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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

Ireland/Northern Ireland Protocol: Scrutiny of EU Legislative Proposals (European Affairs Committee Sub-Committee Report)	
<i>Motion to Take Note</i>	2053
The Union (Constitution Committee Report)	
<i>Motion to Take Note</i>	2086
Net Zero (Industry and Regulators Committee Report)	
<i>Motion to Take Note</i>	2111

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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

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House of Lords

Friday 20 January 2023

10 am

Prayers—read by the Lord Bishop of Carlisle.

Ireland/Northern Ireland Protocol: Scrutiny of EU Legislative Proposals (European Affairs Committee Sub-Committee Report)

Motion to Take Note

10.06 am

Moved by **Lord Jay of Ewelme**

That this House takes note of the Report from the European Affairs Committee *Report from the Sub-Committee on the Protocol on Ireland/Northern Ireland: Scrutiny of EU legislative proposals within the scope of the Protocol on Ireland/Northern Ireland* (5th Report, Session 2021-22, HL Paper 177).

Lord Jay of Ewelme (CB): My Lords, like others in this House, I spent many happy hours discussing the scrutiny of European Union documents as a member of the old European Union committees of the House before we left the European Union but, when we talk about the scrutiny of EU legislation applying now to Northern Ireland, we are talking about something very different. We are talking of the scrutiny by Parliament of EU legislative proposals which now or in the future will apply to Northern Ireland because, under the terms of the withdrawal agreement and the Northern Ireland protocol, Northern Ireland remains in the EU single market for goods; and we are talking about EU legislative proposals over which neither the UK nor the Northern Ireland Administration has had any proper say. There is a real democratic deficit here, and this concerns all members of the Sub-Committee on the Protocol on Ireland/Northern Ireland, which I have the honour to chair. Many members of that committee are speaking in today's debate, no matter what their views on the protocol itself. I thank the staff of the committee, including the staff of the Committees Scrutiny Unit, for the invaluable help and advice that they have given us.

Under the protocol as it currently operates, more than 300 pieces of EU legislation set out in its annexes apply to Northern Ireland now and will continue to do so as they are amended or replaced. In the view of the committee, that legislation must be subject to detailed parliamentary scrutiny. Why? It is because, without that, important areas of law applying to Northern Ireland would go unscrutinised and possibly even unnoticed by Parliament. Such scrutiny therefore is, and will continue to be, a key priority of the committee. The report before the House this morning sets out the committee's approach to this scrutiny work and its key findings and observations so far.

The report notes that the volume of documents requiring scrutiny has been significantly higher than anticipated before the protocol came into force. During the first year of its operation up to March 2022, the committee

wrote more than 90 letters to government Ministers on more than 40 EU legislative proposals applying to Northern Ireland under the protocol. In the current parliamentary Session, the committee has so far written a further 50 letters on 27 legislative proposals. As outlined at paragraph 21 of our report, these cover a wide range of policy areas and are of considerable technical complexity, engaging with many government departments.

In our report, we note that the Government in turn have an obligation to facilitate such scrutiny. We welcome their commitment to do so through the production of explanatory memoranda summarising EU legislation applying to Northern Ireland, including, when requested by the committee, on EU delegated and implementing Acts, and by providing prompt responses to follow-up correspondence from the committee.

However, the report stresses that the Government need to go further. We argue that any entirely new EU legislation within the scope of the protocol of which the EU has informed the UK should automatically be deposited in Parliament for scrutiny at that stage; that the Government should deposit draft EU proposals that are relevant to the provisions of Article 2 of the protocol on rights and individuals; that the Government must also ensure that any other EU legislative proposals with significant implications for Northern Ireland in the context of the protocol are promptly deposited in Parliament; and that the Government need to establish formal mechanisms for prompt communication to Parliament of information received from the UK in the UK-EU joint consultative working group on planned or adopted EU legislation falling within the scope of the protocol.

In their response to our report, which I welcome, the Government went part-way to meeting those points, but there is more work to be done to ensure that their facilitation of parliamentary scrutiny is properly comprehensive. That is the responsibility of all government departments, whose contributions so far have been—how shall I put it?—varied. Some are good, some less so, but, as I mentioned recently to the noble Lord, Lord Benyon, I commend Defra on the quality of its work.

What update can the Minister provide on efforts to enhance the Government's facilitation of parliamentary scrutiny of EU legislation applying to Northern Ireland under the protocol? In particular, what is his response to the committee's calls for the Government to maintain and publish an audit or log of all EU legislation applying to Northern Ireland under the protocol that gives rise to issues of regulatory divergence between Northern Ireland and Great Britain?

I am of course conscious that the Government are in the midst of talks with the EU about the protocol, and conscious too that the Northern Ireland Protocol Bill remains before the House. However, we stress that the Government continue to have an obligation to set out to Parliament the full implications of EU legislation applying now to Northern Ireland under the protocol, and that they must set out as a minimum the views on each proposal expressed by the Northern Ireland Executive, when they are functioning, as well as the other devolved Administrations; the Government's assessment

[LORD JAY OF EWELME]

of the merits or otherwise of the proposal; whether the proposal will lead to regulatory divergence between Great Britain and Northern Ireland, and the practical implications of that; what steps the Government are taking to address such regulatory divergence, including considering the case for introducing equivalent measures in England or Great Britain, according to the extent of the Government's powers of competence in each case; the impact, if any, of the proposals for Northern Ireland's participation in the UK's free trade agreements; the relevance and impact of the proposals for Northern Ireland's participation in UK common frameworks, and how common frameworks intersect with the protocol; whether and how EU legislation will be implemented in domestic law; and what consultation has taken place with business representatives and other key stakeholders on the impact of EU legislation, and whether a regulatory impact assessment has been undertaken. Will the Minister tell us what steps are being taken to ensure that this information, as a minimum, is set out in future in government Explanatory Memoranda?

As well as liaising with the Government in relation to this work, the committee attaches high priority to engagement with other committees of this House and of the House of Commons, with the Northern Ireland Assembly and the Northern Ireland Executive, and with key stakeholders who stand to be affected by EU legislation applying to Northern Ireland. Given the Northern Ireland Assembly's democratic mandate to represent the people of Northern Ireland, the committee's engagement with it is particularly important, and I express the hope that difficulties over the protocol can be resolved so that the Assembly and the Executive are once more able to function and to offer their own unique perspectives on the implications of these issues for the people and communities of Northern Ireland that they represent.

A key aspect of that engagement is of course with the EU itself. As I mentioned earlier, the committee has previously drawn attention to the democratic deficit under the protocol as negotiated, agreed and ratified by the UK and the EU, in that significant aspects of EU law, with wide-ranging political and economic implications, apply to Northern Ireland subject to neither the UK Government's participation in the EU institutions nor to consent from parliamentarians at either Westminster or Stormont. The EU needs to do more to enhance transparency around the application of EU law to Northern Ireland; to take account of the impact of EU law on Northern Ireland's particular circumstances; and to engage with Northern Ireland stakeholders at an early stage, to give them a voice on the application and implications of such legislation.

In our report, we concluded that the EU should explicitly state whether a proposed EU legal Act engages the UK's obligations under the protocol; the basis on which such legislation should apply to Northern Ireland; and how the EU has taken into account Northern Ireland's particular circumstances in the application of the legislation in question. I conclude, as does our report, by stating:

"In the context of the ongoing discussions between the UK and the EU on the future of the Protocol, all sides have a continuing obligation to ensure that the operation of the Protocol

... takes into account the delicate balance between North-South and East-West relations as provided for under the Belfast/Good Friday Agreement, and to demonstrate how it is compliant with that Agreement in all its Strands."

I beg to move.

10.17 am

Lord Lamont of Lerwick (Con): My Lords, I speak as a member of the main EU Select Committee. I warmly welcome the sub-committee's report and I thank my fellow member the noble Lord, Lord Jay, and his colleagues for their hard work and the detailed and constructive recommendations in the report.

The Northern Ireland protocol has produced an unprecedented awkward situation whereby the laws of a foreign jurisdiction are to apply in certain respects to part of the United Kingdom—that is, Northern Ireland. That will include 300 laws, new laws and dynamic alignment whereby existing laws, when they are changed, will cause Northern Ireland to change its laws too. It is therefore extremely important, if we are to have EU law in part of the UK, that there be proper parliamentary scrutiny by the House of Commons, by the Northern Ireland Assembly and of course by this House. We cannot alter EU law but the scrutiny, as the noble Lord has said, enables us to understand the implications and bring what influence we can to bear. It is also important that EU legislators are aware of the specific circumstances of Northern Ireland and take them into account.

The committee has produced a plethora of practical and constructive recommendations to improve scrutiny at all stages, including pre-legislative consultation. I warmly welcome them but, call it what you like—accountability, transparency, glasnost—it can take one only so far. There remains the fundamental problem, as the Government's reply says, of the democratic deficit. It used that phrase, as did the noble Lord, Lord Jay. This situation cannot be resolved simply by scrutiny.

The Government make an important point in paragraph 30 of their reply to the committee when they say that

"the imposition of EU law ... was not a necessary consequence of"

Brexit, any more than Brexit

"required dynamic alignment, or the 'backstop'. The imposition of EU law was a consequence of the EU's unwillingness to accept other solutions ... We need to see much more ambition from the EU to engage on the changes necessary to give Northern Ireland institutions ... a meaningful role in shaping the rules applicable in Northern Ireland."

That is of course the problem at which the Government's stalled protocol Bill was partly aimed. These are very important points in the Government's reply to the committee because they are frank, and they are saying that it is not just the sometimes-alleged intransigence of unionist politicians but also the inflexibility of the EU that has been holding things up.

The reply does not mention the issue of cross-community consent, which would obviously be outside the terms of reference of the committee, but that consent has been an important part of democracy in Northern Ireland ever since the Good Friday agreement. Its absence might well be regarded by unionists as a most important part of the democratic deficit. It would

be good to know from the Minister today what more the Government think can be done to fix—if fix is the right word, or if it is possible—the democratic deficit. Is this just some minor constitutional outrage that eventually we have to learn to live with? Do the Government see the dual regulatory regime, as has been hinted, as helping to solve this problem? How would it do that, when for some people that would be opting out of the direct imposition of EU law? Is that practical and would it really be acceptable to the EU?

Mr Varadkar said recently that perhaps the EU's interpretation of the protocol had been too strict. That sounded as though the EU might be prepared to be more flexible but, almost immediately, his words were qualified by the Commission. We read about the progress that has been made with proposals for red and green channels, potentially minimising checks on goods going from GB to Northern Ireland. This is very welcome and might help to stop the artificial diversion of trade, which weakens the economic link between GB and Northern Ireland and undoubtedly alarms unionists, but it would still leave the political problem.

