and find its measures baffling, frightening and indefensible.

As has been said, the clauses of the Bill dismantle an international agreement, recently signed, which has been operating as described by the 2019 impact assessment. The doctrine of necessity cannot be used here for reasons eloquently explained by my noble friend Lord Howard, the noble Lord, Lord Pannick, and others. The problem is our decision to leave the EU and, in particular, the decision to adopt a hard Brexit, leaving the EU single market and customs union while having a land border with the EU. The un-British belligerence contained in this Bill and the fantasy thinking that the UK can dictate its own terms to other countries by threat and wish away geographical realities and international law are, quite frankly, shocking.

In a world where Northern Ireland was no longer attached to Ireland, no border checks would be needed and goods could flow freely into the single market. In a world with the promised alternative arrangements, there might be no need for border checks as technology—which, by the way, is not available anywhere in the world—would magically solve the problem which the Northern Ireland protocol aims to deal with. There may be a world, but it is not one that I recognise, where countries can sign international co-operation agreements with fingers crossed behind their backs and tear them up soon afterwards to please a political party, but that surely is not our country.

However, the most egregious element of this Bill is not the legal element; for me, it is that it overrides our parliamentary democracy. It seeks to enshrine in law our country becoming an elected dictatorship where Ministers can bypass Parliament and simply decide even to break international law should they so wish. The breathtaking, untrammelled powers putting our international standing at risk, potentially overriding human rights—as the noble Baroness, Lady Kennedy of The Shaws, has explained—and risking starting a trade war with the European Union should this Bill pass, are, quite frankly, baffling.

My noble friend Lord Frost may have been in earnest when he told us that we must not repeat the mistakes he was dealing with where Parliament was usurping the power of the Executive. But since when do we have a system of government where Parliament has no right to stand up against measures damaging our national interest. Having listened to the hours of debate thus far, I have to say that it is clearer to me than ever that this House has a duty to oppose this Bill.

7.57 pm

Lord Moylan (Con): My Lords, it is a pleasure to speak after my noble friend. I welcome this Bill and support it wholly. There has been much talk of international law in the course of this debate and I trespass on that territory with some trepidation because I am not a lawyer and claim no expertise in jurisprudence. However, it seems to me that one should question some of the claims that have been made.

It is easy to imagine, given the way that it has been discussed, that international law simply because it is international is some sort of supreme law, rather like FIFA outranks UEFA and UEFA is somehow higher than the Football Association. But that of course is not the case at all. And it is easy to imagine, given the way it is spoken of, that a breach of international law is somehow akin to a criminal offence.

International law does of course create some criminal offences—the waging of an illegal war is one of them. But most of international law is much more akin to a sort of civil contract between parties agreeing how

[Lord Moylan]
they are simply going to conduct their business on something as mundane as the quality of sausages, for example. That is where we are in this debate, and comparisons with Putin and other such extravagant claims are wholly grotesque and misleading.

In my view, there are other laws higher than international law; one of them is the law to maintain the integrity of our own state. The protocol is a clear wound and severance in the integrity of the United Kingdom. That is why this is a matter of interest not simply to the people of Northern Ireland but to all the people of the United Kingdom.

There is nothing new about this. Shakespeare, of course, had quite a lot to say about it. He envisages an onerous contract, freely entered into, that can be satisfied only by an irreparable wound in the body, possibly a fatal one. He specifically asks the question: how should the law deal with this? It is very easy to say that the answer is that the pound of flesh has got to be paid. In my view, there are too many noble Lords in the Chamber today who have been insisting on the right of the European Union to demand its pound of flesh; there are not enough lawyers who share the wisdom and humanity of Portia.

Apart from the harm to the body politic that the protocol does, there is the question of whether the protocol, far from being a shining pillar of international law, is not in fact in flagrant breach of it. The noble Lord, Lord Bew, gave a number of examples of how the protocol conflicts with other treaties that we and the Republic of Ireland are obliged to. None of the legal experts that I have heard speak in this debate has addressed satisfactorily the question raised by the noble Lord, Lord Dodds of Duncairn, and others, of whether it complies with the Universal Declaration of Human Rights and the European convention, both of which guarantee a democratic and representative say to people on the laws under which they live. That is denied to the people of Northern Ireland in respect of a large swathe of significant laws. That democratic deficit is recognised by our own Sub-Committee on the Protocol on Ireland/Northern Ireland, but no answer has come on whether the protocol is defensible.

That is also a point that goes to those who say that we should be using Article 16. Article 16 is a mechanism for adjusting the implementation of the protocol, but the democratic deficit in the protocol is not due to its implementation; it is at the very heart of the protocol, and this Bill is necessary to deal with it. Nor is the matter addressed by saying that the people of Northern Ireland through the Assembly in Stormont have an opportunity to vote on it. One cannot vote away, and one's parliament cannot vote away, fundamental human rights.

To those noble Lords who wave about the notions of the rule of law and international law as if they were simple, straightforward, knockdown arguments against this Bill, I say that in my view the whole matter is a great deal subtler and a less robust platform for them to rest their case on than they might think. Although there are only a few speakers left on the list, I am still open to hearing someone defend how the protocol is consistent with international law on human rights.

8.02 pm

Lord Rogan (UUP): My Lords, this is the first opportunity that I have had to address your Lordships' House since the untimely death of my friend Lord Trimble. The noble Lord, Lord Godson, spoke at length, and rightly so, about the enormous contribution that David Trimble made to the community and to political life in his native Northern Ireland, not least in his critical role in implementing the Good Friday agreement.

I was Ulster Unionist Party chairman in the period up to and beyond the signing of the Belfast agreement. I witnessed at first hand the pivotal role that David played, not only in finalising that deal but in keeping the peace process on track at moments of great crisis. This included the aftermath of the Omagh bomb, on 15 August 1998, which claimed the lives of 29 innocent people and two unborn twins. Four days later, I accompanied David to the funeral mass, in Buncrana, County Donegal, for eight year-old Oran Doherty, and James Barker and Sean McLaughlin, both aged 12. There was some media furore at the time on the basis that David and I were members of the Orange Order, but we wanted to stand united with the wonderful people of Donegal in their time of unspeakable grief. I am sure that I speak for the whole House when I say that all of us stand with the people of Donegal today as they come together in tragic circumstances for the funerals of Jessica Gallagher and Martin McGill, in Creeslough. David Trimble was a great man, a family man, a wise man, a brave man and a fine parliamentarian. His death is a huge loss to Northern Ireland and, of course, to this House.

I turn to the Bill before us today. It will not surprise your Lordships to know that I continue to thoroughly resent the existence of the Northern Ireland protocol. His Majesty's Government have spent almost three years blaming the European Union for its sheer awfulness. However, what Ministers frequently neglect to mention is that the protocol was agreed by Boris Johnson with the full support of his then Foreign Secretary, Liz Truss. Northern Ireland was sacrificed for political expediency by a Prime Minister in a hurry, with the backing of his eventual successor. The Bill before your Lordships today is merely a diversionary tactic—a sticking plaster to pretend that it was the other side's fault. Not only that but Ministers have openly acknowledged, initially from the lips of the now Justice Secretary, Brandon Lewis, that the legislation itself contravenes international law.

I have spent my life celebrating and defending Northern Ireland's position as an integral part of the United Kingdom. The Good Friday agreement was a huge moment for us, as it should have been for everyone who cherishes Northern Ireland's place in the heart of the union. The Belfast agreement states very clearly that

"it would be wrong to make any change in the status of Northern Ireland, save with the consent of the majority of its people".

It was on that basis that the Ulster Unionist Party campaigned vigorously and successfully for a yes vote in the subsequent referendum. This situation should never have been changed without their consent, but Boris Johnson, supported by senior Ministers, including

Liz Truss, thought otherwise. In an essay first published by the Belfast *News Letter* in 2021 and reproduced following his untimely death in July, David Trimble wrote:

"I feel betrayed personally by the Northern Ireland Protocol, and it is also why the unionist population is so incensed at its imposition. The protocol rips the very heart out of the agreement, which I and they believed safeguarded Northern Ireland as part of the United Kingdom and ensured that democracy not violence, threat of violence or outside interference, would or could ever change that."

We are where we are. My noble friend Lord Empey, who is unfortunately unable to be in his place today because of family commitments back in Belfast, has previously outlined some of the common-sense solutions that the Ulster Unionist Party has put forward to try to ease the burden faced by businesses and consumers in Northern Ireland because of this protocol. We want to be constructive, and we genuinely wish the UK and EU negotiating teams every success following the resumption of talks last week. But the people of Northern Ireland should never have been placed in this invidious position. No one voted for an Irish sea border.

8.08 pm

Baroness McIntosh of Pickering (Con): I regret the Bill before us this evening. On its passage through this place, I will oppose the provisions in it, on both legal and political grounds.

My starting point is that we cannot resile from or breach an international agreement that we freely entered into only three years ago. Moreover, the protocol is not a standalone agreement. It forms the centrepiece of the EU withdrawal agreement. By pursuing this Bill today, we risk reopening the whole agreement on which we left the European Union. In summing up the debate, what assurance can my noble and learned friend Lord Stewart, the Advocate-General for Scotland, give us that there will be no retaliatory measures following the passage of this Bill? I do not believe that he or the Government are in a position to do so. What I fail to understand is why those on these Benches who negotiated the protocol and the EU withdrawal agreement now jeopardise the very foundations on which they were built.

Politically, I welcome the positive engagement that the Prime Minister has undertaken with our European neighbours in attending the Prague summit of the European Political Community. I welcome the fact that—as my noble friend Lord Ahmad said in a conversation that I am pleased he took the time to have with me yesterday—the mood music has indeed changed. He gave an assurance to the House today that technical discussions on the protocol between the UK and EU have commenced, with a view to resolving the issues where they are not seen to be working under the protocol. I note that, in his words, the tone is cordial and that substantive practical measures are being considered.

The economy of Northern Ireland has flourished in the past three years. The economic activity has increased at a higher rate of GDP than that enjoyed in the rest of the United Kingdom. There must be a reason for that, and I suggest that it might be that Northern Ireland remains within the single European market.

As my noble friend Lord Howard put to the House this evening, the doctrine of necessity is not appropriate in the context of this Bill. Perhaps that legal basis has been chosen so that the Government can adopt a select, pick-and-mix approach to those areas where they believe that the protocol is not working, as opposed to those areas where they believe that it is working quite well. The fact that Article 16 has not been chosen as the legal basis proves in my view that the protocol has not fundamentally broken down.

I associate myself entirely with those such as my noble friend Lady Altmann and others in the Chamber today who have said that the Bill will allow an unacceptable level of delegated legislation. I also support the comments made by the noble Baroness, Lady Doocey, who described the mess of dual regulation that will flow from the provisions of the Bill before us this evening. I share her concern for what the Bill will mean for dairy movements between Northern and southern Ireland. I will add that there are other implications for farmers. I ask my noble and learned friend the Minister why the trusted trader scheme, the digital customs arrangements and data sharing have never been realised; why the principle of equivalence has never been agreed, to the detriment of many UK exports; and why the nonsensical prohibition of exports of seed potatoes into the EU and Northern Ireland from Britain remains in place.

Never in recent history have there been more pressing reasons for co-operation between European nations, because of the hostilities in Ukraine and the global threats to energy and food security. I urge the Government to prioritise negotiations on the protocol over the provisions of the Bill and to pause their proceedings after Second Reading today. I sympathise with the arguments put forward on democratic deficit by the noble Lord, Lord Dodds, and other noble Lords—who I consider noble friends—on the Democratic Unionist Benches. Those arguments were as valid at the time that the protocol was adopted as they are now. Perhaps the tragedy is that the Government of the day forged ahead with what this Government now consider to be, in part, a flawed agreement.

Negotiations are a two-way process. I very much welcome that current negotiations have commenced. I cannot support the Bill this evening. I will give it a Second Reading but I hope that it goes no further at this time. I urge the Government to think again and pause the Bill after today.

8.14 pm

Lord Russell of Liverpool (CB): My Lords, believe it or not, we are only five weeks into His Majesty's new Government. I suspect that, if others around the Chamber feel like me, it probably feels more like five months. However, in effect, the Government have been in office for only three weeks because of the unfortunate death of Her Majesty. One might have hoped that that would have given the Administration time to think through some of the things they were trying to do.

The Government have a range of huge political and economic challenges. At the beginning of the debate, I was amused in the wrong way when the noble Lord, Lord Forsyth, appealed for unity across the House. I thought that was a slight case of the pot calling the kettle black, given the current problems there appear to be within his own party.

[Lord Russell of Liverpool]

In order to calm things down, the Government have decided to push forward with this Bill—to negotiate with, in effect, an unstable hand grenade in one hand and a pen in the other. That is not a particularly compelling negotiating position. So how do we get out of jail with this particular problem? I have four suggestions to make to your Lordships for consideration.

The first, quite simply, is to be honest, and to remember the huge diaspora that the Government are talking to. They are not talking only to the 81,326 members of the Conservative Party who voted for the new Prime Minister, nor the 113 Members of the other place who voted for her. They are talking to the entire UK. If one puts all the different components of the so-called "anti-growth alliance" together and does the arithmetic, it makes up a majority of those qualified to vote in the UK—so that is not a great place to start.

One is talking of course to all of Northern Ireland. I heard today of the concept of "wise unionists", which presumably means that there are less wise or unwise unionists. I will not opine which is which—others have done that for me. Clearly, we are talking to the EU, but we are also talking to the United States. I remember vividly, in February 2019—which was the first time I heard the subject raised in an intelligent way in your Lordships' House—the noble Lord, Lord Putnam, talked about the fact that he spent a very large part of his professional time in the United States and had many friends there, and was conscious of how strong the Irish-American vote and political lobby were. He advised the Government to remember that and be careful. Unfortunately, that does not seem to have happened.

The second point is to admit your own mistakes, quickly and with contrition. People will be more ready to forgive and forget if you are honest. Do not obfuscate or evade. I thought some of the comments by some of the wise—or unwise—unionists, effectively saying, "The protocol was nothing to do with us", were perhaps a trifle disingenuous.

Thirdly, do not needlessly antagonise those you need to do business with. The Government have managed to piss off the EU, this House and, even more formidably, the Delegated Powers Committee. Can one learn from the past, I wonder? I googled some of the ruminations of the noble Lord, Lord Frost, on how we got here. In his Churchill lecture in Zurich last year he said:

"We never wanted this appalling bitterness and it is frustrating to Brexiteers that we have somehow attracted much of the blame for it."

The bit I particularly liked in that sentence was the "somehow". I was not impressed by him effectively saying that Parliament had subverted his ability to negotiate. What is Parliament for if not to decide what we should be negotiating for and how we should negotiate?

Fourthly and lastly, I am not a Northern Ireland expert; my first degree is in history. It is often said that in Ireland there is no present and there is no future; there is only the past, endlessly repeating itself. It is clear that the sociodemographics of Northern Ireland are changing. The recent census has demonstrated that. Sentiment about the future of Ireland is beginning to change quite rapidly. I say that having spoken to various people who live in Northern Ireland and are observing what is going on. I suspect that part of that sentiment is that a large part of the population, I suspect particularly the younger part, want to look towards a future that is not defined by a wish to extend or recreate the past. I am reminded of King Canute trying to stop the tide coming in.

It is not on my CV, but in my early years I was a gravedigger. If you are a gravedigger, you know that at a certain point, if you go too far, the walls will fall in. I appeal to His Majesty's Government: please stop digging.

8.19 pm

Baroness Fox of Buckley (Non-Afl): My Lords, by this late hour we have heard many articulate, passionate and, dare I say, tetchy speeches. Accusations abound. We are told that the Bill is constitutional vandalism, no less—a law that will give succour to Putin. Surprisingly, the anti-Brexit coalition seem to have become fans of invoking Article 16, all as a stick to beat the Bill with.

Although we have listened to a plethora of lectures about tarnishing the UK's international reputation, many of us who support the Bill's aims emphasise the importance of UK politicians not further tarnishing their reputation at home among their national electorate. I make no apology for focusing on democracy and lawmaking within UK borders. My priority is national and popular sovereignty. As the noble Lord, Lord Dodds of Duncairn, reminded us, it is jarring when those ideals are cheered when they are bravely fought for in Ukraine but sneered at when they inspire voters or law changes at home.

A quick back to basics, lest we forget: in 2016 the UK as a whole, and that includes Northern Ireland, voted to leave the EU. Millions voted to take control of our laws, our borders and political decision-making. Lest we forget, many Brexiteers knew then that the protocol was a desperate, flawed fudge. Why? To get Brexit over the line. Why did we need to get Brexit over the line more recently? Because for years sections of the establishment tried to thwart and overturn the democratic decision of their own citizens, in flagrant disregard of the rule of law and any sense of democracy. Now that imperfect protocol, which has been inflexibly interpreted by one side, insists that the jurisdiction of the Court of Justice of the EU will hold sway over some UK citizens and compromises the integrity of the borders of the UK's internal market.

When there has been a nod to democracy in this debate it has been when we have heard from, for example, the noble Lord, Lord Cormack, that the majority of Northern Irish parties object to the Bill. Similarly, we are reminded that, to quote one critic of the Bill in the other place,

"the majority of … Northern Ireland have not consented to Brexit in any form, and a majority of voters and MLAs reject the Bill in the strongest terms."—[*Official Report*, Commons, 27/6/22; col. 76.]

But surely a UK-wide referendum means just that, not a balkanised, divisive approach to geographic political differences. The majority of London voted to remain, and the same in Scotland. Would it be okay if Greater London and Scotland declared UDI, saying that they preferred to stay in the EU single market and take

instruction from the ECJ? Indeed, is this not just the approach that Nicola Sturgeon is adopting now in her demands for yet another independence referendum?

I note a certain double standard in respecting the wishes of the voters in devolved areas. My fellow Welsh citizens voted overwhelmingly to leave the EU. That did not stop Labour's Mark Drakeford and the Senedd continually declaring that the electorate had made a grave error and trying to undermine that majority decision.

Of course, we can all note that the union is under strain at present. Since 2016, lots of British politicians seem to have noticed that the border between the six counties and the 26 counties is rather troublesome, let me say. Well spotted, if belatedly.

Yes, some in Northern Ireland are now arguing that that border is artificial and are calling for a border poll. It is absolutely legitimate to campaign for that border poll and, indeed, to campaign for a united Ireland, but that is a completely separate question from this one. The borders in which the majority voted to reclaim democratic sovereignty from the EU were the borders of the United Kingdom as is, and that is why, whatever our substantial differences on many matters, I give solidarity to the DUP and the unionist community, they may be surprised to hear.

A blame game has taken place in this Chamber that suggests that it is the DUP who are the anti-democrats here, expressed bluntly by the noble Lord, Lord Triesman, the noble and learned Lord, Lord Clarke, and the noble Viscount, Lord Hailsham. That felt to me cheap, misplaced and ironic. Yes, ironic because actually all the DUP speakers were the ones who talked about civil liberties and equal treatment under the law, which are thrown out by the protocol. I am also rather worried when a government Minister, Chris Heaton-Harris, chides the DUP, saying,

"Whatever issues there are with the protocol, there are very important functions and services that the people of Northern Ireland need to work"—

as if the DUP had not noticed. However, when he says,

"whatever issues there are with the protocol",—[*Official Report*, Commons, 7/9/22; col. 220.]

if the Government do not understand that these issues are not second-order, if they do not understand that these issues are crucial, it does not give me much faith that this Government will see the Bill through. I hope I am wrong.

Why attack the DUP? I appreciate that politicians who will not be bullied into U-turning and abandoning their mandate may be a rarity in this unelected Chamber, but I think it is admirable, and while I listened carefully to the wise words of the brilliant speech by the noble Lord, Lord Bew, if noble Lords here are really motivated by a desire to restore the power-sharing Executive, then it is simple: vote for the Bill. I certainly will, and I will be doing so on behalf of British voters as well.

8.25 pm

Lord Kirkhope of Harrogate (Con): My Lords, I was not sure whether to speak in this debate on a Bill which I simply do not like, but after all the efforts to conclude the internationally acclaimed Good Friday agreement and then the withdrawal agreement and protocol with the EU, in which some noble Lords were involved, I was very disappointed to see this Bill being presented. My noble friend Lord Frost, who was much involved, describe the withdrawal agreement and protocol at the time as a carefully negotiated agreement. In the light of some of his remarks earlier this evening, I think he perhaps might want to revisit that quotation, but I think it probably was. The then Prime Minister, my right honourable friend Boris Johnson, called it

"a great deal for England, Scotland, Wales and Northern Ireland",—[*Official Report*, Commons, 19/10/19; col. 591]

but we are now trying to unpick it just as our negotiators, to whom I pay full tribute, are hoping to achieve the flexibility to alleviate the known concerns of all the communities in Northern Ireland, as well as the interests of the EU, the Republic of Ireland and the USA.

In considering the effects of our contributions today and bearing in mind the sensitivities, I hope nothing I say or others say will have harmed the progress being made. It would have been better if we had held off while the process is so active. However, we have had the chance to speak on the proposals in the Bill, and although it is inevitable that what I say will involve a lot of repetition of remarks made by others, I hope the Government will take note of all the remarks.

The Bill is unnecessary. Its provisions and the extra powers it gives to the Executive are unnecessary. At Second Reading in the other place, a long discussion took place as to whether necessity kept this measure within our international law obligations. The doctrine of necessity—noble Lords have heard from distinguished lawyers—requires a solid evidential base showing "grave and imminent peril" as a reason for such a measure. That, I would say, was not present at the time when the Bill was in the other place, and it certainly is not present now. To meet that test, there must be no alternative available. Here there is an abundance of alternatives, including the negotiations and Article 16.

In the other place, my right honourable friend the Prime Minister, then the Foreign Secretary, cited the refusal of the EU to co-operate as evidence of necessity. That was, and is, in my view, incorrect. Otherwise, how are we in the current situation? The Government cited the opinion of mainly outside lawyers to support their proposals that seemed to ignore the views of their own First Treasury Counsel. If breaking international law is not of concern, then how could we lecture others such as Bolivia, Sri Lanka, Myanmar, South Sudan, Ethiopia and, of course, Russia and China?

What about Article 16? As my right honourable friend Theresa May said in the other place,

"Article 16 does not justify this Bill … Article 16 negates the legal justification for the Bill."—[*Official Report*, Commons, 27/6/22; col. 63.]

I agree. As long as we are negotiating, we do not currently need either Article 16 or this Bill.

My second concern is with regard to the extensive extra powers given to the Executive by the Bill. This is not the first time we have debated this trend. Trying to exclude proper parliamentary scrutiny of sensitive and important matters is undesirable. This Bill would have Henry VIII seething with envy. No less than 15 of the 26 clauses give the Executive new powers to amend

[Lord Kirkhope of Harrogate]
Acts of Parliament, disapply part of the Northern Ireland protocol and increase secondary legislation to avoid scrutiny, and Clause 19, in particular, allows for a new deal with the EU without any primary legislation. This is a serious overreach by the Executive and our Ministers.

The current negotiations must be carried on in a calm manner, while recognising the fears and concerns of all those communities in Northern Ireland, which I greatly respect. The UK must retain its position as a trusted and responsible power in the world. Leading roles in the G7, the United Nations and with our European and American friends can exist only with adherence to a rules-based system, in which we, this country, set the example. There is great potential for this country, but the rule of law must always prevail.

8.30 pm

Lord Hannan of Kingsclere (Con): My Lords, no one had proposed anything like the Northern Ireland protocol until the second half of 2017. It is worth recalling the genesis. I was a Member of the European Parliament at the time and following the negotiations. In the immediate aftermath of the referendum, no one in Brussels proposed that Northern Ireland should remain under EU jurisdiction for regulatory purposes. They understood that sovereign countries are not in the business of ceding part of their territory to foreign control. They understood that sovereign countries do not usually allow internal borders. All of the talk then was about finding technical solutions: Enda Kenny's Government in Dublin negotiating in good faith with British authorities to try to find ways to keep the border open, on the basis that the UK and EU had pretty similar regulatory norms and could trust each other's standards.

What changed? It was a very sudden moment, around October 2017. I remember Guy Verhofstadt coming to the Constitutional Affairs Committee with his customary self-satisfied grin, saying, "We have now made it part of our negotiating mandate that there must not be any change in the EU side of the single market regulations as pertaining to Northern Ireland." What had changed? We all know the answer: what had changed was that, on 8 June 2017, there was a general election that altered the balance in the other place.

From then, it became clear that a majority of people in both Chambers here were not prepared to leave the European Union except on terms that Brussels liked. That was not the phrase they used; the phrase was that they would not "permit a no-deal Brexit". But let us think about it for five seconds: that is exactly the same, is it not? So, of course, the European Union—not unreasonably; I do not blame them—started putting on the table all sorts of outlandish demands that, up until then, it had not occurred to them to make.

Plenty of people have said, "Parliament ought to assert itself in this situation." That is fine, but it strikes me as a little inconsistent for noble Lords who were strongly in favour of this no-deal Brexit stance, who then, if you like, ensured that this treaty was signed under duress, now to turn around and say, "You told us it was a great treaty. How come you have changed your mind after three years?" It was signed in a moment of EU overreach and it was bound to be corrected when the majority in another place changed. I am bound to add that there is something slightly odd about saying, after three years of negotiations, "Shouldn't we have a little bit more time to talk?" What do noble Lords think we have been doing for the last three years?

I would like to put a question. I am one of the last speakers; some 54 noble Lords have spoken and, as far as I can tell, no one has taken issue with the contents as set out by my noble friend the Minister. Noble Lords will correct me if I am wrong. The aims of the Bill are that companies in Northern Ireland that do not export should be free to follow either UK or EU regulation; that there should be a green channel so that goods not intended for onward export are not subject to additional checks or tests; that Northern Ireland should be part of the general principle of "no taxation without representation"; and that the treaty should be arbitrated in the same way as all other international accords. Are those unreasonable demands? I see a couple of Lib Dem Peers theatrically pulling Paxmanesque leers of incredulity. I shall, of course, give way.

Lord Purvis of Tweed (LD): I thank the noble Lord for giving way since he was obviously referring to me. I am wondering about the noble Lord's assertion—a serious one: that Parliament was misled by the Prime Minister of the day; that the deal that they presented to Parliament was made under duress. We were not informed about that being the case, but that is the case that he is making. Is that correct?

Lord Hannan of Kingsclere (Con): There is absolutely no question that the Northern Ireland protocol would not have been agreed had there not been an anti-Brexit majority in another House that was saying in terms, and had taken the legislative agenda and legislated to say, that they would not permit Brexit to happen except on terms that Brussels liked.

I finish by saying that if there is a conflict between respecting the basis of the Good Friday agreement—which rests on the idea of devolution and power sharing—and an overseas treaty obligation, I hope that any British Government would pursue the former objective. That should go almost without saying. If we were not in this situation where a large chunk of the country will automatically want to side with the EU, whatever its position is, that would be an almost banal statement. If there is a conflict between the protocol and our obligation to the people of Northern Ireland, I hope that any British Government would honour their obligation to the people of Northern Ireland.

8.36 pm

Baroness Hoey (Non-Afl): My Lords, it is a fact that the protocol has downgraded Northern Ireland's position within the union and left it out on a limb, subject to still being part of the EU single market. It is a fact that it leaves our fellow British citizens there subject to foreign laws and foreign courts and under the constant enforcement of new EU regulations, with businesses in Northern Ireland forced more and more to buy from the Irish Republic rather than Great Britain.

Increased bureaucracy, staff resources, cost and delivery times have, as we all know, made many businesses refuse to trade in Northern Ireland.

For me, this is a very simple debate. Our Government decided that protecting the EU single market was more important than protecting the sovereignty of their own country and the internal market of the UK. The Irish Government made threats about the return of violence if there were ever customs posts or anything at the border. They got the EU to weaponise the border, and our Government then decided to put a border between parts of their own territory. Now they are recognising, quite rightly, that they got it wrong and it is not working. As the Prime Minister said at Second Reading:

"The reason why I am putting the Bill forward is that I am a patriot, and I am a democrat. Our No. 1 priority is protecting peace and political stability in Northern Ireland and protecting the Belfast … agreement."—[*Official Report*, Commons, 27/6/22; col. 45.]

We have heard much today about the Belfast agreement, but a great deal of it is a bit hypocritical. We constantly hear about protecting it in all its aspects and all its parts, but somehow the part whereby the principle of consent is supposed to protect the constitutional status of Northern Ireland within the United Kingdom is not mentioned by many. Where is the concern about those parts of the agreement when the protocol subjugates the Act of Union—not my words but those of the High Court judge in Belfast—which is the very constitutional basis of the United Kingdom, or when the protocol consent vote expressly disapplies cross-community consent in order to deprive the unionist community of that protection?

When many in your Lordships' House and elsewhere talk about protecting the Belfast agreement, it seems to mean that they are concentrating on protecting the north-south aspect of it and the nationalist interests within it, yet the citizens in Northern Ireland, who put up with over 30 years of terrorists and everything that was put upon them because of their loyalty to the UK, seem to be ignored. How do we repay them for that loyalty? We do so by abandoning Northern Ireland and leaving it in the European Union single market.

Now, when the Government at long last bring forward a Bill to correct that historic and shameful injustice, we have Peers here in this House who want to torpedo it. They use the language of "pause", which sounds much better than "torpedo", but I ask those Peers: whose side are you on? We are Peers in the British Houses of Parliament who are here to represent our national interest, yet some seem to want to represent only the interests of the European Union.

This Bill finally gave hope to people in Northern Ireland, but unionists generally are not naive. We have been sold out before; we do not forget how our Government defended the subjugation of the Act of Union in court while at the same time saying publicly that they would fix the injustice. When we get to the Supreme Court in November, it will be very interesting to see if His Majesty's Government take a very different view.

What other country would abandon sovereignty over a piece of its territory in this way? Have the Bill's opponents no sense of patriotism or any care for national interest? Would Zelensky agree such a deal for the Donbass—ironically, described as the "Ulster of Ukraine"? I speak with anger today because I believe that you all need to understand what a grave injustice has been perpetrated on your fellow British citizens in Northern Ireland, and whether you like it or not, efforts to stop this Bill constitute taking a side; it is lining up with the European Union and the Irish Government, an Irish Government who stand up proudly for their nationalist community in Northern Ireland but demand that the British Government be neutral. It is betraying the British people that live there who have the fundamental right to equal citizenship.

I was ashamed when Parliament passed the grave injustice of the protocol. The only thing that will top that is sitting here, watching Peers wanting actively to try to keep Northern Ireland in captivity by preventing the progress of this Bill, which does nothing other than seek to restore Northern Ireland's place in the United Kingdom. On the breaking of international law—I think the noble Lord, Lord Bew, dealt with that brilliantly—while I accept the Attorney-General's view, I care more about the fundamental constitutional law of the United Kingdom. After 300 hours of negotiations already, does anyone think that the EU will change its views if this House delays this Bill? It will not even widen Šefčovič's mandate. I believe that it will be helping to put an end to power sharing in Northern Ireland possibly for ever. No self-respecting unionist will return to Stormont until the protocol is removed. As for those who are attacking the DUP, I look to see whether they attacked Sinn Féin when it took Parliament down in Stormont for three years.

Already we have no north-south ministerial councils, no Executive and no Assembly. How can anyone argue that the protocol is not a threat to the Belfast agreement? Please remember that when you vote tonight.

I finish by paraphrasing one of the greatest men to sit in our Parliament, Sir Edward Carson: "There are none so loathsome as those who will sell their friends for the purposes of conciliating their enemies." Sadly, that is true just as much today as it was over 100 years ago.

8.42 pm

Lord Northbrook (Con): My Lords, I am totally opposed to this Bill. I do not like the idea of "excluded" provisions in it, with this meaning that they would no longer apply in domestic law. These would include provisions dealing with customs and movement of goods between Great Britain and Northern Ireland, state aid and the jurisdiction of the European Court of Justice over the protocol. The Bill would give Ministers delegated powers to change which parts of the protocol would be "excluded provision" in domestic law. They would also have delegated powers to make new law in connection with the protocol, such as on the movement and regulation of goods. The wide scope of these powers has been criticised by our House of Lords Delegated Powers Committee, which has recommended that many of them be removed from the Bill.