We are all anxious to see power-sharing back—to have the Assembly and Executive back. It would be good, if possible, to welcome President Biden to the Good Friday anniversary. I recognise that the Government have a difficult job but, as things stand, it is very difficult to see where the landing zone is going to be.

10.21 am

Baroness Ritchie of Downpatrick (Lab): My Lords, I am delighted to follow the noble Lord, Lord Lamont, and to acknowledge the good work and stewardship of our chair, the noble Lord, Lord Jay, and our staff. Our chair has been able to secure consent, agreement and compromise among the many opinions in our committee, based on the evidence presented to us in producing all of our reports so far. This report, as the noble Lord, Lord Jay, stated, deals with our examination of European legislation which deals with Northern Ireland. Our report stated:

“In view of the socio-economic and political implications of the Protocol for Northern Ireland, in particular in the context of its relationship with the rest of the UK, EU legislation applying to Northern Ireland must be subject to detailed parliamentary scrutiny.” This will happen in our committee on an ongoing basis, and is the very essence of what our report under discussion is about.

The noble Lord, Lord Jay, rightly referred to the issue of democratic deficit, which has been continually raised by many people who have given evidence to the committee. There is no doubt that that democratic deficit has to be addressed and resolved through the ongoing negotiations—and, on their completion, I hope there is a formula to deal with that issue.

There is one matter that we raised in our committee's report and which we subsequently wrote to the Foreign Secretary about, on 6 December: is an audit kept of such legislation on an ongoing basis? I recall that the Government demurred from providing us with a detailed answer on that specific point. We requested full disclosure by government and a detailed Explanatory Memorandum on all aspects. In our letter of 6 December, on the foot of the Government's response to our report, we asked specific questions, and I hope that the Minister will be able to provide answers.

On the issue of regulatory divergence, does the Foreign Office have overall responsibility for monitoring such divergence? How does the Foreign Office, with the Cabinet Office and the NIO, as well as other government departments and the Northern Ireland Executive, monitor and log such divergence, and above all its impact? Do the Government have a dedicated divergence unit and, if so, where is it based and what are its functions? It is important that the Minister provides us with answers today, while ensuring that he has a little word in the ear of the Foreign Secretary, so that he will be able to come and give evidence to our committee in the short term.

Undoubtedly, we have to set the report in the context of the overall UK/EU negotiations, which are ongoing. I hope that there is a negotiated settlement that will make the protocol Bill redundant. In my view, it should never have been brought forward for debate, as the clauses remitting the cancellation of a large part of the protocol were seen by many as provocative and belligerent. The only way to deal with the issues, including those raised by the pharmaceutical industry on medicines two days ago at our committee, is negotiations. As the pharmaceutical industry said to us, those issues emerged from Brexit but are logistical and technical, so they require a detailed, negotiated outcome.

I hope there is a restoration of the political institutions in Northern Ireland, because the people are crying out for that. They are crying out for help on a wide range of issues and can no longer wait; they want that restoration to take place quickly. I fully support our report and look forward to our further discussions on many other issues over the next few months.

10.26 am

Baroness Suttie (LD): My Lords, it is a great pleasure to follow the noble Baroness, Lady Ritchie, and I agree with so much of what she has said this morning. I too congratulate the noble Lord, Lord Jay, on his skilful and diplomatic chairing of the Northern Ireland protocol sub-committee. As the noble Baroness, Lady Ritchie, said, it is a committee with a wide range of views, and it is testament to the committee and its staff that, once again, it has produced such an important report of great substance. The sub-committee should also be congratulated, I believe, on carrying out its scrutiny function so effectively. It would be very welcome if the Government would now engage more proactively, and across all departments, as the noble Lord, Lord Jay, said, to ensure that the effective processes of scrutiny can be introduced across Whitehall.

The Northern Ireland protocol is far from perfect and, to use the well-worn phrase, many of us speaking in the debate today would not have wanted to start from here. But we are where we are and, for the sake of businesses in Northern Ireland, it is vital that we now make it work. When I was reading this excellent report and the House of Lords briefing note ahead of the debate, it was hard not to feel a sense of frustration, and even anger, on behalf of the people of Northern Ireland that so much time has been wasted in sorting all of this out. It is now nearly seven years since the EU referendum and over three years since the 2019 election, which was fought on the basis of getting Brexit done.

[BARONESS SUTTIE]

These issues should have been resolved a long time ago. I appreciate that there is now a subtle change of mood music from the Government and a more business-like attitude to finally getting this sorted.

It is also welcome, as the noble Lord, Lord Lamont, said, that on becoming Taoiseach once again Leo Varadkar acknowledged a week ago that the implementation of the protocol

“was too strict and too rigid and that created real difficulties”.

This indication of greater flexibility is very much to be welcomed. But Brexit was a British decision, so we really should not expect our EU partners or the Government in Dublin to have to sort it out.

In my remaining remarks, I will raise a number of specific points, some of which have already been raised by the noble Baroness, Lady Ritchie, on the scrutiny of EU regulations by this Parliament. The first is on the Commission’s non-paper on engagement with Northern Ireland stakeholders and authorities. That paper contains several proposals for initiating a more structured approach for dialogue. Can the Minister say whether the Government are looking at some of these proposals with a view to implementing them?

The Minister will know, as the noble Lord, Lord Jay, has already said, that the sub-committee wrote to the Foreign Secretary on 6 December last year about the proposal of creating a log of regulatory divergence. That seemed to me like a very realistic and sensible proposal. Can the Minister say in his concluding remarks whether this is something they are now actively considering?

I worked for 10 years as a policy adviser and then press secretary in the European Parliament. For three of those years, I worked as an adviser on the research and energy committee. I know just how much work was done influencing the course of legislation at the drafting stage. Information and access were key elements of this. Can the Minister say what thought has been given to assisting Northern Ireland businesses at a much earlier stage of the EU legislative process, especially given that Northern Ireland no longer has MEPs to be involved in these very important early stages of drafting legislation?

In conclusion, as the noble Baroness, Lady Ritchie, has said, I feel that the continuing lack of a Northern Ireland Executive and Assembly is a tragedy at this time. A strong, functioning Assembly and Executive could have done so much to provide necessary scrutiny and oversight of EU legislation. As we approach the 25th anniversary of the Belfast/Good Friday agreement, I hope we can finally move on and make genuine progress.

10.31 am

Lord Hannay of Chiswick (CB): My Lords, the valuable report we are debating, remarkably well presented by my noble friend Lord Jay of Ewelme, lifts the lid on a somewhat overlooked aspect of the Northern Ireland protocol and the withdrawal agreement with the EU: the scrutiny of single market legislation, which necessarily applies to Northern Ireland under the ratified terms of those agreements, but over which neither our Parliament nor Northern Ireland has a formal voice let alone a vote.

I speak as a member of your Lordships’ European Affairs Committee. This report was also submitted under its name, although you would not guess that from the Order Paper. I speak on my own personal behalf, and not that of the committee. Views expressed and questions posed are my own and not those of the committee.

It is surely a mistake to overlook this aspect of these agreements, which amounts to acceptance of what is often known in the jargon as “dynamic alignment” with single market legislation as it emerges down the years. That is a fact of life, whether we like it or not. We all—the United Kingdom, Northern Ireland and the EU—need to come to terms with it and mitigate its implications as best we can so that the democratic deficit does not become and ever deepening crevasse. Why so? Because it is very clear, from any reading of the withdrawal agreement and of the protocol, that that was what we signed up to and ratified in January 2020 and which is thus part of that rules-based international system which our Government purport to champion. Not even the Johnson and Frost negotiating duo have disputed this. It was not due to oversight, misunderstanding, draconian implementation by the EU, nor misrepresentation.

Moreover, despite the assertions of some, it is an integral part of every agreement with every third country which the EU has entered into which grants single market status to that state or to part of it—think of Norway, Iceland or Liechtenstein, or even Switzerland with its bundle of agreements. We should not delude ourselves into thinking that it ever was, is now, or will be somehow negotiable, nor that Northern Ireland has been uniquely picked upon. My first question to the Minister is: do the Government share that analysis?

The issue then is what can be done to mitigate the democratic deficit. Quite a lot is in our own hands and could and should be dealt with straightaway. First, we could reverse our singularly unwise decision to block the Commission’s intention to open in Belfast a subordinate office to its London office. This sub-office would provide early-stage access to emerging EU single market legislation to the whole of Northern Ireland’s civil society—the Executive, Assembly, parties, trade associations, NGOs and many others—and the opportunity to get through to Brussels the implications of its proposals for Northern Ireland. This is surely better than having to rely on periodic visits by EU officials based in Brussels or London.

Secondly, and in addition, there could be a clearly defined, dedicated section of the UK’s mission in Brussels. Its job would be to ensure that the EU’s institutions—not just the Commission but also the Council and the Parliament—fully understand the implications of emerging single market legislation for Northern Ireland and, so far as possible, take them on board. My second question to the Minister is: will the Government take those two steps which are entirely under their control? Beyond those steps, there are more complex issues, which may need to be taken up in the review of the protocol in a couple of years’ time, given the difficulty of raising them during the present fraught process of negotiations over the protocol—although all would much better be addressed sooner than that.

There need to be processes by which the views of the Northern Ireland body politic—the Executive, Assembly and parties—have some kind of voice to and links with all parts of the EU institutions with actions affecting Northern Ireland’s involvement in the single market. This could include the UK/EU parliamentary grouping, the European Parliament more widely, the Council and the Commission. It would go well beyond, in intensity and frequency of meeting, the operation of the TCA machinery. Our aim should be to achieve for Northern Ireland a voice, if not a vote. My third question is: could the Minister, when he replies to this debate, say whether the Government’s thinking is moving into the terrain I have sketched out?

10.35 am

Lord Dodds of Duncairn (DUP): My Lords, it is an honour to be a member of the Sub-Committee on the Protocol on Ireland/Northern Ireland under the chairmanship of the noble Lord, Lord Jay. I endorse everything that he has said and the report, and his calls for better scrutiny of EU regulations as they apply to Northern Ireland.

I pay tribute also to the staff of our committee who labour long and hard to analyse all these EU regulations and to formulate letters, and so on, to Ministers. We are indebted to them because I think no other body is doing this type of work anywhere in the United Kingdom in terms of EU regulation. Even when the Assembly in Northern Ireland met, unfortunately, regrettably—quite amazingly, in my view—it did not do this type of work.