The Government have argued that the Bill is needed because the protocol is failing to achieve its objectives and has led to disruption to the economy and challenges

[Lord Northbrook]
to political stability in Northern Ireland. They say that discussions with the EU over many months have not resulted in any agreement to change the protocol.

In proceedings in the other place, Simon Hoare, chairman of the Northern Ireland Affairs Committee, said that the Office of Speaker's Counsel had provided a legal opinion to his committee that

"raises enormous concerns about this Bill's legality".

He said that the Bill was based on arguments that were

"flimsy at best and irrational at worst"

and that the Bill risked "economically harmful retaliation" and

"shredding our reputation as a guardian of international law."

Julian Smith, a former Northern Ireland Secretary, feared that the Bill was

"a kind of displacement activity from the core task of doing whatever we can to negotiate a better protocol deal".

He said that it risked

"creating an impression to Unionism that a black-and-white solution is available when the reality is that … compromise will ultimately be needed".

At the same time, he feared the Bill risked "toxifying further" discussions with the EU as well as

"prolonging instability for Northern Ireland business, not to mention putting the whole of the UK at risk of trade and tariff reprisals".—[*Official Report*, Commons, 27/6/22; cols. 55-70.]

At the heart of the NIP Bill is the interpretation of the 1998 Belfast/Good Friday agreement by the UK Government. While it seems to some that constructive ambiguity is the most essential feature of that 1998 agreement, this approach is much harder to apply to the issues arising from Brexit. What the UK Government have to face as a consequence of leaving the single market is a choice as to where EU checks and controls on the movement of goods should apply.

The Northern Ireland protocol, signed in January 2020 by the EU and the UK Government, was a compromise that followed lengthy and detailed negotiations which had produced no better option. Finding a realistic and practical way ahead now depends on being able to identify the real problems that need to be addressed, taking account of the constitutional position of Northern Ireland and understanding how the present real difficulties relating to this developed.

The NIP Bill is said to be essential because unionist opposition to the protocol is preventing the operation of the institutions created under the Good Friday agreement. However, the issue of the checks and controls on goods moving from Great Britain to Northern Ireland was known and understood when the protocol was adopted. The UK Government have given contradictory signals about that issue. Unionists claim they were promised unfettered access for goods moving from Great Britain to Northern Ireland, but there is no way that any such promise could be reconciled either with the protocol itself or with the agreements reached in December 2020 on how it would be applied. Hence, I fear the UK Government have clearly contributed to the sense of grievance strongly felt by many unionists over the protocol.

In claiming to address the issue of unionist disengagement through the NIP Bill, the UK Government have in my view adopted a one-sided analysis of the Good Friday agreement. While arguing that the Bill is needed to uphold that agreement, the solution it seeks to impose does not take into account the views of the majority of the people in Northern Ireland who are not opposed to the protocol, nor would it have the agreement of the EU or the Irish Republic Government.

The EU made significant concessions in 2021 to try to make progress in sorting out the problems arising from the protocol for the UK. These included less onerous checks on lorries transporting different food products. A business importing products of animal origin into Northern Ireland from Great Britain will also no longer be subject to the same level of checks and controls. Certain products that are generally prohibited from import into the EU will now be allowed to be imported into Northern Ireland from Great Britain, subject to them carrying certificates for which specific models will be provided. A Northern Ireland business buying goods from Great Britain will have a much simpler process of customs clearance. A smaller Northern Ireland business importing wood and other raw materials from the UK will have much simpler customs formalities. Food manufacturers and retailers exporting from the UK to Northern Ireland will also have simpler or no customs formalities. Finally, British wholesalers of medicines will be able to continue to supply Northern Ireland from the current British base without relocating infrastructure. I am glad to read that protocol negotiations have resumed and hope that the Government really take on board these concessions.

8.48 pm

Baroness Ludford (LD): My Lords, in a recent speech the vice-president of the European Commission, Maroš Šefčovič, said:

"You may not hear this often from a European Commissioner, but it is high time we got Brexit done".

The irony of this Government's position on the protocol and this Bill is that they seek to overturn an instrument that was part of the package their party so triumphantly said got Brexit done—whatever rewriting of history we have heard tonight. Perhaps Mr Šefčovič's answer came last Friday when the Secretary of State for Northern Ireland, Chris Heaton-Harris, said:

"I want to be very positive about the chances of getting a negotiated solution. We are working in good spirits and in good cooperation … We need to show some progress on that".

The noble Lord, Lord Hannay, reminded us that the gap is pretty small. The noises are hopeful and these Benches urge a rapid and constructive result to the negotiations on possible adjustments to the implementation of the protocol, instead of this unacceptable unilateral abrogation of a treaty.

I note that the Minister, the noble Lord, Lord Ahmad, referred to "technical talks", which makes the point that the protocol is not being reopened. The noble Earl, Lord Kinnoull, spoke of the impasse in the wider UK-EU relationship, not least the blockage of our access to Horizon, a very unfortunate spillover. The original mistake was pursuing the hardest of hard Brexits and cutting the UK out of the single market

and customs union, as the noble Viscount, Lord Hailsham, emphasised. Let us hope that sense will prevail on that score in years to come.

But that original mistake of policy was accompanied by a complete absence of integrity. As my noble friend Lord Bruce said, it was starkly clear that "Get Brexit Done" was a great electoral slogan for a weary electorate, but at its heart it was, and is, a deliberate deception. My noble friend Lord Thomas of Gresford recalled that Mr Johnson advised traders to throw paperwork into the bin. So, when the Government now complain of the protocol's "unnecessary checks and paperwork" and "burdensome bureaucracy", we are entitled to point out that this was their sovereign choice. But, as my noble friend Lord Purvis of Tweed recalled, Liberal Democrats, along with our partners in the Alliance Party, were ridiculed and condemned when we repeatedly warned of the implications of the protocol for trade and business. Professor Katy Hayward of Queen's University Belfast said:

"This is a bill that is purportedly intended to protect the 1998 Good Friday (Belfast) Agreement, but as it stands it looks set to bring new levels of economic and political uncertainty for Northern Ireland".

As the noble Lord, Lord Jay of Ewelme, said, the present uncertainty is destabilising.

My noble friend Lady Suttie pointed out that the Bill is not something that the majority of people in Northern Ireland or the business community actually want. My noble friend Lady Doocey drew attention to the problem that a dual regulatory regime would cause for dairy farmers, since, if animal feed from the EU and the UK were mixed up, it would be impossible for vets to certify that an animal's milk genuinely met EU standards. In fact, a dual regime may lighten the red tape load on GB exporters, but it will increase it on Northern Ireland businesses, and all the loose talk about regulatory divergence can only make matters worse.

If the internal market Bill would have broken international law in a "very specific and limited" way, the current Bill's breach of it is absolutely blatant and comprehensive. The noble Lord, Lord Pannick, dealt fully with this subject, as did the noble Baroness, Lady Kennedy of The Shaws, the noble Lord, Lord Howard, and the noble and learned Lord, Lord Garnier—all of them distinguished lawyers. The noble Lord, Lord Tugendhat, recalled that Margaret Thatcher was committed to the rule of law.

It has been pointed out that Article 16 provides a legal mechanism for safeguard measures within the scope of the protocol, but the Government have declined to use this, as the noble Lord, Lord Howard, said. He recounted how the former Attorney-General told him that Article 16 was not being invoked because it only allows measures that are "proportionate". For a country such as the United Kingdom, with its web of treaties and global connections both public and private, to be so cavalier about breaking international law is a very serious error and reputational own goal. Who in the world will trust our Government and even our businesses to keep their word in future? The noble Lord, Lord Cormack, was eloquent on this point.

The noble Lord, Lord Ricketts, warned that this is a very dangerous time internationally and a moment for unity and solidarity in the alliance backing Ukraine, not divisions between the UK and the EU. The noble Baroness, Lady Wheatcroft, warned of the effect on the financial markets. The noble Lords, Lord Kerr and Lord McDonald, noted the welcome reset in relations with the EU, with Prime Minister Liz Truss, when taking part in the inaugural meeting of the European Political Community, even able to bring herself to call President Macron a "friend". This welcome reset would be torpedoed by this hostile Bill, and the mooted bilateral UK-France summit for next summer would surely go in the bin. With our economy in a very fragile position, the last thing we need is a trade war with the EU, and the last thing that Northern Irish traders need is the loss of ready access to the EU single market.

Other noble Lords have adequately covered how the Bill represents an almighty power grab by the Executive, as have the excellent reports from our Delegated Powers Committee, so I will not repeat that point. However, I will quote the Conservative chairman of the Justice Select Committee in the other place, Sir Bob Neill, who said,

"the reality is that there are Henry VIII powers and Henry VIII powers; and this is Henry VIII, the six wives, Cardinal Wolsey and Thomas Cromwell all thrown in together".—[*Official Report*, Commons, 13/7/22; col. 370.]

I also point—as did a stellar quartet of the noble Baronesses, Lady Ritchie, Lady O'Loan, Lady Kennedy and Lady Goudie—to the very legitimate concerns of the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland about the impact of the Bill on the implementation of Article 2 of the protocol, the commitment by the UK Government to ensure

"no diminution of rights, safeguards and equality of opportunity"

protections as a result of the UK's withdrawal from the EU. If the Bill progresses, that will need detailed examination.

I conclude with what the former Prime Minister Theresa May said in the other place—words widely echoed across this House today, including by the noble Lord, Lord Kirkhope:

"In thinking about the Bill, I started by asking myself three questions. First, do I consider it to be legal under international law? Secondly, will it achieve its aims? Thirdly, does it at least maintain the standing of the United Kingdom in the eyes of the world? My answer to all three questions is no. That is even before we look at the extraordinarily sweeping powers that the Bill would give to Ministers."—[*Official Report*, Commons, 27/6/22; col. 63.]

We have two previous Conservative female Prime Ministers, Margaret Thatcher and Theresa May: one who cannot now give her opinion but would surely not have approved of this Bill, and another who has said that she does not approve of this Bill. The most recent previous Prime Minister did his Government and country no favours in bringing it forward. In words he might have spoken, it is time for the present Prime Minister to "donnez-nous un break"—indeed, to give herself a break by ditching it.

8.57 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, my noble friend Lady Chapman dealt with some of the political and practical considerations of this Bill, and a number of speakers have since mentioned the important challenges in relation to legality, precedent and the

[Lord Ponsonby of Shulbrede]
UK's reputation as an actor operating in good faith. The noble Lords, Lord Howard, Lord Pannick and Lord McDonald of Salford, my noble friends Lord Bach, Lady Kennedy of The Shaws and Lord Triesman and many other noble Lords have commented on the legality of the Government's position. However, we cannot forget how the protocol came into force in the first place: the noble Lord, Lord Frost, and his then boss, Boris Johnson, decided that this was the solution to the question of Northern Ireland's future. Three years ago, the Government had a large majority of 80 and this was presented as a solution to Parliament. The UK signed the protocol, as well as committing in Article 4 of the withdrawal agreement to ensuring that domestic law is consistent with the agreements made, only to claim post ratification that it was only ever intended as a stop-gap until something better could be agreed.

As the Bill gives powers to UK Ministers unilaterally to override the terms of the protocol, it cannot possibly be consistent with the UK's obligations under international law. The Government lean on the doctrine of necessity, as we have heard, but there are severe doubts, as we have also heard, about their legal position. Indeed, some government lawyers were asked for only a selective opinion on the protocol, and other lawyers were not consulted at all. The doctrine cannot possibly apply to a state in cases where the necessity has been brought about—even partly—by the state's own actions. That point was made brilliantly by a number of speakers.

The now Lord Chancellor famously said that the internal markets Bill, which is of course related to the protocol, broke the law in only a "limited and specific way". The noble and learned Lord, Lord Garnier, referred to this in his powerful speech. I sit as a magistrate at Westminster Magistrates' Court and if, on a Monday morning after a busy weekend and as the cells are emptied, a defendant came in front of me and said that he had broken the law in only a "limited and specific way", I would take that as a plea of guilty and would sentence accordingly.

Nobody thinks the protocol is perfect but, as my noble friend Lady Chapman and others observed, the majority of Northern Ireland businesses have confidence in it. Our concern is that by acting unilaterally, the Government run the risk of harming the economy and destabilising community relations. I pay tribute to two noble Lords who will not be expecting me to pay tribute to them. One is the noble Lord, Lord Northbrook, and the other the noble Earl, Lord Kinnoull. Both gave very thoughtful speeches about the practical destabilising provisions of the Bill.

The political situation in Northern Ireland is well known. It is difficult, which is why the Government should have been seeking a negotiated outcome all this time, as well as engaging with all communities in Northern Ireland about the future they want to see. We welcome the more productive tone witnessed in recent UK-EU discussions and hope that, as a result of that shift, Northern Ireland will soon have a functioning political system. Residents want their concerns about the cost of living, public services and other matters addressed, a point very ably made by my noble friend Lady Ritchie.

I want to comment on the speech of the noble Lord, Lord Frost. He was very explicit when he addressed the House that he wants the Bill to provide a "walk away" option for the Government. He repeated that phrase several times. I want to give the noble and learned Lord, Lord Stewart, an opportunity to say whether he recognises the Bill as providing a "walk away" option. His noble friend Lord Ahmad was not so explicit when introducing the Bill. I want to comment, as somebody who has done many business-type negotiations, that I have never entered a business negotiation where I accented the "walk away" option. It may have been in the background, but it was not something I said when I wanted a successful negotiation. I think it is the wrong approach.

In his comments the noble Lord, Lord Forsyth, seemed to downplay the importance of the US and President Biden's interest in the Bill. It may be interesting for the noble Lord if I tell him that at the Labour Party conference, I was lobbied by US diplomats on this Bill. That did not happen by accident; it happened because they were very concerned.

Moving on, we have been given a number of concrete assurances during the passage of earlier Bills that this or that piece of retained EU law would be protected, yet now the Government have set a hard deadline for revoking some regulations. With that in mind, it seems that we can no more accept assurances about the use of delegated powers than our international partners can when UK Ministers put their signatures to binding agreements.

My noble friend Lady Chapman described the Bill as an insult to our political and legal traditions. We have heard, from both my noble friend and the noble Lord, Lord Cormack, that we will not be voting on their amendments tonight, but I very much hope that there will be constructive discussions across the House as we move towards Committee.

9.04 pm

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, I begin by expressing my appreciation for the very large number of thoughtful and informed contributions we have heard during this debate. It has been an honour to have heard it and now to become a part of it. It has grappled with not only the grave political and constitutional matters before us but has cited the Marquess of Salisbury, by my noble friend Lady Nicholson, Montesquieu and *The Spirit of the Laws* by the noble Lord, Lord Morrow, Shakespeare's "The Merchant of Venice" by my noble friend Lord Moylan and that peerless advocate and exemplary parliamentarian Sir Edward Carson by the noble Baroness, Lady Hoey. The debate also heard the expression "Piss off" used by the noble Lord, Lord Russell of Liverpool, which I had perhaps not anticipated hearing in a debate in your Lordships' House.

On behalf of the whole House, I am sure, I echo the words of the noble Lord, Lord Rogan, and others on the loss to our counsels constituted by the death of Lord Trimble. I also echo his comments on the loss to Lord Trimble's community, the whole of Northern Ireland and his family.

Before I turn to the points raised by various noble Lords, I will briefly restate the reasons for introducing the Bill. The Northern Ireland protocol was agreed

with the best of intentions, to ensure that the Belfast/Good Friday agreement was protected in all its dimensions as the United Kingdom left the European Union. The departure of the United Kingdom from the European Union is, as the noble Baroness, Lady Fox of Buckley, put it so trenchantly, a UK matter. It is not to be balkanised in terms of how it played out in London, Northern Ireland, Scotland or Wales. It is a United Kingdom matter.