We are dealing with a very serious issue: the scrutiny of over 300 areas of law which apply dynamically and directly to Northern Ireland, formulated and implemented by a foreign political entity, drawn up in its interests—not in the interests of the people of Northern Ireland—and imposed directly without any say or vote of any parliamentarian or elected representative of the people of Northern Ireland in Belfast or London.

These pieces of legislation cover a vast range of subjects—manufactured goods, agri-foods and so on. As we delve into them in our committee, it is very clear that many of these regulations will have long, far-reaching, fundamental and significant effects in terms of the divergence of law between Northern Ireland and the rest of the United Kingdom. Northern Ireland does more trade with the rest of the United Kingdom than with the Irish Republic, the rest of the EU and the rest of the world put together. It is absolutely vital that our economy is aligned with the rest of the United Kingdom. The protocol disrupts and ruptures that.

I understand that the checks we hear a lot about—the red and green channels—are currently the subject of discussion, though no one seems to be able to put any information into the public domain on where these talks are at. I ask the Minister, when he winds up, to give us an update as to what stage these talks are at. Are they at the technical stage? Are we engaged in political talks? Has the EU begun to address the issues the Government have raised in the Northern Ireland Protocol Bill and its explanatory documents? These are necessary and to be dealt with if we are going to get the Northern Ireland Assembly back.

The checks are a symptom of the fundamental problem. The problem is that Northern Ireland is subject to a different regime in a vast range of areas over which the Northern Ireland Assembly, or this House, should have the ultimate say. Until that fundamental problem is addressed, we will not see the sort of progress we need to see to restore the Assembly, because you are asking unionist Ministers in Northern Ireland to implement a regime which is detrimental economically to Northern Ireland and constitutionally to its future as part of the United Kingdom. Unionist Ministers, and certainly those in our party, will not do that. I urge the Government to get on and deal with this as a matter of urgency.

In particular, I draw your Lordships’ attention to paragraph 88 of the report, which says that we have a “democratic deficit”. I would call it a democratic denial, because it is not just a deficit: there is no democracy in this area of laws that apply directly to Northern Ireland under the protocol. Paragraph 88 says:

“While steps to ensure parliamentary scrutiny of such legislation and to enhance Northern Ireland’s voice and influence”— we have heard about this—

“in relation to their application are necessary, they are not themselves sufficient to resolve the issues to which the democratic deficit gives rise.”

This is absolutely correct. There is no point comparing this to Norway, because Norway has some final say on the implementation of EU rules, which apply to the whole of Norway. Our country, the United Kingdom, is now divided: this legislature deals with laws in Great Britain but the EU imposes laws on Northern Ireland. That cannot stand. I urge the Minister to tell his colleagues who are leading the negotiations to deal with the fundamental issues; we can then make progress towards the restoration of devolution.

Lord Davies of Gower (Con): My Lords, we have been quite generous with the time so far. I remind noble Lords that the advisory speaking time is four minutes.

10.41 am

Lord Godson (Con): My Lords, I take great pleasure in following the noble Lord, Lord Dodds, and I share in the congratulations to the noble Lord, Lord Jay, on his stewardship of the committee and to all of the committee staff. There is great consensus on that matter, if nothing else, in this House and in our committee. I congratulate him and all others associated with that.

In the first year, the committee has scrutinised or taken note of around 74 pieces of EU legislation covered by the protocol. That is 10 times more than the original estimate, suggesting that the democratic deficit is wider, and the divergence between the regulation of goods in Northern Ireland and in Great Britain is likely to be greater, than anticipated when the protocol was originally agreed. This will be of concern to this House, to the people of Northern Ireland and to everyone across these islands and beyond.

It is clear from the volume of material passing through our committee, and from the variability of material that we see from the Government, that engagement with Brussels needs now to be enhanced. The protocol, the withdrawal agreement and the trade and co-operation agreement, as well as the other EU-UK agreements,

[LORD GODSON]

joint policies and ongoing co-operation, mean that our understanding of the EU's thinking and planning, and our knowledge of its activities, need to be far better than when we were members of it.

We need to identify the legislative changes and policies that will or might come under the protocol earlier than we are currently doing. We also need to discover and understand the changes in the regulation of the EU's single market and trade policy as early as possible. More broadly, we need to be much better tuned to the development of the EU's justice, home affairs and human rights policy, as well as its common foreign and security policy and the recent moves to transform its state aid and industrial policy. In short, we perhaps need to look to the model of the Irish Republic, obviously a smaller entity than the United Kingdom, which has been very successfully able to track and influence UK government policy through the years. We now need to be able to perform that task towards the EU, the larger entity vis-à-vis ourselves, with the same rigour with which the Irish state has performed its core functions in its own national interest.

Our engagement with the European Parliament will need to be far better, far more technical and more consistent. This is particularly true for the protocol, but the lessons have much wider application. On balance, our footprint in Brussels should increase, not decrease, as we seek to engage and understand and, in so doing, better manage our relationship with our largest trading partner. We made great errors in our negotiation on the withdrawal agreement because, frankly, we were not on top of our game and too little expertise was diffused across Whitehall. We have learned much since, but those lessons need to be embedded. We cannot afford to make similar mistakes again.

On our legislative scrutiny, it occurs to me that, in due course, there might be merit in a working relationship under the British-Irish Council, which my late friend Lord Trimble did so much to place at the heart of strand 3 of the Belfast/Good Friday agreement in 1998, when many thought that it was a slightly quixotic enthusiasm of his, although, in retrospect, it has turned out to be of the greatest significance in very different and changed circumstances. The British-Irish Council has seen too little activity and has too often been too easily dismissed during the negotiations over the protocol and even, at times, in this House.

In our scrutiny of EU legislation affecting the protocol, there would be real benefit now in co-operative work with the Northern Ireland Assembly, this House and the other place. This would help to address, in part, the democratic deficit that so many from across many different sides of the divide here identified, and it would bring together local expertise with the resources of this House and our expertise in, and experience of, scrutiny and engagement with Whitehall. The Belfast/Good Friday agreement specifically promotes interparliamentary links and co-operation under the British-Irish Council in strand 3. We should pay attention to how the institutions of the Belfast agreement can help us to address some of the challenges that we face. We must protect that agreement, and it can help to protect our national interests in the same way.

10.46 am

Lord Hain (Lab): My Lords, I too thank the noble Lord, Lord Jay, for his astute chairing, and our clerk, Stuart Stoner, and his expert team for the brilliant job that they do. But, even with such expert scrutiny, there is a loss of democratic accountability—the “democratic deficit”—affecting Northern Ireland following Brexit. Surely the devolved institutions in Northern Ireland should have a much more direct role in the scrutiny of the EU rules that apply to them.

Boris Johnson and the noble Lord, Lord Frost, endorsed by Rishi Sunak, negotiated a deal making Northern Ireland an EU rule-taker, rather than an EU rule-maker, as it was before Brexit. Like Northern Ireland, Norway is in the single market but not in the EU—yet Norwegian Ministers and parliamentarians are able to scrutinise and achieve amendments to all draft EU proposals affecting Norwegians. These consultative rights for EEA members are important to overcome what would otherwise be their own democratic deficit over single market legislation. Norwegian Ministers say that this works well, so why not give similar oversight of the implementation of the protocol directly to the democratic institutions in Northern Ireland? But this is not only a matter for the European Union. Obviously, Norway is a sovereign state, and addressing this Brexit democratic deficit will require the UK Government to allow something different for Northern Ireland, compared with the rest of the UK.

The UK-EU Joint Consultative Working Group—JCWG—which meets monthly, is where the European Commission informs the UK about

“planned Union acts within the scope of this Protocol”

under Article 15. This is a point at which potential difficulties arising for Northern Ireland can be identified and accommodated in the EU's final decisions. The UK Government should therefore establish formal structures to ensure that the views that they proffer through the JCWG take full account of the views of Northern Ireland Ministers, MLAs, officials and stakeholders. Preferably, Northern Ireland representatives should have direct consultative rights within the JCWG.

Meetings of the joint committee have already seen the First Minister and Deputy First Minister, or their nominees, invited to participate in the UK delegation where the joint committee discussed the protocol. But there is currently no formal mechanism for representation from the devolved Governments in the UK to participate fully in the UK delegation to meetings of the UK-EU joint bodies. The UK Government should therefore commit to raising the status of the Northern Ireland First Minister and Deputy First Minister from invited observers to ex officio members of the UK delegation, where UK-EU bodies are discussing matters relevant not just to the protocol but to devolved competence. There should also be direct consultative avenues for Members of the Legislative Assembly—MLAs—of Northern Ireland with the European Parliament. These are practical and common-sense solutions to a real problem that, quite understandably, exercises unionists. I hope that UK Ministers, the Irish Government and the European Union will support them.

10.49 am

Baroness O’Loan (CB): My Lords, I too pay tribute to the noble Lord, Lord Jay, for the effective manner in which the affairs of the committee have been conducted, and to our very able staff.

The scrutiny work of the committee is profoundly important because the legislative and other changes which are ongoing are crucial to the future prosperity of the UK. The report addresses the economic and political impact of the protocol, and we have considered the impact of the arrival of the protocol Bill, which caused such consternation in your Lordships’ House—happily, it is now on the shelf, where it should remain.

We have heard evidence that the ongoing uncertainty and lack of stability are a barrier to inward investment, which is desperately needed in Northern Ireland. The data on the economic impact of the protocol is not sufficient to enable definitive conclusions to be drawn, but we know that other factors are at play such as the exclusion of non-UK labour from the market, which results from withdrawal rather than the protocol. We heard from one CEO that, following Brexit and Covid:

“Instead of the usual 100,000 people coming into the workforce, we will have fewer than 10,000.”

Trade has continued, but it would have been more difficult had the protocol been enforced in all its terms. Time is running out on the grace periods. We have the newly revitalised talks, and it is vital that a negotiated way forward is achieved. It is vital too that the Northern Ireland Assembly returns to do its work, that the democratic deficit in all its forms is addressed and that the problem of regulatory divergence receives urgent attention from the Government.

Concerns are being articulated about problems deriving from the omission to check goods coming into Northern Ireland from GB, particularly because supply chains are altering and goods are coming in from third countries from which they did not come before. Manufacturers and distributors have indicated to us that they are working hard to maintain markets and continue supplies, both east-west and west-east, but that selling into Northern Ireland from GB involves a lot more paperwork, resources and complexity. There are situations where businesses are absorbing that cost; we do not know how long that can continue. The MD of M&S told us that his company has had to open a new export centre in Motherwell in Scotland to facilitate deliveries to its stores on the island of Ireland. They require an extra 24 hours for delivery, with an impact on shelf life and therefore on profitability. A representative of the logistics industry told us that there was an initial 40% increase in the cost of moving goods to Northern Ireland. We have also heard that businesses are taking advantage of free access to the GB mainland.