But in its practical operation, the protocol is causing practical problems for people and businesses in Northern Ireland, including disruption and diversion to east-west trade. That disruption is present in the rest of the United Kingdom and it is causing significant costs and bureaucracy for businesses and traders.

Moreover, political life in Northern Ireland is, as your Lordships have heard on numerous occasions, built on compromise and power sharing across communities. However, as noble Lords have also heard, the protocol does not have the support of all communities in Northern Ireland. The noble Lord, Lord Dodds of Duncairn, was but the first to explore this point. As a result, we are seeing political and social stress in Northern Ireland, including the non-functioning of the Northern Ireland Executive and Assembly. It is clear that the protocol is putting strain on the delicate balance inherent in the Belfast/Good Friday agreement.

It remains the Government's preference to reach a negotiated agreement on the protocol. I could not associate myself more with the comments from all sides of your Lordships' House—the noble Lords, Lord Triesman and Lord Bach, on the Benches opposite, the noble Baroness, Lady Wheatcroft, and my noble friend Lord Tugendhat—on the importance of negotiation and the hopes the Government have that it will ultimately bear fruit. My right honourable friend the Foreign Secretary has reiterated this. He and Vice-President Maroš Šefčovič have agreed that officials should meet to discuss technical solutions. The Bill contains provisions to implement any future negotiated agreement with the European Union. I can give an assurance at this stage to my noble friend Lord Frost that we are clear that negotiations must be able to address the full range of serious issues caused by the protocol. The Bill is set up to enable us to do precisely that.

In answer to a point raised quite early in the debate by the noble Lord, Lord Ricketts, our EU partners and friends are aware of this Bill. They are aware that negotiations continue and recognise that there are problems to resolve.

My noble friend Lord Forsyth of Drumlean spoke early in the debate about the manner in which the protocol has been operated. I will revert to that point when I discuss, at a level I think appropriate to Second Reading, the implications of the Government's stance for international law. However, I must stress to your Lordships' House that the problems created by the protocol are urgent and require swift action. The Taoiseach, the Irish Premier, said publicly last week that the protocol as it was originally designed was a little too strict. These problems are of long standing and we now seek to address them. But while we engage in dialogue with the European Union, we must also ensure that we have covered all bases and that the United Kingdom Government have the ability to implement durable solutions in any scenario.

I now propose to turn to some of the specific themes and questions raised in this evening's debate. I do that against the undertaking that if I should fail to refer specifically to the contributions of any of your Lordships or fail to give consideration to any of your Lordships' arguments proper to this stage of Second Reading, I am happy to engage with your Lordships in writing or in person in the corridors of this place, or for that matter, elsewhere.

The matter that featured most strongly in your Lordships' deliberations today arose out of the matter of international law and the argument from necessity. The Government have already published a statement of their legal position on the Bill and their position is that it is lawful and necessary. The noble Lord, Lord Birt, from the Cross Benches and my noble friend Lord Kirkhope of Harrogate seemed to suggest to your Lordships that the voice of the legal profession was as one in saying that this was not the case. That is not so. The Government have a worked-out position in international law and there is no reason why we should not take it forward.

The United Kingdom exercised its sovereign choice to leave the European Union single market and customs union. I discern that that course was not universally approved by your Lordships' House. But the peril that has emerged was not inherent in the protocol's provision. As to the universal opposition, which some of the contributors to this debate seemed to throw up, it is in the nature of law that it is often adversarial. It is in the nature of law that parties will have different approaches, just as it is in the nature of sincere friendship that sincere friends will often disagree, even on the most fundamental matters.

The strain that the arrangements under the protocol are placing on political institutions in Northern Ireland, and more generally on socio-political conditions, will leave the Government with no option but to take action if they cannot reach a negotiated solution with the European Union.

I listened with great interest to the comments as to law made not only by the many distinguished lawyers on the Benches of this place but from lay people concerned about the implications of the step that the Government were proposing to take. Opening for the Opposition from the Front Bench, the noble Baroness, Lady Chapman, began more correctly—or less wrongly—by saying that it was "likely" that this would amount to a breach of international law. Then she recovered the party line and said that it did breach international law. The curiosity was that I think that the lay people contributing to this debate about international law were, in fact, nearer to the truth than distinguished commentators such as the noble Lord, Lord Pannick, or my noble friend Lord Howard of Lympne, because the fact of the matter is that it is not possible—

Lord Purvis of Tweed (LD): I do not want that honour.

Lord Stewart of Dirleton (Con): I hear the noble Lord and will revert to him in due course. It is not possible to equiparate international law with domestic law. There is simply not enough of it and it is too

[Lord Stewart of Dirleton]
dependent on facts and circumstances which will not apply from case to case to come up with a precedent which would allow noble Lords who have spoken in these terms to speak with such certainty.

Should I address the noble Lord, Lord Purvis of Tweed, at this stage? At an early stage in these proceedings, he spoke about the nature of the plea to necessity. I say again that it is very different from the interpretation of a domestic statute. Of course in international law there are similarities with domestic legislation, and of course in international law, often being a matter of paction, there are similarities with the law of contract. But it cannot be equiparated with, to use a metaphor that emerged from the Cross Benches, a contract for the sale of sausages. It is too complex and too fact-specific. That point was continued by the noble Baroness, Lady Suttie, my noble friends Lady McIntosh of Pickering, Lady Altmann and Lord Kirkhope of Harrogate, my noble and learned friend Lord Garnier—I am sure that I have missed others out; as I said, my undertaking is to engage with your Lordships to assist them in moving this forward—and, I decipher from my scrawl, the noble Lord, Lord McDonald of Salford, speaking from the Cross Benches. The assertion that the Government's position breaches international law is too bold and lacking in nuance. I submit that we are entitled to proceed on the basis that we anticipate that the protocol will be operated in a manner that reflects the unique and serious circumstances against which it was drawn up.

The doctrine of necessity was approached by the noble Baroness, Lady Crawley, and my noble friend Lord Hannay of Chiswick in particular, who equiparated—if I misattribute this to my noble friend, I apologise to him and will happily correct it—invocation of the doctrine of necessity with the law of President Putin. Far from it: there is authority for the existence of a defence of necessity dating back at least to the early 19th century. It was recognised by the International Court of Justice in 1997 in a case between Slovakia and Hungary regarding a dam on the Danube. It formed part of the International Law Commission's articles on state responsibility, drawn up in 2001, as the Government's statement on their legal position notes. In 1995, the Government of Canada justified steps taken to protect the Grand Banks fisheries on the basis that it was necessary to do so. If fisheries in the Atlantic are important, how much more so is the extension of democratic rights across the whole of this United Kingdom?

Invoking the doctrine of necessity does not repudiate international law or the international rules-based order. It is part of the international rules-based order. The noble Baroness, Lady Kennedy of The Shaws, my noble and learned friend Lord Clarke of Nottingham, the noble Lord, Lord Bach, and my noble friend Lord Tugendhat stated that the Government were undermining the rule of law and that this constituted a flagrant breach of the rule of law. Again, by invoking the doctrine of necessity, we operate within the framework of international law and—

Lord Howard of Lympne (Con): Is not my noble and learned friend rather missing the point? None of us has suggested that the doctrine of necessity plays no part in international law. What we are saying is that it is not justified by the Government's approach in this particular instance.

Lord Stewart of Dirleton (Con): I respond to my noble friend by saying that the assertions that it breaches international law simply cannot be determined at this point because it is a matter of exploring the complex background of facts and circumstances, including the manner in which the protocol has been operated.

Lord Thomas of Gresford (LD): Can the Minister define in a few words what the necessity is in this particular instance?

Lord Stewart of Dirleton (Con): My Lords, I think it would be wrong of me at this stage in the Second Reading to engage in a deeper debate. I refer the noble Lord to the terms of the legal statement issued by the Government.

On the diminution of rights which were raised among your Lordships, I return to the point raised by my noble friend Lord Moylan and indeed by other Members of your Lordships' House from Northern Ireland: what are we to say of the diminution of rights which strips from citizens of this country the right to make laws? Must we not look to that? At present, the circumstances of Northern Ireland strip our fellow countrymen of that right.

Baroness Altmann (Con): My Lords—

Lord Stewart of Dirleton (Con): I will not give way at this stage.

An argument which was deployed by some of your Lordships, beginning with the noble Lord, Lord Ricketts, and continued by my noble friend Lord Northbrook, was that by these steps the Government are damaging the trust in the United Kingdom among its international partners. There is no reason why this legislation should damage trust among our international partners. The Government want to move past issues with the protocol and focus on the key global challenges, such as those emanating from the current Government of Russia. As regards this country's standing in the world at large, people furth of this country will look to the unhesitating support offered by this country to a democratic state imperilled by an aggressive neighbour and take that as the badge and measure of this country's approach.

Baroness O'Loan (CB): My Lords—

Lord Stewart of Dirleton (Con): My Lords, again, with the utmost respect, I decline to give way to the noble Baroness. She has my assurance that I will engage with her.

Lord Purvis of Tweed (LD): The point is to answer noble Lords.

Lord Stewart of Dirleton (Con): I hear the noble Lord; I will not give way.

It remains the Government's preference to reach a negotiated agreement on the protocol, and further discussions are now under way with our European

Union counterparts with the aim of identifying shared solutions. I can give my noble friend Lady McIntosh of Pickering repeated assurance of the importance of negotiation. We will continue to work closely with the European Union on the crisis of Ukraine, as we will with the United States and with all friendly powers and democracies throughout the world. We have always said that we want to fix the problems created by the protocol, in part so that we can focus our full collective energy on global challenges such as these.

The point was taken up at various points during the debate that the Bill threatens Northern Ireland access to Ireland and to the wider European Union single market. I stand before your Lordships in place of my noble friend Lord Caine, who I feel is far better equipped to answer these questions, drawing on his extensive experience of affairs in Northern Ireland. Again, he will undertake to engage with noble Lords on that point. Any perception of risk posed to the EU single market can be managed through market surveillance activities delivered by relevant United Kingdom bodies which will continue to prevent, deter and remove non-compliant and unsafe activity to protect the consumers of both the United Kingdom and EU markets. Market surveillance will follow the risk-based and intelligence-led approach as it does at present. As we have said all long, our preference is for a negotiated solution, and we stand ready to discuss appropriate assurances with the European Union.

The noble Baronesses, Lady Ritchie of Downpatrick, Lady Doocey and Lady Ludford, and the noble Lord, Lord Browne of Belmont, raised matters specific to agribusiness and dairy farming in particular. Again, I offer the House assurance that negotiations continue.

I am grateful to my noble friend Lord Frost for his account of the current economic situation and his summary of the historical situation in 2009 which my noble friend Lord Hannan of Kingsclere joined with his customary brio and, in the process, released a cat among the Liberal Democrat pigeons. I am also grateful to the noble Baroness, Lady Fox, whom I took to adopt the historical summary which my noble friend Lord Frost advanced.

I come next to the noble Lord, Lord Purvis of Tweed, who again very early in the debate raised the important point of an impact assessment. As the noble Lord pointed out, the Bill does not have an impact assessment. The full details of the new regime will be set out in regulations alongside and under the Bill, including economic impacts where appropriate.

Since the Bill was introduced, we have consulted extensively with businesses and other key shareholders on the underlying details of the regime to ensure that it is as smooth and as operable as possible. The Government are getting on with that task now.

The noble Lord, Lord Russell of Liverpool, seemed to invoke the concept of historical inevitability in his contribution towards the end of the debate. I am no Marxist but I am by no means clear that his exercise in foresight in relation to society in Northern Ireland will prove to be accurate.

A matter of grave and, if I may say, fully appropriate interest to your Lordships is that of the breadth of the Henry VIII powers. The noble Lord, Lord Bruce of Bennachie, my noble friend Lord Northbrook, the noble Baroness, Lady Ritchie of Downpatrick, once again, my noble and learned friend Lord Garnier, and the noble Baroness, Lady Meacher, in particular, raised these matters, and I apologise to other noble Lords whom I have not mentioned by name.

The Bill provides specific powers to make new law where we are disapplying the EU regime and where such law is appropriate to make the Bill's regime work. These powers are restricted. They can be used only in connection with certain provisions and subject matter of the protocol, for example changing valued added tax rules in Northern Ireland.

It is important to emphasise that we are engaged in negotiations. We are not, as the noble Lord, Lord Kerr of Kinlochard, said, engaging in blackmail; nor are negotiations, as the noble Lord, Lord Thomas of Gresford, said, engaged in attempting to bully the European Union; and nor, as my noble friend Lady Altmann suggested, have we by this proposal become an elected dictatorship.

These provisions are necessary. They allow the Government to act as quickly as possible to deliver new policy arrangements, for example to introduce the green and red lane for traders. Since the Bill was introduced in June this year, the Government have consulted extensively. There have been over 100 bespoke sessions with over 250 businesses, business representative organisations and regulators.

I am being warned once again: noble Lords will doubtless be glad to see the back of me. The steps which we are taking are necessary to reflect the unique and dynamic situation in which the Bill passed in the other place.

In conclusion—

Noble Lords: Hear hear.

Lord Stewart of Dirleton (Con): The Government have not triggered Article 16—from early in the debate, I note my noble friend Lord Howard of Lympne. The position is that it would not solve the radical, fundamental problems with the protocol. It would treat only some symptoms without fixing those root causes. As my noble friend Lord Moylan explained to your Lordships, the problem lies in the protocol and not in its application.

Noble Lords: Well done.

Lord Stewart of Dirleton (Con): It would appear that I am losing the House's patience.

The Bill allows the Government to implement lasting and durable solutions to the existing problems with the Northern Ireland protocol. While we remain committed to exploring shared solutions with the European Union, it is critical that we retain the ability to take action on the very real and urgent problems inherent in the protocol. I hope that noble Lords will recognise this and act in the best interests of the people of Northern Ireland by voting with the Government for the Bill. I am obliged to your Lordships.

9.30 pm

Lord Cormack (Con): My Lords, we have had a very long debate. I have heard every single word of it because I have not been out of the Chamber. I will be very brief.

[Lord Cormack]

All I say to my noble friends on the Front Bench is that there were 59 speakers, 40 of whom were troubled and against the Bill and 19 of whom were in favour of it, including government Ministers. I urge my noble friends please to consider carefully what has been said: consider what has been said about the emasculation of Parliament; consider what has been said about alienating friends at a time when we need them most of all, in a dangerous world; and please, before Committee begins, realise that there is deep disquiet throughout this House and in many quarters of the Conservative Party—I think I heard 10 speeches on this subject. Please can my noble friends talk and consider, and remember that decisions made in haste are not always the best decisions—that was really the subtext of the speech made by my noble friend Lord Frost.

I will not trouble the House further. I beg leave to withdraw my amendment.

Amendment withdrawn.

Amendment to the Motion

Tabled by ***Baroness Chapman of Darlington***

At end insert "but that this House regrets that His Majesty's Government have introduced legislation which is widely perceived to breach the United Kingdom's obligations under international law; further regrets that they have proposed unparalleled delegated powers to be exercised by Ministers of the Crown, which could be used to undermine international law and which would be subject to little or no parliamentary scrutiny; calls attention to the serious concerns expressed by the Northern Ireland business community and the majority of members of the Northern Ireland Assembly over the contents of the Bill; notes that the Bill contradicts the policy platform endorsed by the electorate at the 2019 General Election; therefore calls on His Majesty's Government to prioritise a negotiated solution with the European Union, and to pursue existing legal options to resolve outstanding issues around the operation of the Protocol on Ireland/Northern Ireland; and further calls on His Majesty's Government to consider and report to the House on whether pausing this legislation would be beneficial to the progress of those negotiations or other processes".

Amendment not moved.

Bill read a second time.

Northern Ireland Protocol Bill

Order of Commitment

9.31 pm

Moved by ***Lord Stewart of Dirleton:***

That the Bill be committed to a Committee of the Whole House.

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, I beg to move.

Amendment to the Motion

Tabled by ***Lord Cormack***

At end insert "and that the Committee should meet not until 18 April 2023, or until His Majesty's Government has reached a negotiated settlement with the European Union, whichever is earlier".

Amendment not moved.

Motion agreed.