There is a danger that, if the matters raised in the evidence we have heard are not dealt with speedily by government, if the grace periods expire and are not renewed, if the EU takes further infringement action against the UK and if the issues relating to the protocol are not resolved, Northern Ireland will face significant hardship in many areas, including the ability of businesses both in Northern Ireland and in GB to continue to do business. There will be lost jobs in both parts of the

UK as markets can no longer be serviced in Northern Ireland, and there will be difficulty in accessing safe foods and adequate medication, for example.

We have had checks in the past. It is not new that we should have checks, but this is a different situation, and we have to face the reality of that.

I hope that the work of the committee is providing government with assurances about the legislation coming through and with information, which is vitally needed. As the noble Lord said, we need more information from government departments, but I hope that government, working with the committee, will continue to enable this important work.

10.54 am

Lord Weir of Ballyholme (DUP): My Lords, I join others in congratulating the noble Lord, Lord Jay, and the committee on this report; I welcome it and am happy to support all the recommendations. However, I do so in a context in which I have deep concern for the present and grave fears for the future.

The report rightly details that we need maximum scrutiny of EU legislation. I welcome in particular those parts of the report that deal with the detail and contents of Explanatory Memoranda, because, too often, Governments of whatever political hue tend to treat a requirement as a tick-box exercise. We must ensure that we have the maximum scrutiny.

However, the very thoroughness of the report highlights the fundamental problem that we have. The most detailed scrutiny that can be provided—if I can use an analogy—will present this Parliament, the Northern Ireland Assembly and the people of Northern Ireland with effectively a front-row seat as a spectator not of the match itself but of the match highlights, because the match has already taken place. Given that the JCWG meets with a level of confidentiality, we will not even get to see part of the match. It does not permit us to participate in the match in front of us. That is the fundamental democratic deficit.

British democracy, and indeed the foundations of world democracy, are based, on the one side, on the relationship between legislation and taxation and, on the other, on direct parliamentary representation and decision-making powers. The protocol renders that asunder. No matter what level of consultation, discussion or seats at tables that we have, unless there is throughout the United Kingdom the opportunity to reject or accept something democratically, we are simply in a position where laws are imposed on us.

Recommendation 7 of the Government’s response, which refers to paragraph 78 of the report, highlights the concern about divergence, in respect both of goods coming from Great Britain to Northern Ireland and of goods coming from Northern Ireland to Great Britain. Much has been said about the Irish sea border and the problems of movement between Great Britain and Northern Ireland. It will mean, for example, that companies in Great Britain either will be at a disadvantage when trading with Northern Ireland or may in some cases be completely prevented from trading. For Northern Ireland, it will lead to increased costs for customers and consumers; it will lead to reduced choice. Even on that flow, it will massively disrupt the UK internal single market, to the disadvantage of Northern Ireland.

[LORD WEIR OF BALLYHOLME]

The disadvantages for Northern Ireland goods moving to the United Kingdom have perhaps been less understood. If we are in a regime in which there is increasing regulatory divergence, as highlighted by the report, it will mean that Northern Ireland access to the rest of the UK market will again be deeply disrupted, as my noble friend and colleague Lord Dodds indicated—roughly 70% of Northern Ireland’s trade is with the rest of the United Kingdom. As we move towards arrangements with other countries, it will mean that Northern Ireland goods will not be able to be produced to the same standards and regulations. That will mean a reluctance, indeed opposition at times, within the rest of the United Kingdom to take goods from Northern Ireland; it will directly disrupt trade that is there.

These are the fundamental problems. Unless the Government tackle them, and do not see them as just a few checks on trade, we are in danger of disregarding the major problem; we will simply reheat it. If the emperor has no clothes, simply giving the emperor a bit of a makeover and leaving them naked in the future is not to our advantage. Unless we tackle the fundamental problem of ensuring that we get an agreement which has cross-community support in Northern Ireland and genuinely listens to the concerns that are there, we are, at best, taking part in Groundhog Day and, at worst, heading towards a deteriorating situation both for trade and politics in Northern Ireland.

10.58 am

Lord Hannan of Kingsclere (Con): My Lords, it is a pleasure to follow the noble Lord, Lord Weir, whom I first encountered some 30 years ago when he was running the Young Unionists. His was a strong and true voice for County Down at the Stormont Assembly, and it will be again in our councils. I add my praise to everyone else’s in favour of the chairman of our Select Committee, the noble Lord, Lord Jay, whose temperate, measured and judicious approach has brought, out of a very disparate Select Committee and with the assistance of our staff, a very useful report. Everything that people said about the House of Lords before I became a Member—how disinterested it could be and how people could raise their eyes above the partisan scrum to try to discern some kind of consensus—has turned out to be true, at least in my Select Committee. For that, I thank all my fellow members.

I associate myself very strongly with the balance of the report. There is a sense, which is very widespread across the channel and in chunks of our media here, that it has always been the UK which is unreasonable, that we created the whole problem, and that any compromise will largely involve movement from our side. However, such a view does not survive first contact with the reality on the ground. The UK could have been extremely unreasonable; we could have stood on the letter of the law and said, “Look, we are a sovereign country, we are doing our own thing, and we are not going to raise so much as a matchstick of infrastructure on our side of the border; what you do on your side of the border is up to you”. That would have been legal under international law.

The Republic of Ireland opted out of our customs union in 1921, to the horror of Lloyd George, who thought that that was the final thing that could have symbolised some kind of continuing relationship between the two states. There would have been no comeback from that, if you like, but we did not do that. We did not do that because, first, we wanted to be good neighbours to the European Union, and, secondly, we recognised an obligation to both traditions in Northern Ireland—so we went out of our way to help the EU deliver on that aim. Let us remember that it is the EU that says it needs the border; there has never been any suggestion of that on our side.

All the provisions in the protocol Bill, which stalled but will come back in your Lordships’ House, are to that end: the red and green channel; Northern Ireland having the same right of taxation with representation that the rest of the world has; the freedom for companies in Northern Ireland that do not export to be able to follow UK regulation; and arbitration in accordance with every other international treaty. Those have been put together precisely so that they do not cause any inconvenience or damage to the EU, yet I do not think that that is acknowledged at all.

I sit on the Joint Parliamentary Assembly between this Parliament and the EU, and there is a very widespread sense there that the UK, as it were, is not moving an inch to try to accommodate its neighbours. In fact, at the last meeting, I made an intervention, saying that I am very pleased that we, on this side, do not require tests or checks on EU imports, and that I hope we will carry on doing that, because these are our friends, neighbours and allies and we should trust their standards. A large number of members were so preconditioned to expect me to have said something else that they all raged at me—“How dare you say that we should not have tests or checks on UK imports”—because people hear what they are expecting. There is an imbalance in the readiness to resolve the issue.

I very much hope that we will use Northern Ireland as a bridge between the UK and the EU, and that it will become a symbol of our friendship, but that requires both sides to recognise that the other side has legitimate concerns. It is a legitimate concern for any sovereign country not to have an internal border or a chunk of its territory governed from overseas without democratic representation. I am sure that all noble Lords in this House wishes the EU prosperity and success—I certainly do; I want it to be rich so that it is a better customer. As David Hume observed in 1777, the increase in the commerce of any one nation, far from hurting its neighbours, must serve to augment the commerce and riches of its neighbours. I just hope that that sense is reciprocated.

11.03 am

Lord Murphy of Torfaen (Lab): My Lords, it is a great pleasure to follow the noble Lord, Lord Hannan. It is quite interesting that this debate falls almost exactly to the day when the agreement in Northern Ireland about restoring elections fell—that was yesterday. The House will know that that has not happened, and that there will be a further set of negotiations, which will probably end at roughly the same time as the anniversary of the Good Friday agreement. Yesterday,

also, the British-Irish Intergovernmental Conference met as part of strand three of the Good Friday agreement—an agreement I chaired what feels like a million years ago. That really means that this debate is very relevant today. I wholly congratulate the noble Lord, Lord Jay, on his extremely skilful handling, not just of the issue but of the Select Committee. The differing views on the Select Committee on the protocol are intense, and I rather suspect that the members' skills would be very useful in Belfast and London at the moment.

The report says that “particular circumstances” apply to Northern Ireland; of course they do. I agree with the point made by some noble Lords that there should be greater flexibility on the part of the European Union on Northern Ireland. There is no direct comparison between what happens in Northern Ireland regarding the protocol and the European Union, so it is clearly unique. It seems that the Government and the European Union, in their negotiations, should understand that particularity.

In the debate so far, the comments by the noble Lord, Lord Hannay, and my noble friend Lord Hain, were particularly useful, with very practical suggestions as to what could happen to improve the democratic deficit and ensure that people in Northern Ireland have some sort of say over the regulations, as far as the protocol continues, over their lives. That does not seem to be a huge ask: that people who will be elected in Northern Ireland, hopefully, will have some say on the laws that affect it.

I hope that the Minister takes into account those very significant recommendations, but it depends, of course, if there is a Northern Ireland Assembly or a Northern Ireland Executive—the jury is out on that at the moment. We have had negotiations of sorts, but it was not exactly ideal that, a week or so ago in Belfast, half the community in Northern Ireland was not represented because of a rather silly row over the protocol. Great effort should be made by the Foreign Office and the Northern Ireland Office regarding how they approach the negotiations. Frankly, if we had decided, 25 years ago, that it was the Government's view as to who should or should not meet, we would not have had the Good Friday agreement.

The weeks ahead are really critical, and the recommendation from the noble Lord, Lord Dodds, that the Minister should tell us a little bit about what is happening at the moment would be very useful. I know that we cannot go into great detail on any of it, but he can tell us, roughly, if any progress is being made. If progress is not being made on these negotiations, there will be no Assembly and no Executive, and there will be no proper local scrutiny of the European Union regulations. Therefore, no progress will be made on the central issue dividing the parties at the moment: the operation of the protocol.

11.07 am

Baroness Hoey (Non-Affl): My Lords, the noble Lord, Lord Jay, has made some very sensible points on behalf of his Select Committee on improving the scrutiny of EU legislation applying to Northern Ireland and the democratic deficit. However, that all addresses the symptoms, not the problem.

What is the point of that scrutiny? We could sit for hours scrutinising everything that the EU wants to do to Northern Ireland if we cannot say no and change it. Millions of people voted to leave; many of us voted to get rid of the EU telling us what we had to do and what we could not get out of because of majority voting. This will not all be solved in any way, no matter how good some of the points on scrutiny are. We do not need the scrutiny—we should not need it—because we should not have the protocol.

The truth is that the Government should never have signed up to the protocol. I know that it is an international treaty, but it came after another international treaty—the Belfast/Good Friday agreement—and now, without doubt, the protocol is destroying that agreement and the hugely important principles of both cross-community consent and the democratic deficit. I wonder how long we in this House and in this country can allow a treaty to continue when it is working absolutely against the unity of its own country. The courts have said that it is subjugating the Act of Union and, when it is brought down, devolved government.

The Government may talk about taking back control, but, even last week they produced a statutory instrument to introduce the Official Controls (Northern Ireland) Regulations 2023, which gives powers to UK Government Ministers to implement and supplement the protocol by building structures at the ports in Northern Ireland for customs and other checks. If Northern Ireland officials do not apply these laws, a foreign court will impose sanctions on the UK.

However, Article 64 of OCR 2017, the regulation that they seek to give effect to, requires border control posts at the entry into the EU. By building these posts in Northern Ireland, the Government are accepting the principle that Northern Ireland is part of the customs territory of the European Union. Pre-action legal proceedings have now been lodged, which will force the Government to finally take an honest position. Is Northern Ireland part of the UK customs union, as is boldly proclaimed in Article 4 of the protocol, or is it part of the EU, as per the statutory instrument, which treats Northern Ireland as part of the EU? I am sorry to say it but the Government are speaking in a kind of double-speak; it is as if they want to conceal their true intent and kid people in Northern Ireland that they are actually really going to sort the protocol, when they have no intention to do so.

I refer noble Lords to the recent publication of an excellent report from the Centre for the Union written by Ethan Thoburn, Jamie Bryson and James Bogle, which gives very clear views on how we can restore Northern Ireland's place in the union. It is a paper analysing the impact of the protocol on Northern Ireland's constitutional status. Many noble Lords have talked about the Assembly coming back. Really, the Government have to accept, realise and understand that, until Northern Ireland is fully back as an integral part of the United Kingdom, Northern Ireland devolution will not happen and the Northern Ireland Assembly will not come back. That needs radical change to the protocol, not tinkering.

If only the Secretary of State for Northern Ireland would, rather than denigrating those parties that are sticking to their mandate of saying that they would

[BARONESS HOEY]

not go back into devolution until the protocol was sorted, spend more time trying to convince Ministers, particularly in the Foreign Office, that the protocol has to go, and there has to be a restoration of Northern Ireland to its rightful place in the UK. It is only when that happens that we will get devolution back.

11.12 am

Lord Bew (CB): I rise, as so many other noble Lords have done, to praise the work of the noble Lord, Lord Jay, and his committee. I have attended several of the public sessions and have given evidence at a private session. Perhaps most remarkably, last Wednesday's session from the pharmaceutical industry was really interesting about how we have not actually resolved the problem, as many people believe, of medicines yet for Northern Ireland. It was very important evidence, to which I hope the Government pay attention.

I agree with everything that the noble Lord, Lord Jay, said today, but I want to add one thing. He ended by saying that Northern Ireland is part of the EU single market. It is also part of the UK single market, and the protocol commits the EU to respecting the functioning of the UK single market. It is a complicated matter, but it is right there in the protocol. How we do it is rather difficult, but it is there—it is part of the UK single market as well. That is the difficulty in making it work properly. It is not the GB single market but the UK single market.

Briefly, it is clear—and I was struck by the observations of the noble Baroness, Lady O'Loan—that there are newly revitalised talks. On the day when the Northern Ireland protocol had Second Reading in this House, there was a regret amendment, and it was widely said across this House that the introduction of that Bill would doom those talks and be a most dreadfully provocative thing to happen. It is a matter of fact and an absolute certainty that that was not a correct line of argument. We are not at the point yet where we can say with confidence that there will be a workable deal, but the deal that there already has been on the transfer of data between the UK and the European Union is a *sine qua non* for a workable deal. Those are positive things, and we meet at a moment of much greater positivity than usual.

I wanted to say something else about my noble friend's report, which is in many ways a landmark report. I give one reason for that. Every speaker so far has reflected the theme of the report—the democratic deficit. I remember when the May version of the protocol was published; there was not even a mention of the Northern Ireland Assembly, reflecting EU pressure. For six months or so there was an argument behind the scenes but, for a long while, legal officers of the May Government were under inquiry from journalists referring to the Matthews case in Gibraltar, which raises the question about how you can impose things top-down with no democratic assent. That case, which is very important in European law, was dismissed, and for six months there was a solid position—it was not a problem. We are now in a totally different world.

To be fair to the May Government, by about March 2019, in the Statement made by the Brexit Secretary on 12 March and made in this House by the

noble and learned Lord, Lord Keen, the position gradually changed. The move began towards accepting that there was a problem with democratic deficit, and there is now total consensus in this place. There were 200 or more MPs who voted for that Bill without worrying one bit about the total absence of democratic deficit. Now there is a new consensus, and I welcome it, but it is important to note that it is part of the development of an argument. As the report of the noble Lord, Lord Jay, says, it is important that the protocol in its eventual working be compliant with the Good Friday agreement. It was very hard to argue that for six months but, eventually, the Brexit Secretary in his Statement in the Commons on 12 March finally acknowledged that it was a reasonable request and a reasonable argument.

This report is a landmark: it represents a transformation of the terms of the debate on this subject as was. We owe it to the Irish officials, who spoke so honestly about the British negotiating defeat in 2017 and expressed their surprise publicly to Politico, and talked about the consequences of that humiliation. That was the function, above all, of the May Government effectively having lost the general election and being desperate to get into talks at any price. We owe it to the Taoiseach—and the noble Lord, Lord Lamont, referred to the fact that he said that the protocol was too strict, when many people in this House and many in the Northern Ireland Assembly were full implementers. The Taoiseach repeated it after the EU's recent statement, saying that the protocol was still a thing; he repeated again that it was too strict. So we owe a lot to the honesty of Irish politicians and civil servants, but we are now in a new place. The quality of the work and the detail in the report of the noble Lord, Lord Jay, is excellent, and on the substantive matters it has achieved much and reflects much of the new reality.

11.17 am

Baroness Altmann (Con): My Lords, I, too, congratulate the noble Lord, Lord Jay, for his diplomatic handling of his remit and his excellent introduction to today's debate. The fact that unionists, Brexiteers and remainers have all paid tribute is a testament to his skills.

Of course, the hard Brexit chosen and the Northern Ireland protocol agreement signed must entail a democratic deficit; that is agreed by all now. Practical suggestions have been proposed by, among others, the noble Lord, Lord Hain, and I wonder whether my noble friend the Minister could respond as to whether his Government will take any of those suggestions forward.

The democratic deficit is of serious concern. There was insufficient consultation and approval from all Northern Ireland parties before finalising the arrangements for our future relationship with the EU. Northern Ireland was never going suddenly to attach itself geographically to the rest of Great Britain and suddenly magically separate itself from the single market and the EU. There was always going to be a need for practical arrangements of some kind, or regulatory alignment. The noble Lord, Lord Hannay, has proposed some equally practical suggestions for giving Northern Ireland a voice. Will my noble friend consider taking any of those forward?

The answer to the democratic deficit must not just be to replace our country's vital parliamentary checks and balances by ministerial diktats, which override and break the agreement that our own Government signed. Of course, the noble Baroness, Lady Hoey, is right that perhaps we should never have signed it, but sign it we did—we are where we are. It feels as if the Government are still not taking seriously the implications of the actual agreements that they have signed with the EU.

Can I ask my noble friend to please answer the question raised by the committee and by the noble Baronesses, Lady Ritchie and Lady Suttie, today about whether the Government are keeping a single log of all cases of regulatory divergence arising from EU and UK legislative changes since the Northern Ireland protocol came into force? Will they publish this, since that is surely essential for future arrangements?

My noble friend Lord Lamont stated that Brexit did not require dynamic alignment. That is true, but it is not as a consequence of EU unwillingness to adopt alternative arrangements that we are where we are. My noble friend Lord Hannan suggested, for example, that there be no checks at all. I must respectfully disagree. Does my noble friend the Minister agree with our noble friends on this? If so, why did our Government sign the protocol, which requires that to happen? What are the other arrangements that could or should have been conceded?

The single markets lies at the very heart of the EU. When our then Prime Minister signed the withdrawal agreement and the protocol, how did he believe that it could fulfil the requirements of the Good Friday agreement and meet the demands of all parties? The fact that, immediately after signing that there would be a border in the Irish Sea, he declared that no customs checks would be required does not change the reality. Was the plan to use Northern Ireland as a Trojan horse to gain favoured access from the mainland to the single market? I cannot say. In the meantime, however, can my noble friend update the House on talks that are going on with the EU on the Northern Ireland protocol?

11.21 am

Lord Liddle (Lab): My Lords, as a member of the European Affairs Committee, I add my thanks for all the work that the noble Lord, Lord Jay, does on the Northern Ireland protocol sub-committee and for the excellent work of Stuart Stoner and his officials. They work really hard and do their best in a very difficult situation.

We are dealing with a world of second-bests here—possibly third-bests. I have great respect for the views of the unionists that these changes have been imposed on Northern Ireland without cross-community consent. I think that the noble Lord, Lord Bew, was the first person who pointed that out to us in this Chamber; it is a fact that this has happened. But there is now no going back to the status quo as it was before Brexit. Brexit has altered everything. It has fundamentally altered relations on the island of Ireland and there is no way that we can go back to where we were as a United Kingdom prior to that.

However, I also agree with the noble Lord, Lord Lamont, that the European Commission has not approached this question in the most tactful manner. From my experience of working in the Commission, I say that it sees its role, fundamentally, as protecting the competencies of the EU in trade and the single market. It has looked at the Irish question from that very narrow institutionalist perspective and has not taken into account as fully as it should the complexities of the Northern Ireland situation. Do noble Lords think that our Government actually pointed that out? Boris Johnson certainly did not; he was only too anxious to sign off on this protocol agreement in order to “get Brexit done”. He did not give a—sorry, I was about to swear there. He did not care one little bit for Northern Ireland. That should be borne in mind.