Oaths and Affirmations

9.32 pm

Lord Grantchester took the oath.

Social Security (Special Rules for End of Life) Bill [HL]

Returned from the Commons

The Bill was returned from the Commons with a privilege amendment. The amendment was considered and agreed to.

House adjourned at 9.33 pm.

Grand Committee

Tuesday 11 October 2022

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Baroness Pitkeathley) (Lab): I remind your Lordships that if there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) (No. 2) Regulations 2022

Considered in Grand Committee

3.45 pm

Moved by ***Viscount Younger of Leckie***

That the Grand Committee do consider the Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) (No. 2) Regulations 2022.

Relevant documents: 11th Report from the Secondary Legislation Scrutiny Committee

Viscount Younger of Leckie (Con): My Lords, due to the sad death of Her Majesty Queen Elizabeth II, the debate on this statutory instrument has been delayed, but I am pleased to be taking it forward now. This SI is largely administrative and makes only minor updates to provisions under the money laundering regulations.

This Government continue to recognise the threat that economic crime poses to the UK and our international partners and are committed to combating money laundering and terrorist financing. Illicit finance causes significant social and economic costs through its links to serious and organised crime. It is a threat to our national security and risks damaging our international reputation as a fair, open, rules-based economy. It also undermines the integrity and stability of our financial sector and can reduce opportunities for legitimate business in the UK.

That is why we have taken significant action to combat economic crime, including legislating for the Economic Crime (Anti-Money Laundering) Levy and the Economic Crime (Transparency and Enforcement) Act. We are going further by developing a second iteration of the landmark economic crime plan, and by introducing the Economic Crime and Corporate Transparency Bill, which has had its First Reading in the House of Commons. This Bill will include significant reforms to strengthen the role of Companies House. We are also working closely with the private sector and our international partners to improve the investigation of economic crime, strengthen international standards on beneficial ownership transparency and crack down on illicit financial flows. These efforts are making a difference. Over the last five years we have confiscated over £1 billion in criminal assets, and over the last year we have increased money laundering proceedings by 9%.

The money laundering regulations support our overall efforts. As the UK's core legislative framework for tackling money laundering and terrorist financing, they set out various measures that businesses must take to protect the UK from illicit financial flows. Under these regulations, businesses are required to conduct enhanced checks on business relationships and transactions with high-risk third countries. These are countries identified as having strategic deficiencies in their anti-money laundering and counterterrorist financing regimes which could pose a significant threat to the UK's financial system. This statutory instrument amends the money laundering regulations to update the UK's list of high-risk third countries by adding Gibraltar and removing Malta from the list. This is to mirror lists published by the Financial Action Task Force, the global standard-setter for anti-money laundering and counterterrorist financing set up by the G7.

For the purposes of the high-risk third countries list, countries include territories and jurisdictions. Therefore Gibraltar, as a UK overseas territory, is treated as a country in the high-risk third countries list. Gibraltar has been added to the Financial Action Task Force's list as it has not completed the action plan set by the Financial Action Task Force. Improvements are still needed in Gibraltar's use of effective sanctions to address anti-money laundering and counterterrorist financing breaches and Gibraltar's actions to recover and confiscate criminal assets. The UK has offered support to Gibraltar throughout the Financial Action Task Force process and will continue to do so.

Malta has been removed from the Financial Action Task Force list after addressing the remaining commitments in its Financial Action Task Force action plan. This includes improvements in the detection of inaccurate company ownership information and the pursuit of tax-based money laundering cases, among other areas.

This is the fourth time we have updated the UK list to respond to the evolving risks from third countries. This update ensures that the UK remains at the forefront of global standards on anti-money laundering and counterterrorist financing. In 2018, the Financial Action Task Force assessed that the UK has one of the toughest anti-money laundering regimes in the world. The UK was a founding member of this international body and we continue to work closely and align with international partners such as the G7 to drive improvements in anti-money laundering and counterterrorist financing systems globally.

Lastly, this high-risk third-country list is one of many mechanisms that the Government have to clamp down on illicit financial flows from overseas threats. We will continue to use other mechanisms available to respond to other country threats, including applying financial sanctions as necessary.

This statutory instrument will enable the money laundering regulations to continue to work as effectively as possible to protect the UK financial system. It is crucial for protecting UK businesses and the financial system from money launderers and terrorist financiers. Therefore, I hope colleagues—or a colleague—will join me in supporting the legislation. I beg to move.

Lord Tunnicliffe (Lab): After the Summer Recess, it is good to be back in this crowded Room. I am grateful to the Minister for introducing these regulations. As he outlined, they contain the latest updates to the Financial Action Task Force list of high-risk countries. We are supportive of FATF's work and these regulations, though I hope the Minister will be able to answer some questions for me.

In yesterday's economy debate, I raised the new Administration's apparent dislike of what they call economic orthodoxy. We saw the role of certain economic and financial institutions questioned during the Conservative Party leadership campaign. The occupants of Downing Street have doubled down on some of their criticisms in the intervening weeks. There have long been concerns that the Government have not taken money laundering seriously. That concern has related mostly to Russian money, with feet dragged in relation to a register of overseas entities. Can the Minister confirm today whether and to what extent the UK Government remain committed to FATF and its output? We were not always convinced of the previous Administration's commitment to implementing FATF's country-specific recommendations. Are we likely to see those timescales slip further still under the new Chancellor?

While this question does not relate directly to this SI, the noble Lord, Lord Callanan, chose not to answer it last night, so I am tempted to have another go. Do the Government remain committed to bringing forward the second economic crime Bill? If so, when will we see it?

Turning to the detail of the regulations, could the Minister comment on the Government's view regarding the addition of Gibraltar? He will know that the Secondary Legislation Scrutiny Committee wrote to the Treasury regarding Gibraltar's appearance on the list, asking what assistance, if any, the Government were prepared to offer. Does the position outlined by the former Economic Secretary to the Treasury that Gibraltar does not require any bilateral assistance to implement various actions remain current? Can the Minister confirm whether the newly appointed Treasury Ministers have had any contact with their Gibraltarian counterparts on these issues?

Finally, I thank officials at the Treasury for taking the time to discuss this statutory instrument and its Explanatory Memorandum with me before the summer break. We debate these instruments perhaps three times a year yet, despite our general familiarity with the subject, the Explanatory Notes are often unclear and inconsistent. No matter how technical the matters we consider may be, it should be possible for Explanatory Memoranda to make the subject accessible to a wider audience. Indeed, that is the aim of the Cabinet Office guidance. I hope the Minister will take that on board, as we are likely to have a high volume of Treasury regulations coming forward in the months ahead.

With that, the Opposition are pleased to support these regulations. I look forward to the Minister's response to my broader questions about the Government's efforts to combat money laundering, and I would be happy for him to write with any detail that may not be available to him this afternoon.

Viscount Younger of Leckie (Con): My Lords, I thank the noble Lord, Lord Tunnicliffe, for his remarks, and I shall endeavour to answer as many of his questions as possible. I too take note of the fact that this is rather an empty Committee. That is rather a shame. I certainly hoped that there might have been more people contributing to a debate on this important subject.

I reiterate what I said in my opening remarks very briefly: the Government are taking proactive action to ensure that these high-risk third-country changes are made, and that similar anti-money laundering controls are put in place and are making a difference. I will focus on sanctions for a moment: just last year, the Financial Conduct Authority secured a fine of around £265 million against a large bank for breaches of the money laundering regulations, so these regulations have to have some bite. I hope that what we are bringing in will provide some bite.

Turning to the noble Lord's questions, I can confirm first that the Government remain entirely committed to FATF and its international standards on anti-money laundering and counterterrorist financing. As he knows, in 2019 the UK was assessed as having one of the strongest regimes for combating illicit finance, but I reassure him that we are not complacent. We are committed to addressing the remaining gaps in the UK's system as soon as possible, and ahead of the UK's next FATF evaluation.

Just a few weeks ago, we introduced the economic crime Bill before Parliament. This Bill, once agreed, will introduce the largest reforms to Companies House in over 170 years, making it harder for criminals to misuse companies to launder their dirty money. It will also improve law enforcement's ability to seize and confiscate criminal assets held in crypto assets. We have Second Reading of the Bill on Thursday and are entirely committed to taking it forward. A draft of the Bill is now available on the Parliament website, should the noble Lord wish to access it.

The Government are also currently working with industry on the second economic crime plan, which I hope will provide some reassurance. The plan will be published in due course and will set out the steps the Government are taking with industry to tackle economic crime over the next three years.

On Gibraltar itself, bearing in mind the questions that the noble Lord raised, we stand by the technical decision of the Financial Action Task Force, of which the UK is an active member. In June, the FATF recognised that Gibraltar had made considerable progress since its FATF evaluation, but that it still needed to make improvements in key areas to complete its action plan. In particular, improvements are still needed to strengthen confiscation of criminal proceeds and increase supervisory outreach to non-financial sectors, such as lawyers. But throughout the FATF process, the UK has been working closely with Gibraltar. We have kept in close contact, and indeed have offered our support. Both Gibraltar and the UK are confident that it will be able to make the necessary reforms to be removed from the list within a short timeframe. By aligning the UK's approach to the FATF, the UK is in line with international standards, and the identification of countries is underpinned by the FATF's consistent and technical methodology.

Nearly lastly, let me turn to the noble Lord's comments on Russia, which he touched on. We are absolutely taking a firm stance against Russia; we are working with our allies, and have introduced the widest possible financial sanctions to cripple Putin and his kleptocrats. Since the invasion of Ukraine, the UK has introduced sanctions to over 1,000 individuals and 100 entities. We are also restricting Russian access to finance, with asset freezes of 18 of Russia's major banks, with global assets worth £940 billion.

Just to complete my response to the noble Lord—and I thank him again for his questions—I make a very brief comment about his concerns about how the Government view "certain economic and financial institutions", to quote him. I reassure him that the Government remain fully respectful of such institutions. No names of institutions were mentioned by him, so I think that I shall not mention any either. It is just for the record to say that. As the papers have been saying, and as we know, the Chancellor meets the governor regularly to discuss current issues, while respecting that the Bank of England, for example, remains thoroughly independent.

I hope that the Committee has found today's sitting informative and that it will join me in supporting these regulations, which I commend to the Committee.

Motion agreed.

Motor Fuel (Composition and Content) (Amendment) (Northern Ireland) Regulations 2022

Considered in Grand Committee

4.02 pm

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

That the Grand Committee do consider the Motor Fuel (Composition and Content) (Amendment) (Northern Ireland) Regulations 2022.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, these regulations relate to the introduction of E10 petrol in Northern Ireland. Regulations relating to the introduction of E10 petrol in Great Britain were considered and agreed to by your Lordships' House in 2021, and I should note that this introduction has been successful, with no significant concerns raised.

E10 petrol contains up to 10% of renewable ethanol, double the amount blended into E5 petrol. Increasing the renewable ethanol content in standard grade petrol across the UK can reduce annual carbon dioxide emissions by 750,000 tonnes a year, helping us to meet our ambitious climate targets. The regulations' purpose is to introduce E10 as standard petrol in Northern Ireland, while ensuring that the current E5 grade remains available for those who need it. This will bring petrol grades in Northern Ireland in line with those in Great Britain, where E10 was introduced in September 2021. We have completed the notification procedures required under the Northern Ireland protocol, meaning that an introduction in Northern Ireland is now possible.

E10 allows us to cut carbon emissions from cars, motorbikes and other petrol-powered equipment in use on our roads today. This is done by simply increasing the amount of renewable fuel blended into standard petrol. It is one of very few measures available to us which has an immediate impact. E10 is a proven fuel that has been successfully introduced in Great Britain and many nations around the world to deliver carbon savings. Following the introduction of E10 in Great Britain last year, these regulations ensure that consumers are provided with a consistent petrol grade across the UK. It is worth noting that the Republic of Ireland intends to introduce E10 in January 2023.

The UK has a valuable bioethanol industry, which has already benefited from the increased demand created by the introduction of E10 in Great Britain. Following our policy announcement to introduce E10 across the UK, one large facility operator announced that it would recommence production. The domestic bioethanol industry supports high-skilled jobs and improves our energy independence, delivering on a range of government priorities such as growth and energy security.

These production facilities also play an important role in their local economy, employing hundreds of skilled workers directly and supporting thousands of jobs in the wider community. That community includes the agricultural sector, with locally grown, low-grade feed wheat used to produce ethanol. Furthermore, valuable co-products of bioethanol, such as high-protein animal feed and stored carbon dioxide used by the food industry, reduce our reliance on imports, thus increasing our domestic resilience. It is vital to support these industries as we grow our economy and progress towards net zero by 2050.

Introducing E10 is part of a wider set of measures to encourage renewable fuels. Overall, renewable fuel blending is incentivised through the renewable transport fuel obligation, or RTFO, obligating larger fuel suppliers to supply renewable fuels. However, the RTFO does not prescribe how to meet low-carbon fuel supply targets, nor does it require specific fuel blends; it is market driven. It is therefore necessary to introduce the obligation to supply specific fuel blends to remove market barriers. This has been proven to be successful by the introduction of first E5 and then E10 petrol in the UK, as well as B7 diesel.

We have opted for introduction in Northern Ireland in November, as fuel suppliers and retailers have made it clear that an introduction at the same time as or shortly after the change from summer to winter fuel specification is the most efficient way to introduce E10 into the fuel system.

Over 95% of petrol-powered vehicles on the road are compatible with E10 petrol, and this figure is increasing all the time. All new cars manufactured since 2011 are compatible with E10 petrol, and most cars and motorcycles manufactured since the late 1990s are also approved by manufacturers to use E10. However, some older vehicles are not cleared to use E10. That is why this instrument includes provisions to keep the current E5 petrol, which contains up to 5% ethanol, available in high-octane "super" grade.

The same set of derogations and exceptions that apply to the supply of E5 and E10 in Great Britain in case of supply issues or infrastructure constraints will

[Baroness Vere of Norbiton]
apply in Northern Ireland as well. This means that very small filling stations will be exempt from having to sell E10. Additionally, if supplying petrol with the required minimum ethanol content is not feasible for short periods of time, say due to factors such as technical or supply issues, the Secretary of State for Transport can grant refineries or blending facilities temporary derogations to ensure that fuel supply is not interrupted.

We have launched a comprehensive communications campaign involving local radio, roadside posters, social media and information at forecourts. This informs motorists in Northern Ireland of the changes that will be made to petrol this autumn—subject, of course, to the approval of this instrument—and directs vehicle owners to GOV.UK, where there is an online compatibility checker so that people can see whether their car is compatible.

In proposing this statutory instrument, my department has carefully considered a balance of interests, as we did when we introduced E10 petrol in Great Britain. I beg to move.

Baroness Randerson (LD): My Lords, I thank the Minister for her excellent introduction. Obviously, we welcome this statutory instrument. However, I want to use this opportunity to register my concern at the continued lack of an Executive in Northern Ireland. That is an issue that goes well beyond this. The lack of the Executive serves the people of Northern Ireland very badly indeed, condemning them to the slow lane on so many important issues. There is an example in this SI of how they are disadvantaged.

Paragraph 12.6 of the Explanatory Memorandum makes clear that the "added complexity" of supplying 95 octane E5 grade fuel to Northern Ireland while the rest of the UK has moved on to E10 grade has, not surprisingly, meant additional costs to producers. It goes on to make it clear that producers have had to provide

"separate production processes and storage."

Paragraph 12.3 says that the costs of this have

"already been passed on to motorists in Northern Ireland",

even though they have not been enjoying the advantages of it. They are paying the price without getting the benefits. Happily, however, this SI brings Northern Ireland in line with the rest of the UK. Presumably the SI includes any useful lessons learned from the Great Britain implementation. Maybe the Minister could tell us whether any specific issues have been incorporated as a result of this.

I have a few questions. The Minister has answered the first one; I was going to refer to the tight timescale. I see that the Government have anticipated that and have launched their information and awareness-raising campaign. There are older vehicles that are incompatible, of course, and there will continue to be supplies of the old grade of fuel for this reason. Classic cars might be the main reason for that, but petrol is not used just for cars. Indeed, the SI refers to its use for equipment. I declare an interest as the owner of what might politely be described as a classic petrol lawnmower. Does the public information campaign cover equipment in general—not just lawnmowers but other equipment—and not just cars? Putting the wrong petrol in can be quite disastrous.