How do we make the best of this bad job? We must work much harder at getting effective mechanisms working between the Northern Ireland people, the Assembly and its stakeholders, and the European Commission. The situation requires dynamic alignment, but that has to be done in a way where the views of the people in Northern Ireland are fully taken into account. I agree with what the noble Lord, Lord Hannay, suggested, and I think that there should be a regular consultative forum, where senior people from the Commission go to Belfast and listen to and debate the views of politicians from all parts of Northern Ireland. I am a member of the new UK-EU Parliamentary Partnership Assembly, and we should establish a sub-committee that brings together Northern Ireland politicians and MEPs on a regular basis. That would be very constructive.

We must recognise that this is the world of the second-best and there is no going back to what it was before Brexit.

11.25 am

Lord Cormack (Con): My Lords, as always, I am delighted to follow the noble Lord, Lord Liddle. Although I am slightly sorry that his expletive was deleted, it was a very splendid and spirited speech, as always.

I begin with an expression of regret. If noble Lords look at the date on the excellent report of the committee of the noble Lord, Lord Jay, they will see that it is 22 March last year. The date of the Government's response is 26 September last year. Here we are on 20 January before your Lordships' House has had a chance to look at this. Those in charge of arranging business in this House should have a little more regard for the importance of our committee reports and a little less regard for the burdensome, turgid legislation that is placed before us on an almost daily basis.

As I listened to the noble Lord, Lord Jay, I could not help but think, “If that man had been in charge, we would have solved it by now”. He has all the attributes of the consummate diplomat, marvellous experience and the ability to see the other side. I agree with the noble Lord, Lord Liddle, in his strictures on the protocol; what we needed was a flexible garment and what we got was a straitjacket. Who signed up to the tailor's plans for the straitjacket? The noble Lord, Lord Frost, the Government, the then Prime Minister—they imposed it on us, not the EU. It was imposed on us by our own Government. That is, I am afraid, something that should not be easily excused.

[LORD CORMACK]

I am glad that the protocol Bill is on hold. Although I have some sympathy with the points made by the noble Lord, Lord Bew—whom I greatly admire, as I think we all do—the fact that it has been on hold for some months has assisted the negotiations that have been taking place, I think, because we have not been in the position of making a sword of Damocles while people were sitting around the table. I very much hope, as I think we all do, that the negotiations come to a successful, constructive conclusion, but they will need to be built on.

So many colleagues from different sides of the argument have talked about co-operation. I entirely agree. Of course, the committee that produced this report has a valuable part to play, but so would a Joint Committee of both Houses, and so would a committee that embraced within it Northern Ireland politicians as well as Members of the European Parliament—the noble Lord, Lord Hannan, touched on this, or something very like it. It is absolutely vital that we recognise, in a Europe that is more dangerous than it was a year ago, that those of us who have democratic values must build on them together.

It is absolutely crucial, in my view, that we see a strong European Union but also a strong United Kingdom that recognises its close friendship and ties over centuries with our neighbours and friends in Europe. Let us try to go forward building on the very good recommendations of this report but, in future, when reports of this magnitude and importance, with far-reaching implications, are drawn up by committees of your Lordships' House, let us have the chance to discuss them in under six months, rather than almost a year later.

11.30 am

Lord Bilimoria (CB): My Lords, since the referendum in June 2016, I have always felt that Northern Ireland has been the Achilles heel of Brexit. There is no solution without compromise of some sort, and the protocol is, in essence, a compromise, trying to protect the Good Friday agreement but, yes, creating a border down the Irish Sea—a border between Great Britain and Northern Ireland within the United Kingdom.

Under the protocol, Northern Ireland is subject to the EU's customs code, VAT rules, single market rules and rules on state aid applied to the UK in respect of measures that affect trade between Northern Ireland and the EU covered by the protocol. It also requires the UK to ensure that there is no diminution as a result of Brexit of the rights, safeguards and equality of opportunity set out by the Belfast/Good Friday agreement. Also, future changes in EU legislation may apply to Northern Ireland. The noble Lord, Lord Jay, referred to 300 pieces of EU legislation. I thank him and his committee for its excellent report. It points out so many issues I would like to put to the Minister. The committee highlighted the inconsistent and at times poor quality of Explanatory Memoranda and ministerial correspondence. Does the Minister acknowledge this?

Of course, the democratic deficit has been mentioned by just about every noble Lord who has spoken in this debate. The committee concluded that all sides had a continuing obligation to ensure the operation of the protocol and this dynamic application that has been

referred to as well, taking into account the delicate balance in north-south and east-west relations. The Government have agreed with the committee's assessment that there is a democratic deficit—will the Minister confirm this?—and that there needs to be much more ambition to sort this out.

The committee also reiterated the importance of keeping a comprehensive audit or log of both EU and domestic legislation. Again, is this going to happen? I think it is a necessary requirement. The noble Lord, Lord Hannay, very clearly pointed out that the EU is not picking on Northern Ireland in any way. The noble Lord, Lord Hannan, spoke about an imbalance. There is an imbalance. When I travel to European countries, I have to go in a separate queue but EU citizens coming here do not have to queue up and are allowed to go through our e-gates. That is just one example. We need to have a close relationship with the EU to make any of this work. There needs to be a spirit of trust and, as the noble Lord, Lord Hannay, said, we may not have a vote but we should have a voice.

The noble Lord, Lord Godson, with his huge knowledge and experience of Northern Ireland, has pointed out that the divergence is much greater than anticipated. He said that engagement with the European Parliament needs to be much better and very clearly pointed out that the EU is our largest trading partner. The noble Lord, Lord Hain, said very clearly that Northern Ireland is now a rule-taker, as part of the EU, whereas earlier Northern Ireland and the UK were rule-makers within the European Union. That is a reality. The noble Baroness, Lady O'Loan, spoke about the difficulties experienced by business and the increase in costs. She gave the example of Marks & Spencer. I can speak, as a former president of the CBI who visited Northern Ireland, about the difficulties experienced by our members. We just want to get on with business, and a green channel/red channel route based on trust is one solution.

With all respect to the noble Lord, Lord Bew, good will has been strengthened by pausing the protocol Bill, because that Bill could create all sorts of issues, including, possibly, a trade war. James Cleverly has said that he wants it to be done, but he is not agreeing to the deadline. Will the Minister say that we should resolve this in time for the 25th anniversary, when President Biden might visit?

The noble Lord, Lord Lamont, asked: where will the landing zone be? Earlier this month, I was skydiving in Cape Town from 9,000 feet, plummeting down to 4,000 feet before the parachute opened, and we landed on a landing zone. It was a patch of sand and it was a very soft landing zone. We need a soft landing zone, because beyond this protocol is the big prize of the trade and co-operation agreement—the TCA—which is very thin. We need to do so much more to enhance that agreement with our biggest trading partner. Let us resolve this and then we can get on with the much bigger prize.

11.35 am

Baroness Ludford (LD): My Lords, I am delighted that the noble Lord, Lord Bilimoria, came through that terrifying experience to share his wisdom with us today, not least as the former president of the CBI. I absolutely endorse the tributes paid to the noble Lord,

Lord Jay of Ewelme, for his chairmanship and stewardship as a sort of welfare counsellor to the sub-committee: he is not a former top diplomat for nothing.

This report is not about the protocol itself, but about the process of scrutiny. The noble Lord, Lord Jay, kept to the confines of his report in his initial presentation. As the noble Lord, Lord Lamont, said, it contains a plethora of constructive and practical suggestions, and these were referred to and, indeed, added to during the debate. While the noble Lord, Lord Jay, kept to the confines of the report and its subject, other speakers did not, beginning with the noble Lords, Lord Lamont, Lord Dodds and Lord Weir. They ranged a bit more widely, so I will give myself permission to do so just a little.

I went back to read the introductory report of the sub-committee from July 2021. Everything in that report is still entirely valid, including that the protocol was not created in a vacuum but as a consequence of Brexit. As the noble Lord, Lord Hannay, pointed out, this was a UK Government choice. The noble Lord, Lord Lamont, referred to paragraph 30 of the Government's response to the report, which says:

"The imposition of EU law was a consequence of the EU's unwillingness to accept other solutions."

Well, as has been remarked on during the debate, the Government negotiated, signed and ratified. They insisted on ratification of the protocol, so this idea that "It's nothing to do with us, guv"—particularly the "guv"—is, I think, pertinent in this context. Indeed, the introductory report from the sub-committee I just referred to, from two and a half years ago, said:

"Just as unionists and loyalists object to the Protocol being imposed without their consent, so nationalists and republicans point out that Brexit was imposed on Northern Ireland even though the majority of votes there were to remain in the EU."

As the noble Lord, Lord Hain, pointed out, there was no democratic deficit before Brexit. I really do not want to go on too much about this, but I am responding to remarks made as if this came from outer space. For those of us who have some experience of the EU's democratic processes, one of our main objections to Brexit was that we would become a rule-taker, not a rule-maker. The sub-committee's report of July 2021 said:

"While there are mitigating steps that can be taken ... there is no apparent way to eliminate the democratic deficit."

That is absolutely true. The noble Baroness, Lady Altmann, was one of those who repeated the point that it was obvious what the problem was going to be. I say to the noble Lord, Lord Bew, that it is not a new acknowledgement, or some sort of new revelation, that there is a democratic deficit.

As this report concentrates on, the important thing is how we can mitigate and improve the management of the situation. The noble Lord, Lord Hannay, added to the suggestions in the report that the UK should stop blocking an EU office in Belfast—which obviously seems sensible—and the idea of having a Northern Ireland Executive office in Brussels. Scotland and London, among others—forgive my ignorance; Wales probably did as well—had their own offices in Brussels back in the day. It could be not just a section of the UK mission but an office in its own right, as the Scotland and London offices were.

My noble friend Lady Suttie referred to the Commission non-paper of October 2021, which had lots of sensible suggestions on how to improve the practical situation. That is what we need to concentrate on; how will it be taken forward? It is not helpful that we have had to labour for the last few years, as the sub-committee noted in its invaluable introductory report of two and a half years ago, against the Government's apparent reluctance to accept their obligations under the protocol and the consequences of their policy choices, as we have heard from the noble Lord, Lord Liddle, and others.

I completely understand the dilemma of the noble Lord, Lord Liddle, over language when thinking about the former Prime Minister. I am afraid that there was dishonesty—"lying" may be unparliamentary, so let us stick to that term—about what paperwork and checks would be necessary. There was no clarity about what practical obligations would be imposed on stakeholders in Northern Ireland, so it has been a shock to business and others. By the way, I do not think the statistics bear out that the protocol has had a poor impact on the economic situation in Northern Ireland; the situation is rather to the contrary.