These regulations impose requirements on petrol filling stations to supply certain types of fuel. They impose additional responsibilities on those filling stations, so I use this opportunity to ask the Minister whether the Government will give urgent consideration to requiring them also to provide electric vehicle charging points. They are beginning to do so on certain rare occasions in Great Britain. The faster this happens, the greater we can all reap the environmental advantages of electric vehicles. EVs now encompass 16% of the new car market. Petrol stations are losing their market relatively fast and need to adapt. I think an imposition—with a timescale, of course—would be very useful in ensuring that we make the transition as soon as possible.

Paragraph 7.12 refers to fuel terminals still

"unable to blend … ethanol into their petrol"

and gives them at least two years' exemption. I am concerned that these still exist. We have known for a long time that this change was coming, so I thought providers would have adapted by now. Can the Minister tell us what percentage of terminals this applies to? Is it just one or two? I notice that apparently there are none identified in Northern Ireland. Are we talking about a big section of the market in the UK, or just one or two outliers?

Finally, the documentation states that most petrol sold in Northern Ireland—which itself represents 3.5% of the total UK market—comes from suppliers who also supply the rest of the UK. I assume that some of the petrol sold in Northern Ireland comes over the border from the Republic, and I would be interested to know what percentage. Are the rules and regulations that now apply in the Republic identical to those being imposed on Northern Ireland, or is there some variation at some point? Obviously, this would have implications in terms of the protocol as well as a practical implication for motorists. Having put forward those questions, I am very pleased to see this measure before us.

4.15 pm

Lord Tunnicliffe (Lab): My Lords, I thank the Minister for introducing this SI, which of course we will support. However, having done a little research on this issue, I have ended up with a few questions. First, I think she said that the situation in Northern Ireland and mainland UK will be precisely the same after 1 November. It seems to me that we have E10 and E5, and 97 and 95. As I understand it, in Northern Ireland all the E5 will be 97 and all the E10 will be 95. I should know this from when I fill up my car, but is that the situation in the UK today?

The second area I am interested in, from doing research on that glorious but occasionally seductively dangerous Google, is that there have been questions about whether there is a fuel consumption penalty. Indeed, looking it up on GOV.UK, there is an acknowledgement that there is. The government website suggests that it is 1% or 2%; some motoring magazines have suggested it is rather higher. It would not require much of an increase in overall fuel consumption to arguably negate the advantages of ethanol in the fuel.

If one is unfortunate enough to own one of the 5% of cars which, I think, are not E10 compatible—or perhaps fortunate because they are some of the nicest cars around—it seems that one would have to go to E5 97. My general experience is that 97 is substantially more expensive than E10 95, so it seems to be something of a penalty. Indeed, it might lead some people to use E10 even though they know their vehicle is incompatible. Can the Minister give us some feel for the impact on the engine of consuming incompatible fuel E10 95 instead of the E5 97 that should be used?

GOV.UK explained—it is set out in the EM—that carbon dioxide emissions are reduced by this process. I would be grateful if the Minister could explain the mechanisms by which that is achieved. I have to say that until today I thought petrol was petrol, but when I got on to Google I discovered that it is a gigantic mixture of all sorts of things, and that it varies according to the time of year, and so on. However, it is a hydrocarbon—that is, it takes its energy from releasing hydrogen and carbon from the molecules and creating water and CO_2. That must be as true for ethanol because its chemical formula contains only carbon, hydrogen and oxygen, and, as far as I can tell, all the components of petrol contain carbon, hydrogen and oxygen. I therefore find it difficult to see how the emissions from the vehicle would be different. I can see that there is a difference between fuel which comes from various processing of vegetable matter, which of course captures the CO_2 in its creation and then it goes through a cycle in order to be able to go into a car.

I also discovered with my friend Google that there are worries about some issues such as condensation, and potentially water in fuel as result of that, and about the possibility of degradation of hoses and seals. I wonder to what extent in this introduction those concerns have been taken account of. Otherwise, this is a wonderful idea and I beg to support it.

Baroness Vere of Norbiton (Con): My Lords, I am grateful to the noble Baroness, Lady Randerson, and the noble Lord, Lord Tunnicliffe, for their consideration of the statutory instrument today. I am pleased that they are both able to support it, and they had some very good questions, definitely one of which I had to go and look up after I spoke to the noble Lord, Lord Tunnicliffe, this morning; I am very pleased to have an answer but I will leave it to the end, as it is my piece de resistance.

I turn first to the questions asked by the noble Baroness, Lady Randerson, although this also applies to some of the issues the noble Lord, Lord Tunnicliffe, raised. We have had this fuel in Great Britain now since September 2021 so, if there were any significant concerns, they would have been raised. We are not aware of any. I recognise that some motoring magazines might raise certain questions, but certainly there is no evidence at the moment that there is a significant problem with the introduction. The noble Baroness asked whether we had learned anything from the introduction in Great Britain. One of the key things that we learned was to make sure that we made the introduction when the specification of the fuel changes from summer to winter, so that you get the throughput at the same time as you are trying to flush through the winter grade, in this case, into Northern Ireland. In broad terms, therefore, as regards this introduction, where there are any risks they have been mitigated or we are aware of them, and otherwise I expect a very smooth introduction.

Of course, it is true that this SI was delayed a little by the sad death of Her Majesty the Queen; that is why the communications campaign in Northern Ireland has already started. The noble Baroness spoke about classic cars and indeed classic lawnmowers. We are aware that a number of items of equipment will need to continue to use E5. E5 will remain available, and we will make sure that the communications include guidance for owners to check their manufacturer's instructions to see whether E5 is suitable. In the vast majority of cases, they can just use E10 and then E5 if it is available. Light aircraft should also be able to continue to use E5. Again, as with the introduction in Great Britain, although we noted it and it was a potential issue, it has not turned out to be the case.

The noble Baroness mentioned EV charging points and I look forward, now that I am back in my role, to speaking with her further about them. I note that we have a new Minister for the Future of Transport, whom I was speaking to only today. I am not saying that the last Minister was slacking at all, but the new Minister has come at it with great new vigour to look through all our plans, to make sure that the funding is going to the places which need it most. We have to fund areas where there is a market failure because there is a significant private sector there that is willing to invest, and we need to make sure that we target those areas—for example, rural areas—where the value-for-money case for the private sector might not be so good, but we absolutely need to get those EV chargers there.

On the percentage of terminals that cannot blend, I can say that bat the moment there are two terminals, which represent less than 5% of total UK petrol production. I am afraid that the point about the percentage of petrol from the Republic is a step too far, but I will write if we have that information. When the Republic introduces E10 in January, that will be consistent across the island of Ireland and within the whole of the UK. There will be consistency for the vast majority of people who are driving compatible cars.

I am afraid that the noble Lord, Lord Tunnicliffe, slightly lost me with his first point about Northern Ireland and the mainland and 95 and 97. I will go back to read it again to make sure that we can respond properly and that we have fully understood his concern about the supply of 95, 97, E5 and E10. He is right to note that there is a penalty in terms of miles per gallon when using blended bioethanol. We think it supplies about 1.7% less energy. As we noted when we did the last SIs, it is probably about the same as driving with the air conditioning on or driving with slightly flat tyres. It is not a game-changing decrease in the energy supplied from the petrol. That impact was of course included in the impact assessment on whether it was a good idea to do this at all. The impact on the consumer is fairly marginal.

I turn to the costs for those who have an incompatible vehicle. As the noble Lord, Lord Tunnicliffe, mentioned, some classic cars cannot run on E10 and would need

[Baroness Vere of Norbiton]
to continue to use E5, which will continue to be available. I recognise that it might be a little more expensive than the E10 prices one would hope to see. For those who are unwilling to pay for super grade petrol, there are very good second-hand alternatives on the market. Unfortunately, that will probably be the option that they have to pursue.

As for what happens if you put the wrong grade in, whether E10 or E5, if you do it infrequently it is unlikely to damage your vehicle at all. It is not like when you put diesel in your petrol car or vice versa—then you really are in trouble. Your car will be fine and you can just go back to using the right one. Should you put the wrong one in on occasion, it is not going to be too much of a problem.

Then we come to carbon calculations. When I spoke to the noble Lord, Lord Tunnicliffe, this morning, he got me thinking. Of course, he is absolutely right. I had to get my head around this. It is true that when you put bioethanol into petrol, it is combusted and it produces carbon dioxide. However, the point is that the carbon dioxide in that bioethanol is from the short-term carbon cycle. It is from the air and you could probably calculate how many months it has been gone. It is from the air, it goes into feedstuffs, it goes into the vehicle, it comes out of the tailpipe and it returns to the air again. Because it is from the short-term cycle, it is basically a case of taking it out temporarily and putting it back. Using bioethanol is stopping us using that percentage of fossil fuel-based petrol, which comes from stored carbon and is what we do not want to add to the atmosphere. That was a great learning point for me and I am grateful to the noble Lord for raising it. I am going to do a bit more digging to make sure we fully understand that. We know that this is not carbon dioxide free at the tailpipe, but it is a short-term cycle rather than the long-term release of greenhouse gases, which is absolutely what we are trying to reduce in this country. On that basis, I commend the regulations to the Committee.

Motion agreed.

Merchant Shipping (High Speed Craft) Regulations 2022

Considered in Grand Committee

4.30 pm

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

That the Grand Committee do consider the Merchant Shipping (High Speed Craft) Regulations 2022.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, these draft regulations relate to the safety of high-speed craft, which are generally all rapid passenger craft but can be cargo craft. They primarily operate domestically in UK waters, although some operate between the UK and the Isle of Man, the Channel Islands and France.

High-speed craft are defined in the International Maritime Organization's *International Code of Safety for High-Speed Craft*, SOLAS chapter X. They include some twin-hulled vessels, hydrofoils and air-cushioned vessels such as hovercraft. Examples include the Isle of Wight hovercraft and the Thames Clippers. The definition of a high-speed craft set out in the international documents relates not only to its speed but to its displacement.

These regulations will be made under the safety powers conferred by the Merchant Shipping Act 1995. However, they are subject to the enhanced scrutiny procedures under the European Union (Withdrawal) Act 2018, as they will revoke the Merchant Shipping (High Speed Craft) Regulations 2004, which were made under Section 2(2) of the European Communities Act 1972. That is a long way of explaining why these have an affirmative attachment to them; in and of themselves, they are fairly straightforward and mostly technical. They do not implement any EU obligations.

As I have noted, these high-speed craft regulations replace those from 2004 to implement the most up-to-date requirements of chapter X of the annexe to the International Convention for the Safety of Life at Sea 1974, known as SOLAS, affecting high-speed craft. Chapter X gives effect to the high-speed craft codes of 1994 and 2000, which contain the requirements applying to high-speed craft. As their name suggests, these codes were first agreed internationally by the International Maritime Organization in 1994 and 2000, but they have been updated, most recently in 2020.

What do these regulations do? They further improve the safety standard for high-speed craft and will enable the UK to enforce these requirements against UK high-speed craft, wherever they may be in the world, and non-UK high-speed craft when in UK waters. This provides a level playing field for industry. These amendments bring UK legislation up to date and in line with internationally agreed requirements.

The updated requirements of SOLAS chapter X, which these regulations seek to implement, introduce both a new requirement for crew drills on entry to and rescue from enclosed spaces, such as machinery spaces, to be conducted every two months, and the recording of those drills alongside other similar recordings currently kept for fire drills and other life-saving appliance drills. These updated requirements came into force internationally on 1 January 2015.

In addition, the regulations implement two further changes to the codes. First, they introduce updates to the requirements for life-saving appliances relating to rescue boats and life rafts. Secondly, they abolish the current monopoly on satellite service provision to ships, opening the market to any provider meeting the required standards. Both these measures came into force internationally on 1 January 2020.

While many other nations adopt such resolutions into their domestic law immediately, our dualist legal system can lead to delays and a backlog has occurred. We intend to avoid such delays in future by using ambulatory references in our regulations. Indeed, we are using ambulatory references in these regulations to put matters agreed at the IMO into our domestic law.

On the UK flag we have about 30 high-speed craft to which these new regulations apply. There are no foreign-flag high-speed craft operating in UK waters.

The 1994 code applies to older vessels and the 2000 code to vessels built or substantially modified in or after 2002.

I believe that is about as much as I can say about these regulations. I have one more thought: they also make amendments to the Merchant Shipping (Fees) Regulations 2018. That is purely to enable fees to be charged for the inspection, survey and certification of these high-speed craft by the Maritime and Coastguard Agency. On that note, I beg to move.

Lord Greenway (CB): My Lords, I am grateful to the Minister for describing these regulations. As she said, under chapter X of the IMO's SOLAS convention the high-speed craft codes are regularly updated to incorporate advances in safety technology. That is the reason for these regulations.

The changes the Minister outlined are acceptable to the UK shipping industry, as evidenced by the response to the consultation process. The addition of the ambulatory reference provision to keep UK law aligned with IMO obligations is also welcome. As she said, we hope it will speed up the process as this is just another of those maritime SIs that we should have discussed some time ago.

I understand that many of the changes proposed have already been adopted by UK owners, especially by those trading internationally, because it is in their own interests to do so. I believe that some of them would like to have more advance warning of what new changes are being discussed at the IMO so that they have an idea of what might come through the pipeline.

As the Minister said, these high-speed craft come in many shapes and sizes. I have been slightly mystified as to what the size parameters are, because the only thing I have found relates to cubic metres, and I cannot relate cubic metres to a vessel. She mentioned Thames Clippers, so it obviously comes down to a relatively small craft. An upper limit does not really apply, because these craft do not get to enormous sizes.

Another area for high-speed craft, and one that is rapidly increasing, is in the offshore service sector. I looked this up to see what was going on, and I understand that there is already a High-Speed Offshore Service Craft Code. Presumably, those sorts of craft are not included in these regulations. If the Minister and her advisers could help me with a parameter for these regulations, in relation to the vessels they cover, I would be most grateful.

In the offshore sector there is enormously interesting development going on, with the latest things being all-electric craft that fly on foils. Seen from ahead, you wonder how on earth they manage to go about their business, when the ship is high out of the water and there is just a single foil going down into the water. These are exciting prospects and ones that I hope will lead to great commercial success in future. In the meantime, I welcome the regulations.

Baroness Randerson (LD): My Lords, it is good to see another small step on the long path facing the Department for Transport, as it tries to catch up with the backlog of maritime legislation waiting to be adopted into UK law. The legendary Secondary Legislation Scrutiny Committee has been watching this process and has produced three reports on this problem over three different Sessions of this House. The impact of this backlog is that the UK is failing, in effect, to live up to its international obligations, which is a matter of concern to many of us—and I think is undoubtedly a matter of concern to the Minister, to judge by what she has said before. Some of her colleagues are not that concerned about international obligations, but I know that she is.

This current lapse seems to be a potential matter of life and death, because these regulations relate to chapter X of the International Convention for the Safety of Life at Sea 1974. Since they also specifically refer to high-speed craft, I assume that there is potential for considerable risk.

I have read the legislation and the Explanatory Memorandum, and I remain a bit confused as to exactly what is covered, because the Explanatory Memorandum specifically refers to

"fire-retardant aspects of construction and fire detection and extinction devices, life-saving appliances (including life-rafts and lifejackets), navigational and stability systems".

Paragraph 13.3 of the EM refers to these as having

"key implications for safe operation"

and it seems obvious that they do, because they are an area where technical improvements in design and manufacture will have increased the effectiveness of that equipment. But the legislation also talks about people being drunk at sea, obeying orders to leave the ship and so on, so I would welcome clarity from the Minister as to exactly which of these sets of issues we are very late in implementing, if I can put it that way. Several different dates are fired at us in the Explanatory Memorandum. How late are the Government in implementing this? Exactly how much of this is gravely overdue?

When we have discussed other delayed maritime legislation, the Minister has attempted to reassure us that, for various reasons, we have been in effect carrying out the legislation anyway. The noble Lord has just referred to the fact that a craft operating internationally would have had to do that, but those operating just domestically would effectively have been exempt. It seems to me that if we are referring to changes made to chapter X in 2014, we are eight years behind schedule. Have I understood this right? Can the Minister tell us whether there have been any incidents or accidents where the lack of this legislation has been a factor?

The delay in bringing these new powers definitely seems to have been one of the more reprehensible issues that have come from the delay in so much of this maritime legislation, and therefore I am extremely pleased to see that the department is continuing to try to catch up on this issue.

4.45 pm

Lord Tunnicliffe (Lab): My Lords, we are looking at the high-speed craft regulations—the high-speed craft code. I assume—I may be corrected—that the code is de facto in two parts. There is presumably a part of the code which relates to construction—I noticed the reference to stability—and clearly there is a part which relates to operation. That is a classic division in international transport; it happens in aviation, and essentially, the international code for the construction of aeroplanes is obeyed more or less by every country to the same

[Lord Tunnicliffe]
standard, which makes life very straightforward. There is a code about operation but clearly, that tends also to be influenced by the domestic philosophies of the airlines and operators concerned. Is my assumption that the code divides into two accurate?

Secondly, to what vessels or craft does the code apply? I discovered the formula—I cannot remember whether it is in the Explanatory Memorandum, the regulations or on Google, but wherever it is, how I would apply it did not entirely leap to my mind. However, as I understand it, it relates to volume and it then manipulates that volume to create a speed, which defines whether a craft is high-speed. If it goes faster than that, it is a high-speed craft, and if it goes slower than that, it is not. However, it means that the image of what a high-speed craft is is not self-evident. I understand that the "Queen Mary 2", for instance, can achieve 30 knots—it normally goes around the world at about 20 or 22 knots. That sounds quite fast, but I believe it is not a high-speed craft. Equally, smaller vessels—the Minister mentioned smaller vessels which operate domestically—which clearly do not do 30 knots are categorised as high-speed craft.

My next question is on whether we have any in the UK; the noble Baroness has already told us that we do. If my conceptual division is right, clearly, this code would apply to how they are operated. I presume it applies to how they are manufactured. The question then is: do we manufacture any of these vessels in the UK? My sense from my Google exploration is that we do not, although I may have misread that. Are we comfortable that the philosophy behind the code has been applied in the original construction of these vessels?

Finally, the code is different. It says in paragraph 7.3 of the EM—and in the code, which I have looked at only very superficially:

"The HSC Codes take more of a risk-based approach than many maritime standards, which tend to be more prescriptive."

Indeed, it is the history of transport that most specifications originate from simply building the particular transport facility, be it a train, a boat or an aeroplane, seeing how many of them crash, and from each crash you learn something new and put that in a regulation. You end up with a large amount of prescriptive things, and if you do it enough, you get pretty close to the optimum. Indeed, the high performance of aviation recently has shown that this approach works—sadly, with the notable exception of the 737 Max; it took two horrific accidents for Boeing to take its responsibilities seriously.

The interesting point is that taking a risk-based approach to safety, as opposed to a learning-based approach that creates the prescriptive codes, requires a different philosophical approach by the safety regulators. If the Minister agrees with my division between these two approaches, can she say whether the people who now enforce that code in the UK are equipped and educated to move from the prescriptive way of going about these things, which in a sense is quite challenging but really straightforward—it passes the prescriptive feature: it has the right number of this and that and will break or not break at this level, and so on—into the more judgmental or risk-based way and to apply the code in that flexible way? Have they exercised that sort of discretion in a way that can give us confidence? The problem with the risk-based approach is that until you get a mature group of regulators, it is possible for people to make poor judgments under such a code.

I have no further questions. We will support this code being incorporated, of course. While I deplore the delays, I will forgive the Minister because we have gone on about that enough.

Baroness Vere of Norbiton (Con): I am grateful to all noble Lords who have taken part in today's short debate, especially the noble Lord, Lord Greenway, for his insight as a relative expert in this area. I will start by trying to help all noble Lords with the definition of a high-speed craft; they may or may not need calculators. A high-speed craft is one

"capable of a maximum speed in metres per second"

equal to or exceeding 3.7 times the one-sixth power of

"the volume of displacement corresponding to the design waterline"

in metres cubed,

"excluding craft the hull of which is supported completely clear above the water surface in non displacement mode by aerodynamic forces generated by ground effect".

I hope that is helpful.

Lord Tunnicliffe (Lab): I did read that definition, so I am not surprised by it. I really want to know what are typical high-speed crafts and what are not. Am I right that the "Queen Mary 2" is not a high-speed craft but that some smaller craft that do 30 knots are designated as high-speed craft?

Baroness Vere of Norbiton (Con): I will see whether I can get further written clarification of that. My understanding is that a craft knows that it is a high-speed craft, is certified to be such and then falls under these regulations. Clearly, there is a balance between the speed and the displacement. We might come up with a nice little picture of the displacement and the speed, saying whether it is high speed. That might be quite interesting for all noble Lords, as we are unlikely to talk about high-speed craft again any time soon. Let us see how we do.

The other thing I want to cover at the outset is the impact of the delays, as mentioned by the noble Baroness, Lady Randerson. I think the noble Lord, Lord Greenway, said it best; I believe he said that many of these changes are already adopted. During analysis, the UK's high-speed craft were found to already comply with all the elements of these regulations, which transpose these international safety requirements for high-speed craft from chapter X into domestic law.

There are the two different codes, as noted by the noble Lord, Lord Tunnicliffe. The noble Baroness, Lady Randerson, talked about being drunk at sea and a list of other things. Essentially, everything within those codes comes over to domestic law. I got a little confused at this point, so I will go back to *Hansard* and check that I have properly covered that issue, which I know was raised by both Front-Benchers.

On the delay in bringing them into domestic law, I hope I have been able to reassure noble Lords that all the UK craft were already doing it. The main benefit of the regulations today is the fact that we will be able to enforce them against foreign and UK craft if they are not. The MCA will certainly do that. The delay for enclosed spaces, et cetera—I am sorry; I cannot read

my writing—was seven years; that came into force in 2015. On life-saving appliances and the deregulation of satellite services, there was a two-year delay. But as I say, the requirements were already in place and we are not aware of any incidents relating to vessels that did not put these requirements into place.

The noble Lord, Lord Greenway, asked about high-speed offshore service craft. Indeed, he is absolutely right: there is a completely different set of regulations, which I was going to mention in my opening remarks. I then decided that it would confuse all noble Lords because we would be talking about entirely different vessels which do very important things. I completely appreciate that there is huge innovation going on in that area with electrics and the foils—you only have to look at the America's Cup vessels to see that they fly. They do not sail anymore; they just fly. It is amazing. But, yes, we are not talking about those vessels, or indeed offshore service craft, today.

I will take the point about advance warning of future changes back to the department to make sure that we have good stakeholder engagement before future changes, either international or domestic, are foisted upon the industry. We want stakeholders to be prepared, and it is obviously really important that we get their feedback as well.

The noble Lord, Lord Tunnicliffe, asked whether we manufacture in the UK. Yes, we do—we manufacture hovercraft, and we also have a number of high-speed craft in development. I suspect that these might relate to some of the more innovative maritime things coming through, some of which are very exciting. Obviously, those craft will take account of these regulations, as would any vessel imported into this country before it can be certified.

Turning to the issue of a risk-based approach, I understand where the noble Lord is coming from. However, the high-speed craft codes of 1994 and 2000 have always taken a risk-based approach, so there is no change in mindset among the regulators here in putting a risk-based approach into place. Unless I have misunderstood the issue he raised, we believe that the MCA already operates in that way.

I have one last comment on our favourite topic: the maritime backlog. I recognise that this is one more brick in the wall, which is very good. This is one of the 13 outstanding statutory instruments, and I am sure noble Lords will join me again later this year as we debate some more. We are making progress. As I always say, I apologise, but we hope to get everything done by the end of 2023, which is what we committed to the Secondary Legislation Scrutiny Committee.

Motion agreed.

Terrorism Act 2000 (Alterations to the Search Powers Code for England and Wales and Scotland) Order 2022

Considered in Grand Committee

4.59 pm

Moved by ***Lord Sharpe of Epsom***

That the Grand Committee do consider the Terrorism Act 2000 (Alterations to the Search Powers Code for England and Wales and Scotland) Order 2022.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, I beg to move that the order, which was laid before this House on 18 July, be approved.

Following the horrific terrorist attack at Fishmongers' Hall in November 2019, the then Home Secretary commissioned the Independent Reviewer of Terrorism Legislation, Jonathan Hall KC, to review the Multi Agency Public Protection Arrangements, commonly referred to as MAPPA, used to supervise terrorist and terrorist-risk offenders on licence in the community.

The Police, Crime, Sentencing and Courts Act 2022, hereafter referred to as the 2022 Act, established three new powers for counterterrorism policing: a personal search power, a premises search power, and a power of urgent arrest. These powers were established in response to recommendations made by Jonathan Hall KC following his review of MAPPA.

This order relates to the new power of personal search, the creation of which was also recommended by the *Fishmongers' Hall Inquests—Prevention of Future Deaths* report. The personal search power has been inserted into the Terrorism Act 2000, in new Section 43C, by the 2022 Act. The new search power came into force on 28 June this year.

As was set out by the Government during the passage of the 2022 Act, the new personal search power applies across the UK, enabling the police to stop and search terrorist and terrorism-connected offenders released on licence who are required to submit to the search by their licence conditions, should the Parole Board determine such a condition is necessary. The officer conducting the stop and search must also be satisfied that it is necessary to exercise the power for purposes connected with protecting members of the public from a risk of terrorism.

Section 47AA of the Terrorism Act 2000 imposes a requirement on the Secretary of State to prepare a code of practice containing guidance about the exercise of search powers that are conferred by that Act. In June, Parliament approved regulations laid by the Government that amended Section 47AA so that it extends to cover the new personal search power inserted into the Terrorism Act 2000 by the 2022 Act. This created a requirement for the Secretary of State to prepare a revised code of practice that includes guidance on the exercise of the power conferred by new Section 43C.

We have duly prepared a draft revised code of practice, and this order seeks Parliament's approval to bring the revisions we have made to the existing code of practice into force.

I will now set out the nature of the revisions the Government have made. The primary update to the code of practice is the incorporation of the new stop and search power provided for by Section 43C of the Terrorism Act 2000. The revised code sets out important parameters that govern the use of the Section 43C power and provides clarity for police officers on the power's scope. This includes providing guidance on the thresholds to be met before the section 43C power can be used, scenarios in which it might be appropriate for use and the powers of seizure associated with the search power.

[Lord Sharpe of Epsom]

We have also set out clearly within the revised code the limitations on the clothing that a person can be required to remove when the Section 43C power is being exercised by the police. In keeping with existing stop and search powers, police officers exercising the Section 43C power may not compel a person to remove any clothing in public except for an outer coat, a jacket or gloves, and an intimate search may not be authorised or carried out under the new power.

The new Section 43C stop and search power has been specifically created to help manage the risk posed by terrorist offenders on licence who are assessed to be high or very high risk to the public. The Government plan to collect data from police forces on the use of this targeted power, as we routinely do for other stop and search powers, and make this data publicly available through future statistical publications.

Given that the existing version of the code was brought into force in 2012, the Government have also taken this opportunity to make other minor changes to the code to ensure that it accurately reflects current practice, legislation, terminology and organisational responsibilities. The updated code reflects the creation of police and crime commissioners and structural changes to other police authorities, including the creation of authorities overseeing combined police areas.

We have also ensured that organisational names have been updated, for example replacing previous references to the Association of Chief Police Officers' counterterrorism co-ordination centre—it does not trip off the tongue—with up-to-date references to the Counter Terrorism Policing national operations centre.

The revised code also includes a new paragraph which references the Children Act 2004, and its Scottish equivalent, to highlight the need for the police to ensure that in the discharge of their functions they have regard to the need to safeguard and promote the welfare of all persons under the age of 18. Although this is not a new policy, the Government considered it important when revising the code for safeguarding duties such as this to be made explicit.

In addition, we have used this opportunity to make other minor but necessary amendments, such as updating links and contact details within the code, including refreshing the web address where the most up-to-date version of the Government's counterterrorism strategy, known as Contest, can be found.

In the course of revising the code, the Home Office has consulted the Lord Advocate and other appropriate persons and organisations, including the Independent Reviewer of Terrorism Legislation, Counter Terrorism Policing and Police Scotland, all of which are supportive of the approach being taken.

The revised code promotes the fundamental principles to be observed by the police and helps preserve the effectiveness of, and public confidence in, the use of police powers to stop and search under the Terrorism Act 2000. I very much hope that noble Lords will support these alterations to the code of practice.

Lord Paddick (LD): My Lords, I congratulate the Minister on his elevation to Home Office Minister. If it were me, I would also be thinking, "Oh goodness, what have I done?", but I am sure he will be excellent in his new role. I thank him for explaining this order. As when we considered the primary legislation that lies behind this order, clearly we are supportive of the changes in the legislation. We know from the tragedy at Fishmongers' Hall how the risk posed by offenders on licence is an inexact science. These additional powers for the police to stop and search people on licence on the recommendation of the Parole Board are an important tool in trying to manage that risk and act as a deterrent to those on licence from carrying out the sort of appalling attacks that we saw at Fishmongers' Hall.

As the Minister explained, the order is about the revised code of practice, which is quite a lengthy document. We are here to hold the Government to account for, in this case, the changes that have been made to the extensive code of practice. I understand the issues around the change in the legislation and Section 43C but, as the Explanatory Memorandum and the Minister have explained, a series of other amendments have been made to the code. The Explanatory Memorandum says that these "include", and then gives a list of those changes, as the Minister explained. It would be extremely helpful to have a "track changes" copy of the code of practice so that we could see exactly what the changes are to the revised code of practice. Although the changes to incorporate the new Section 43C are fairly obvious, as I say, the others are difficult to find in among the code of practice. However, this is an important step forward in terms of giving these additional powers to the police for those who may pose a risk after they have been released from prison, and it is important for the police to have a code of practice to go with those changes. Having said that, we are supportive of the order.

Lord Coaker (Lab): I congratulate the noble Lord, Lord Sharpe, on his promotion and wish him well in his task—not too well, perhaps, but pretty well. But seriously, I know that he will be diligent in the execution of his duties and will work with his usual co-operative manner.

We too support what is obviously a very sensible and necessary step forward by the Government. I have a couple of questions that I want to ask. The Fishmongers' Hall attack clearly highlighted some problems, which the independent reviewer took up and made recommendations about. It is good that the Government have reacted and responded to that. Along with the noble Lord, Lord Paddick, we support what they are doing here.

The order is called the Terrorism Act 2000 (Alterations to the Search Powers Code for England and Wales and Scotland) Order 2022. It revises the code of practice with respect to those three, yet its extent is to the whole of the UK, which includes Northern Ireland. I do not quite understand how a code that relates to three parts of the UK extends to all four. You would expect the title to refer to England, Wales, Scotland and Northern Ireland.

We all appreciate the sensitivity in Northern Ireland, but can the Minister explain how a British order, which does not include Northern Ireland, extends to the whole of the UK, as in the notes? If there has been widespread consultation, does that include Northern Ireland and who has it been with, notwithstanding

that the Northern Ireland Assembly has not been sitting? I just do not understand the process or how that works. I am sure there is a very simple reason laid out by somebody, but I cannot find it. I do not understand this, but it is laid out in the order.

The Explanatory Memorandum says that this new power can be used with a convicted terrorist who is released on licence, provided that a search power is included in the licence. Can the Minister explain for all our benefit in what circumstances a terrorist released from prison would not have a search power included in their licence? If that were the case, what power would a police officer or whoever else have with respect to a potential terrorist?

One would assume—the noble Lord, Lord Paddick, would know better than me—that if a police officer thought a terrorist act was about to be committed, they would have a power to try to do something about that. If that is the case, why would you have a new power included in the Act? In other words, what is the purpose of including the search power in the Act and in what circumstances would you not have that anyway? That would be interesting to know.