As the sub-committee has been pointing out for its entire existence, there was a paramount need for the British Government to be trustworthy, rigorous and honest and show good faith and good will in acknowledging what they signed up to and its implications, and then carry through the good governance machinery necessary to make it all work. Unfortunately, that did not happen. We had the internal market Bill and now we have the Northern Ireland Protocol Bill, which is parked—thank goodness—and will hopefully go up in a puff of smoke. Both of them have been detrimental, to put it mildly, to any chance of demonstrating trust and getting on with the necessity of implementing the protocol.

To quote the report we are discussing, this is not helped by the fact that

"the Government's stated intention in pursuing the particular form of Brexit it has chosen is to give the opportunity for the UK (in respect of Great Britain) to diverge from EU Single Market rules."

That complicates the situation because, if you have the moving target of regulatory divergence all the time, there will be no stability in the situation for Northern Ireland, which is effectively under single market rules.

Today we are trying to discuss day-to-day process rather than policy. One element that we can demonstrably very much rely on is the assiduous, diligent and thorough exercise of the scrutiny duties of our protocol sub-committee under the noble Lord, Lord Jay of Ewelme. As the noble Lord, Lord Dodds, said, no other body is doing this. The sub-committee on the protocol is filling a gap where the Government should be leading the way. I enjoyed some of the acerbic comments in the report on the Government's failure to fulfil their duties in a prompt and efficient way. I thought some of the language reflected the experience of the noble Lord, Lord Jay, in his long career in Whitehall. It is not good enough to have sloppy Explanatory Memoranda—"unacceptably poor" is the phrase used.

[BARONESS LUDFORD]

I am running out of time. What occurred to me in reading the report was the need for trust, honesty, rigour, respect, fairness, engagement, fulfilment of obligations, provision of information, good will and good faith. That is all that is being asked for—I see the Minister grimacing; it is a lot—and it is not too much to ask from a Government who want to implement the obligations that they signed up to.

Finally, the noble Lord, Lord Godson, referred to the Irish Government. It is worth recalling that the sub-committee referred in its introductory report to the Irish Government's important role in facilitating dialogue between the UK Government and the Northern Ireland Executive on the one hand and the EU on the other. We cannot expect them to take on too much, but we owe it to them to recognise the role they have played in the last few years.

11.46 am

Lord Ponsonby of Shulbrede (Lab): My Lords, I thank the noble Lord, Lord Jay, for his skilful and diplomatic chairing of the sub-committee. He has produced a report of real substance which this House has benefited from.

The protocol is a unique arrangement. It was designed, as we know, to manage the consequences of the Government's approach to Brexit, avoid a hard border on the island of Ireland and maintain the delicate balance of institutions created by the Good Friday agreement. It does so by requiring Northern Ireland to remain aligned with aspects of EU law. We need to make the protocol work, but the arrangement none the less creates some specific challenges for scrutiny and accountability.

As the report notes, the protocol lists more than 300 pieces of EU legislation that apply to Northern Ireland, not just in their present form but as they may be amended in future. In addition, new EU legislation that falls within the scope of the protocol may apply to Northern Ireland too. While the protocol will be subject to a vote of consent in the Northern Ireland Assembly in 2024, the reality is that new EU legislation that applies in Northern Ireland under it will not have been subject to a direct democratic decision-making process involving the UK Government or another representative body of Northern Ireland.

This creates three obvious challenges. The first is a democratic challenge, since no elected representatives of people in Northern Ireland are involved in agreeing the legislation at EU level. Secondly, there is an application challenge: legislation which is not primarily designed with Northern Ireland in mind may have unintended or disproportionate consequences when applied there. Thirdly, there is a divergence challenge, since the dynamic nature of the application of new EU legislation within the scope of the protocol creates the potential for greater divergence between Northern Ireland and the rest of the UK.

These challenges are inherent to the nature of the protocol, but it is right that this House plays a role to help make it work, mitigate any negative consequences and maximise the benefits of this arrangement for people in Northern Ireland. The work of the committee in scrutinising EU legislation applying in Northern Ireland is therefore a vital function.

I will make three points on the committee's work; the first is on the facilitation of scrutiny. In the unique circumstances of the protocol, it is all the more important that the Government meet their obligations to enable the committee to perform its functions properly. The report is absolutely correct to emphasise that the Government have an obligation to explain the impact of legislation that will apply in Northern Ireland. It is concerning to hear the committee's characterisation of some of the Government's Explanatory Memoranda on these pieces of legislation as "frankly poor". The Government must comply with their undertakings and ensure the proper quality of Explanatory Memoranda.

The report lays out a very reasonable set of requirements the Government should meet when setting out the implications of legislation for Northern Ireland, including the risks of regulatory divergence, the views of the devolved Administrations and the consultations that the Government have undertaken. Here, it is worth referring to the point made by the noble Baroness, Lady Ritchie, about the importance of an audit of EU legislation and of monitoring divergence; the noble Baroness, Lady Suttie, also made this point.

There is, regrettably, a troubling pattern from this Government when it comes to parliamentary oversight and scrutiny. The Government's retained EU law Bill is an insult to the proper scrutiny function of Parliament. The protocol Bill, with its Henry VIII clauses, is a power grab that gifts Ministers significant and unaccountable powers. It seems that the Government are also failing to provide quality materials to enable the proper scrutiny function of the European Affairs Committee. I urge the Government to take heed of the committee's concerns in this area.

The second point is the importance of engaging with stakeholders in Northern Ireland. This is a duty that I believe is incumbent not just on the UK Government but particularly on the EU. The more the EU engages with those affected by the new legislative proposals that will apply in Northern Ireland, the better. We have heard in today's debate some practical proposals for trying to facilitate better engagement from my noble friend Lord Hain, and a number of others. This can help address democratic concerns about the protocol, as well as ensure that Northern Ireland's unique circumstances are taken into account. Too often, the voices of communities and businesses in Northern Ireland have not been heard sufficiently. I urge the EU to think creatively about how it can best engage with those voices in Northern Ireland. The work of the committee also provides, through its written and oral evidence sessions, an important platform to engage with Northern Ireland's stakeholders, and that should continue.

Thirdly, I make the wider point that the most effective step that could be taken to promote effective governance and democratic accountability in Northern Ireland would be the restoration of power-sharing, and the return of a functioning Northern Ireland Executive and Assembly. Some 44% of families in Northern Ireland have no savings and it has the worst waiting list figures in the United Kingdom. These problems can be solved only by a functioning government. It is an abject failure that power-sharing has not been restored.

It is the job of politicians to solve the problems of residents and voters; it is not the job of voters to solve the problems of politicians.

There is a window of opportunity now to reach a negotiated agreement with the EU that the Government must not squander. We sincerely hope to see a swift and comprehensive negotiated solution. I hope the Minister will be able to update the House on negotiations. If there is a deal that delivers for our national interest and the people of Northern Ireland, we in the Labour Party will support it. I am grateful to the noble Lord, Lord Jay, and his committee for their work; I hope that the important issues raised in this report will receive appropriate consideration from the Government.

11.53 am

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con):

My Lords, first, I join others in both acknowledging and thanking the noble Lord, Lord Jay, and all the noble Lords on the protocol sub-committee for putting together this excellent report. I take on board the points made by my noble friend about the tabling of this debate. My noble friend the Chief Whip, who is also present on the Front Bench, has the challenge, as always, to ensure effective debates and scrutiny and I think today's debate has underlined exactly that.

Again, I commend the noble Lord, Lord Jay, and the suggestion that he should be a part of the negotiating team was an interesting one, maybe a practical one. I commend him because when you have the likes of my noble friends Lord Hannan and Lord Cormack, as well as the noble Baroness, Lady Ludford, and the noble Lord, Lord Dodds, all paying tribute to the noble Lord, Lord Jay, for the balance and perspective he brought in pulling together recommendations, it is no mean feat. I am sure we all commend him for that. Equally, I recognise the measured substance and tone of the noble Lord, Lord Ponsonby, in this debate. This debate can strike emotions, and rightly so. I also acknowledge—while the challenges are there for the Government of the day—the positive and constructive engagement with the noble Lord, and his contribution today underlines that; perhaps unlike other contributions, but there were some that were measured in staying on the actual debate in front of us. I also commend the noble Lord, Lord Liddle: when you are running away with your emotions, to stop yourself mid-flow is always a challenge, and I think we all noticed his restraint—hats off to him for that.

The committee's report and today's debate get to the very heart of the challenge and the problem with the current application of the Northern Ireland protocol. The noble Baroness, Lady Hoey, reminded us of this, as did other noble Lords. They recognise it has been a hindrance to trade between Northern Ireland and the rest of the United Kingdom. The noble Lord, Lord Bew, again underlined the key principle that there are two single markets to be considering here: the European single market and, what has been forgotten, the UK single market, which is at the heart of our union and our United Kingdom.

The committee and the debate recognise the democratic deficit—which many noble Lords referred to—in that certain EU laws apply to Northern Ireland on a dynamic

basis, without consent from parliamentarians in Westminster or Stormont. They also recognise that the Northern Ireland protocol has become a roadblock to the formation of the Northern Ireland Assembly and, indeed, the Executive. I will come on to some of the more substantial points made by the noble Baroness, Lady Ritchie, about the importance of updates on negotiations. I will also pass on her request about engagement to my right honourable friend the Foreign Secretary. Having known the Foreign Secretary for many years, I am sure that noble Lords will acknowledge that his approach to trying to resolve current issues in Northern Ireland, including the negotiations with the European Union, is reflective of his desire to achieve a practical and pragmatic outcome for all.

Since the committee published its report, the Government and the relevant committees in both Houses have reached an agreement on the Government's ongoing EU scrutiny commitments. I join the voices, including that of the noble Lord, Lord Jay, in saying that the work that has gone on in achieving this consensus has led to a really positive outcome for all involved. I pay tribute to everyone. I also highlight the importance of this report in influencing the provisions of that agreement. Some of the report's recommendations are directly reflected in the agreement, such as the automatic deposit of any new EU legislation which the EU has informed the UK of as being within the scope of the protocol. The agreement we reached with the scrutiny committees also encompasses that continued submission of Explanatory Memoranda on EU proposals which amend or replace existing proposals that fall under the scope of the protocol, including the EU legislation in Annex 1.

Finally, the report also made the important point that the material provided by the Government in Explanatory Memoranda should be of the highest quality, so that it can be supportive of effective scrutiny. I take that on board. As the noble Lord, Lord Jay, will know, officials from the departments are working very closely with the committee clerks on exactly this point. It is very much a live discussion, and we hope that that will reflect the views of the committee in the detail and the nature of what is required within Explanatory Memoranda. As the noble Lord, Lord Jay, will already be aware, the Cabinet Office Minister of State wrote to the Secretaries of State in 2021 to stress the importance of submitting well-crafted Explanatory Memoranda. But I take on board the points made in the report.