Can the Minister say a little more about the thresholds? It seems to me that in most cases, and particularly in Section 43C, we are talking about powers to search without suspicion. What are the thresholds for that? Is that where the officer has a belief that a terrorist act is going to be committed, even though they have no grounds for that? How does that happen?

As the noble Lord, Lord Paddick, quite rightly said, there are a number of changes. The Government talk about minor changes being made, but it is very difficult to understand what those changes are and to track them through. For example, the Minister said that there are examples in the code of what a police officer can or cannot do with respect to clothing or in a public place. Is this the same or has that changed as a result of the new power that this secondary legislation gives to police officers? Is there any change in relation to who can carry out the search—for example, a female officer searching a male terrorist, or the other way around?

The Minister talked about children and this applying to children under 18. Is there a lower age limit? What do we mean by children? I understand that children means those under 18, but is there a lower limit or does this apply to anybody, irrespective of age, who a police officer believes may be about to commit a terrorist act?

As the noble Lord, Lord Paddick, said, the questions we have laid out are important because public confidence, particularly in the use of stop and search without suspicion, is of real importance. I would be keen to hear what steps the Government have taken to ensure that public confidence has been and will be sought in some of these situations. One can imagine the difficulty for the police operating in communities where this power might be used and the sensitivity of it.

5.15 pm

I had a question about oversight. I was very pleased that the Minister talked about the fact that the Government were going to collect data on the use of the power and keep it under review. Presumably, the Independent Reviewer of Terrorism Legislation will also be involved with all that. I was pleased that the Minister included that in his remarks, because the oversight of how the legislation will work is particularly important. Given that the legislation commenced on 28 June, has anything happened since which has informed the Government about the code of practice?

With those few remarks, generally speaking, we are very supportive of what Government are doing and hope the legislation helps keep our communities and our country safe.

Lord Sharpe of Epsom (Con): My Lords, first, I thank both noble Lords for their warm welcome; I hope that we continue to operate in total agreement.

Lord Coaker (Lab): I am not sure about that.

Lord Sharpe of Epsom (Con): I am not sure about that either, but we will try.

On the specific points that both noble Lords raised, to the noble Lord, Lord Paddick, we will be happy to provide a tracked change version as he requested, and I will make sure he gets that as soon as possible. That was the easy question.

Moving to the questions of the noble Lord, Lord Coaker, I shall try to deal with them in order. He asked about the extent of the code of practice and why it is confined to Great Britain. A separate code exists for stop and search powers under the Terrorism Act in Northern Ireland—a fact that the noble Lord alluded to. The Northern Ireland Office is responsible for that. We continue to work with colleagues there and offer them support in updating their equivalent code in Northern Ireland, which they have advised is likely to happen next year.

Lord Coaker (Lab): I just ask, because this is a very important point. The new power exists with respect to Northern Ireland, but the code of practice under which it operates is separate, legislated for under a different Act and in a different way. Is that correct—the power is a new power to be extended to Northern Ireland?

Lord Sharpe of Epsom (Con): As I understand it, it could be extended to Northern Ireland, but the Northern Ireland Office is, of course, responsible for the application of such things in Northern Ireland. I may not be entirely correct on that, so I will come back to the noble Lord if I am not.

Lord Coaker (Lab): I am sorry to labour this point, but it is so important. I may be wrong, but I understood the Minister to be saying that a different code of practice applies to Northern Ireland, hence this is called a code of practice for England, Scotland and Wales—in other words, Britain. For Northern Ireland, there is a separate code of practice. Given that the new power extends to the whole of the UK, one presumes that the police and others in Northern Ireland will have the ability to stop and search without reasonable suspicion a terrorist out on licence, where that is part of their licence. Is that the case or not?

Lord Sharpe of Epsom (Con): To clarify—I think this does—the new search power applies UK-wide, but there are two separate codes. Does that make sense?

Lord Coaker (Lab): That makes absolute sense. It is not what I understood the Minister to say in the first place, but I was just trying to clarify that. If I had realised that, I would have made different remarks, because it is a quite interesting extension of power with respect to Northern Ireland, for obvious reasons.

Lord Sharpe of Epsom (Con): Understood. The noble Lord asked me how it is determined who qualifies under the new code. To go back to the point I made in my opening remarks, in most cases the Parole Board determines whether it is appropriate for the offender, when released, to have their licensing condition expressed as a part of the conditions of their release. Its assessment is based on a contemporary assessment of the offender's risk profile, including whether they are judged to represent a high or very high risk to the public.

How is it determined which terrorist offenders should have licence conditions permitting the search imposed on them? As I say, it is imposed on offenders convicted of terrorism or a terrorism-connected offence and assessed as posing a high or very high risk of serious harm. In those cases, it may be imposed where there is a concern that the offender may carry a weapon or to provide an additional protection for staff—for example, where they are subject to polygraph testing, a search can be carried out prior to the examination for the safety of the examiner. I hope that clarifies that.

The noble Lord, Lord Coaker, asked about the sex of the searching officer. The answer to his specific question is no: a same-sex officer is not required unless the individual being searched requests one. The noble Lord also referenced the data that is collected. I can assure him that it will be extensive. He asked about age as well. I will come back to him on that; I do not have a specific answer. The notes I have deal only with the 18 year-old point.

In closing, I reiterate that this order provides for alterations that the Government have made to the code of practice for the exercise of search powers conferred by the Terrorism Act 2000 to be brought into force. I think I have covered the rest of the information requested, and as such I commend this order to the Committee.

Motion agreed.

Warm Home Discount (Scotland) Regulations 2022

Considered in Grand Committee

5.22 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Warm Home Discount (Scotland) Regulations 2022

Relevant documents: 9th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, I beg to move that these regulations, which were laid before the House on 29 June 2022, be approved. This Government have taken decisive action to support people with their energy bills. From 1 October a typical household in the UK will pay no more than £2,500 a year on their energy bill for the next two years. This is in addition to the £37 billion of support announced earlier this year, including the energy bills support scheme that provides a £400 discount for around 29 million households. The warm home discount complements these measures, focusing on those at risk of fuel poverty, primarily through the provision of a £150 direct energy bill rebate.

We have already passed legislation for the extension, expansion and reform of the warm home discount scheme in England and Wales, with better targeted and automated rebate provision. The Scottish Government have devolved powers under the Scotland Act 2016 to design and implement a warm home discount scheme in Scotland. The BEIS Secretary of State has certain reserved powers, including approving any scheme for Scotland. Earlier this year, Scottish Ministers requested that the UK Government make provisions for a continuation of the scheme in Scotland. In May, the UK Government consulted on this continuation and expansion of the scheme in Scotland, which was supported by a majority of respondents.

This SI extends the WHD scheme in Scotland to 2025-26, providing much-needed certainty on energy bill support to low-income and vulnerable households in Scotland. The Government committed to expanding the scheme in the energy White Paper 2020. The £475 million —at 2020 prices—spending envelope is set for Great Britain and will be approximately £506 million in 2022 prices. The warm home discount in Scotland will increase proportionately in line with the GB-wide increase to the scheme. The UK Government will apportion 9.4% of the total spending to Scotland; this means £49 million of the overall scheme value, an increase of around £13 million compared with last year.

Overall, around 280,000 Scottish households in or at risk of fuel poverty will receive a rebate this winter, which is 50,000 more households than last winter. The apportionment of spending to Scotland is based on the number of domestic gas and electricity meters across Great Britain and ensures that the costs of the scheme are spread evenly across all customers. As a result, the proportion of spending in Scotland will exceed Scotland's share of the Great Britain population.

The scheme participation threshold for energy suppliers is lowered to 50,000 domestic customer accounts in 2022-23 and to 1,000 domestic customer accounts from 2023-24. This mirrors the scheme in England and Wales, and will mean that from 2023-24, suppliers obligated under the scheme will cover over 99% of domestic customers.

As requested by Scottish Ministers, the WHD scheme in Scotland will be a continuation of the scheme previously in place across Great Britain in 2021-22 and therefore will continue to include three main components: the core group, the broader group and Industry Initiatives. First, under the core group element

of the scheme, around 90,000 low-income pensioners in receipt of pension credit guarantee will continue to receive their rebates automatically. Secondly, under the broader group element, around 190,000 low-income and vulnerable households, mainly of working age, will receive a rebate following an application to their energy supplier. The broader group is expanded to include housing benefit as one of the mandatory eligibility criteria, as per the England and Wales scheme. Income thresholds for the criteria relating to child tax credits and universal credit are increased.

Each energy supplier's obligations under the scheme will be set according to their market share in Great Britain. This is the fairest way of spreading costs across all customers in Great Britain and will ensure consistency across the two warm home discount schemes.

The Government recognise that there are differences in the proportions of energy customers that suppliers have in the different nations. There will be different challenges for suppliers with a higher proportion of customers in Scotland and those with a lower proportion. We are making allowances for these differences by allowing suppliers with few broader group customers in Scotland to transfer up to 100% of their broader group target to Industry Initiatives, which of course will be subject to Ofgem's approval. Ofgem's approval will mainly be based on each supplier's market share in Scotland relative to Great Britain. Only energy suppliers with a disproportionally low number of broader group customers are likely to be permitted this flexibility.

Scottish households in or at risk of fuel poverty will continue to benefit from support under Industry Initiatives funded under the warm home discount. This element of the scheme will continue to provide valuable support to households, such as energy advice, benefit entitlement checks, energy debt and emergency financial assistance, as well as energy efficiency measures. We increased the cap on spending on Industry Initiatives to £7 million per annum, which is broadly proportionate to the spending expected in England and Wales in 2025-26.

Although activities permitted under Industry Initiatives will be the same as in previous years, there will be some exceptions. Part of the permitted Industry Initiatives spending on debt write-off is ring-fenced for customers with pre-payment meters, as these customers are particularly at risk of self-disconnection. Again, this mirrors the scheme in England and Wales. As per the scheme in England and Wales, limits are imposed on boiler and central heating system installations supported under Industry Initiatives, which will help to support our decarbonisation objectives.

No caps have been imposed on the amount of Industry Initiatives spending that can be used for financial assistance. The list of eligibility criteria for financial assistance has been expanded to include the mandatory eligibility criteria for the broader group. This will include suppliers whose broader group is oversubscribed to direct customers to financial assistance under these Industry Initiatives.

In conclusion, the warm home discount remains a source of critical support for low-income households across Great Britain. These regulations extend the scheme in Scotland until 2026 and increase energy bill support from £140 to £150 for over 280,000 low-income and vulnerable households each winter, when they need it most. This is an additional 50,000 households receiving vital support compared with last year. Therefore, I commend these regulations to the Committee.

5.30 pm

Baroness Blake of Leeds (Lab): I thank the Minister for his very full explanation. I start by expressing regret that this scheme is necessary in the first place. I think all of us recognise that while fuel poverty is really high profile at the moment, it is a scourge that has been with us for a long time, as reflected by the fact that the original scheme came in in 2011. Many people and families have struggled to pay their bills for a very long time. Of course, as outlined by the Minister, we recognise the support that has been given for the extreme circumstances we have found ourselves in recently.

I do not want to spend too much time going through the detail. I recognise that there has been extensive debate on the England and Wales scheme in the Commons and in this place, and that these regulations are bringing in the necessary additions to meet the requirement to have a separate scheme for Scotland, as has been outlined. We recognise that point, but I would like further clarification and reassurance that the Scottish Government are happy with the outcome of the debate and consultation as it has gone forward. That is very important; obviously, there are peculiar circumstances in terms of the responsibilities of the Scottish Government and the role that the UK Government have to play.

As we have heard, most respondents to the second consultation agreed with the proposed extension of the current scheme until 2026, but the other question that came up was whether it was possible to have an earlier review of the scheme given the circumstances people are facing at the moment. There is concern generally about the higher fuel poverty rates in Scotland that the evidence suggests. Obviously, concerns were raised about the method for apportioning spending to Scotland, and some asked for higher apportionment to reflect those higher rates. I think it is fair to say that some energy suppliers also expressed concern about the additional costs of running two separate schemes, in England and Wales and in Scotland, and I do not know whether there is any assessment of what that additional spend will be.

Of course, it was probably inevitable that there were many requests for the value of the rebates to be increased. I understand that the rebate is fixed at the level proposed for consistency with the England and Wales scheme, but I will leave that issue there as something that will probably come up in the Minister's response. I wonder if there are any comments to be made on how we will assess the situation as we go forward into continuing uncertain times.

The way the scheme is structured means that the cost of the rebates will be passed on to consumers in Scotland. My understanding is that the suppliers will pass on the cost of the scheme to their customers. This is estimated to come out at about £19 per dual fuel account, which is an increase from £14 under the current scheme. The Minister is shaking his head; I take from his response that he has a comment to make on this. I look forward to hearing that this is not the case. The reason I raise it, of course, is because we are

[Baroness Blake of Leeds]
seeing across the whole of the UK more and more people starting to struggle to pay their energy bills—and an additional cost for some who might not be eligible for this rebate scheme is probably not sustainable and could end up forcing more people into needing to take part.

I shall leave my comments there. It is very important that we approve the regulations so that we can get them into place, so families can benefit as quickly as possible. I end my comments with the general view that I hope we are not losing sight of the wider imperative of moving forward with schemes that will actually reduce the need to use fuel. I am thinking of home insulation, for example. There is some uncertainty at the moment, and I would welcome reassurance that the work that has started will be continued and, indeed, increased.

Lord Callanan (Con): I thank the noble Baroness very much indeed for her questions. She deserves admiration for being the only Member to turn up to discuss this important issue, so I am grateful to her for that. I am happy to confirm that the Scottish Government are very satisfied with the scheme before us today; in fact, they asked us to implement it on their behalf. They originally talked about doing a separate scheme for ECO and the warm home discount for Scotland, then they decided that they could not and therefore requested us to launch the process and implement it for Scotland. That is why we are debating these regulations separately from the England and Wales regulations. So not only are they satisfied with it but it is at their request that we do this.

On the noble Baroness's question about a review, it would be possible for the Scottish and UK Governments to carry out a review and consult on amendments to the scheme, should they consider it appropriate. We are apportioning a fair amount to Scotland; it is equivalent to 9.4% of the overall spending, which is proportionate to the number of domestic gas and electricity meters in Scotland compared to the rest of Great Britain. This is higher than Scotland's proportion of the population in Great Britain, which was 8.4% in mid-2020, and it will also exceed its share of means-tested benefits recipients. This approach makes it fairer for consumers across England, Wales and Scotland, ensuring similar levels of cost and benefit across consumers.

On the administration costs of the schemes, the scheme in Scotland is a continuation of the current scheme, so there would be limited additional burdens in implementing it, and there would be continuity for suppliers. The reform of the scheme in England and Wales will reduce the administrative burden of running the scheme compared to the current one, and flexibility to transfer the broader group into industry initiatives will reduce the burdens for suppliers with low or zero broader groups in Scotland.

On the noble Baroness's point about the cost of the scheme on energy bills—I think that she cited the figure of £19—the ECO scheme and warm home discount form part of the so-called green levies, which the noble Baroness will recall the Chancellor announcing, rather than being funded through bills. The scheme will be funded, at least for the next two years, by the Exchequer directly under the energy price guarantee scheme. So we are continuing with the scheme as previously, but the suppliers will be refunded by the Exchequer from that.

The noble Baroness also asked a very important question about our insulation schemes. As she will know, we have insulation and energy efficiency schemes of about £6.6 billion through a number of different initiatives. I am thinking of the home upgrade grant, the social housing decarbonisation fund, the public sector decarbonisation scheme, the local authority delivery scheme, and so on. I am happy to confirm that they are continuing, as well as the ECO scheme, which is also part of the obligations on suppliers. Indeed, I am happy also to confirm that we are extending it. As part of his recent Statement, the Chancellor announced an ECO plus scheme, which will be worth about £1 billion over three years. We are currently working on implementing it, and we will bring a regulation back to this House to discuss its further implementation in future.

I hope that has dealt with all the noble Baroness's queries. Again, I commend the draft regulations to the Committee.

Motion agreed.

Committee adjourned at 5.41 pm.