Turning to some of the questions raised in our debate, as I said, government officials are working with committee clerks to review and enhance the format of Explanatory Memoranda so that they better reflect the information that committees find helpful. As part of the agreement with the committees, there will be an interim review of arrangements in the summer and then a full review after two years or at the end of this Parliament, whichever is sooner. The Government look forward to working with the committees to see how these arrangements could be improved still further.

There were some practical suggestions made in the debate on the issue of divergence; I cannot answer the full detail of those today. The noble Lord, Lord Jay, raised an important point on this issue. The FCDO is

[LORD AHMAD OF WIMBLEDON]

working very closely with other government departments to analyse the EU law that applies in Northern Ireland. This involves identifying issues relating to regulatory divergence and, where necessary, raising them with the EU directly. While some of these discussions require discretion, the Government regularly update the relevant committees in both Houses through the publication of Explanatory Memoranda. I know that the noble Lord has also recently sent correspondence to my right honourable friend the Foreign Secretary on this matter. I asked for an update on that, and I understand that a response is due to be sent in the very near future. I will follow up again on that point. These issues were also raised by my noble friend Lady Altmann and the noble Baroness, Lady Suttie, in their contributions.

The noble Baroness, Lady Ritchie, also raised the important point of divergence and its impact. I reassure her that this is a cross-government endeavour; the FCDO is not alone. I have already alluded to my colleagues in the Northern Ireland Office, and I am delighted that my noble friend Lord Caine has joined us on the Front Bench for this important debate. He and I are working very closely on this. I will get on to negotiations in a moment, but I say first and foremost that we do all sit in one room—we convene these meetings together regularly, as was underlined by the visit my right honourable friends the Northern Ireland Secretary and the Foreign Secretary made to Northern Ireland. We are also working with other departments, including BEIS and the Cabinet Office, and linking in with the work on common frameworks and the UK Internal Market Act. My own officials work very closely with their partners across government, including on quality, ensuring that the issues on Explanatory Memoranda that have already been raised are directly addressed.

Turning to the negative impacts of the protocol, the noble Lord, Lord Murphy, described the situation as unique, and I agree with him. The issues with the way the protocol has been implemented are causing this debate and the problems in Northern Ireland, as we heard from many noble Lords, including my noble friends Lord Dodds and Lord Weir. Traders have to bear additional costs and bureaucracy. The noble Lord, Lord Bilimoria, highlighted the challenges that companies are facing; they want clarity. I know that my noble friend Lord Caine has been engaging directly with many companies and businesses over a number of months. I am sure we will return to some of these discussions and debates, but I assure noble Lords that their views matter, and that is why we are engaging and ensuring that they are factored into the discussions and negotiations we are having with the European Union. As I say, traders have to bear additional costs and bureaucracy and are missing out on some of the advantages being enjoyed in the rest of the United Kingdom. This is unacceptable.

The political cost is also unsustainably high. The Belfast/Good Friday agreement is based on respect between all communities and the consent of all communities, and we must keep that at the heart of our approach. The protocol itself is directly undermining that principle and preventing the restoration of the Northern Ireland Executive. Again, the noble Baroness, Lady Hoey, raised this point. That is why it is a top

government priority to continue to work with our European partners to address these problems and put the protocol on a sustainable footing. This requires commitment, negotiation and movement from both sides, as my noble friend Lord Hannan noted.

Turning to the Government's approach, my noble friend Lord Lamont, the noble Baroness, Lady Ritchie, and others raised the important issue of the democratic deficit. We have long held, since our Command Paper back in 2021, that this will need to be addressed if the protocol is to operate sustainably. This is one of the issues we are seeking to address directly in discussions with our EU counterparts. The noble Lord, Lord Hannay, made some very practical suggestions. It would be very easy for me to nod and agree with all of them, but he knows from his experience as a senior diplomat that I will have to take these back. Other noble Lords also raised some practical suggestions on this issue that I will certainly take back and share with colleagues, and indeed my right honourable friend the Foreign Secretary. On his specific questions, I am not aware of any discussion about the EU office in Belfast, but I think there is merit in the process to ensure that the impact of EU legislation is fully understood. My noble friend Lord Caine has also heard that point very clearly.

Many noble Lords focused on negotiations, and rightly so. I recall hearing very clearly when the Northern Ireland Protocol Bill was in Committee about the importance of discussions with our partners, and I emphasise that point now. If I can digress on recent events—the noble Baroness, Lady Ludford, said that we have gone quite wide, but events do matter—events in Europe and the war on Ukraine have clearly demonstrated the importance of partnership working and approaching those who seek to disrupt democracy, cause division and sow discord, and that there is unity in action. It is in that spirit that I know my right honourable friend the Foreign Secretary and European Commission Vice-President Maroš Šefčovič have had regular discussions. They last discussed these issues earlier this week, on Monday 16 January. I have been part of some of those meetings, and we will continue to engage on the practical issues. As I said in that debate, it is not just about atmospherics; there is cause and focus on substance as well. They have spoken regularly over recent months.

As the noble Lord, Lord Bew, reminded us—and I update the noble Lord, Lord Murphy, and my noble friend Lady Altmann—the Government reached an agreement with the EU on the way forward regarding the specific question of the EU's access to UK IT systems. This issue was raised with us directly as a critical prerequisite to building trust and providing assurance, which provides a new basis for EU-UK discussions. The Foreign Secretary and Vice-President Šefčovič's conversations on Monday also took stock of recent progress and scoped further work for potential solutions. These engagements and negotiations continue in a constructive and collaborative spirit at all levels—including technical discussions between officials, which take place very regularly.

The noble Baroness, Lady Hoey, raised the issue of discussions on the recent Defra statutory instrument. I emphasise to her, and indeed to all noble Lords, that

this is required in any outcome, including the green and red lane model under the Northern Ireland Protocol Bill. I assure noble Lords, as I have already said, that the Secretary of State for Northern Ireland and the Foreign Secretary remain in close contact and work very closely together. I know through direct attendance of various meetings on this very issue that we convene these meetings across government.

I am conscious of time and responding to the important issues that were raised. Turning briefly to the important and practical points made by the noble Lord, Lord Hain—there he is; sorry, he caught me out there, as I was scanning the Benches—he speaks from great insight and experience. The Government have long held that the protocol is leading to a democratic deficit where EU law applies in Northern Ireland but with little meaningful consultation on that EU law. I can say to the noble Lord that the representatives of the Northern Ireland Executive already attend meetings at the joint consultative working group, and we value their important expertise. However, I take on board what he has said. There are always ways to improve existing processes and mechanisms, including through the discussions we are currently taking forward with the EU. I will certainly reflect on the practical suggestions he has put forward again today.

My noble friend Lord Lamont reminded us of the anniversary of the Belfast/Good Friday agreement. Preparations for the anniversary are currently under way. Attendance is being considered across government, including in the British embassy in Washington. Confirmed details on who will attend will be announced in due course and I will keep the House updated.

To conclude, I reiterate once again that, when it comes to practical working with our partners in the EU and the issue of the Northern Ireland Protocol Bill, the Government's preference remains for a negotiated outcome. I hope that some of the details I have shared this morning underline both that commitment and the progress that is being made in the discussions. However, the Government introduced the Northern Ireland Protocol Bill to fix the practical problems created by the protocol in the event that this is not possible. I totally take on board the points raised by the noble Baroness, Lady O'Loan, and my noble friend Lord Dodds that these things need to work in the interests of all communities across Northern Ireland. Indeed, they need to work for the whole of the United Kingdom.

From a political and practical perspective, the current situation in Northern Ireland is not sustainable, as highlighted by the noble Lord, Lord Bilimoria. The protocol is inflicting increasing economic and political harm and undermining the very principles of consent that underpin the Belfast/Good Friday agreement, as we were reminded by several noble Lords, which must remain paramount in all negotiations and discussions. The Government are committed to fixing these issues so that the Executive can be formed. We are committed to ensuring that all businesses in Northern Ireland can prosper. We are committed to finding solutions through the negotiations with the European Union and ensuring that both single markets and all people across our United Kingdom can truly prosper.

12.12 pm

Lord Jay of Ewelme (CB): My Lords, I am very grateful to the Minister for his reply to the debate. I am also very grateful to all Members who have spoken from all sides of the House in what has been a very wide-ranging debate. In fact, the debate has ranged rather wider than the subject of the report. If I may, I will return for a moment to the report to say that I think the debate has also shown that, while scrutiny may seem dry and technical, it really matters. It matters to the businesses and the people of Northern Ireland. I commend the report to the House.

Motion agreed.

The Union (Constitution Committee Report) *Motion to Take Note*

12.13 pm

Moved by Baroness Taylor of Bolton

That this House takes note of the Report from the Constitution Committee *Respect and Co-operation: Building a Stronger Union for the 21st century* (10th Report, Session 2021–22, HL Paper 142).

Baroness Taylor of Bolton (Lab): My Lords, I am very pleased to introduce this debate on the report from the Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st Century*. I want to place on record at the start my thanks to all members of the committee and our staff and advisers, who worked very hard on this report and throughout my time as chair. This inquiry was very interesting and demanding and I think we can all see that it is a very substantive report. Therefore, there was an awful lot of work involved. I look forward to hearing the contributions of committee members and the maiden speech of the noble Lord, Lord Verdirame—I may be the first to pronounce that incorrectly, but we look forward to the speech.

The timing of this debate is very interesting, because it is exactly a year to the day since we published this report. That highlights two things. The first is that, too often, reports from this House, which are very insightful, important and topical, are welcomed when they are first published but then go on a shelf and we wait a very long time before we manage to have a debate on them. That is a concern for many people on many committees and I think it is something that the House needs to do more to address.

Having said that, the timing of this debate proves the importance of the decision of the Constitution Committee to undertake this inquiry. It is right that we need the insight into the constitutional relationships. I hope this debate will not be dominated by the current controversy about Section 35 powers, so I will not go into that here, tempting though it is. However, the fact that the situation we are now seeing is so toxic illustrates the need for a change in relationships and attitudes, which this report outlines.

[BARONESS TAYLOR OF BOLTON]

The report is titled *Respect and Co-operation* and that is not without good reason. Indeed, the title was chosen very carefully and reflects our conclusion about the future governance of the UK after months of taking evidence, both written and oral, visiting parliamentarians in Scotland and Wales, and having discussions with those in Northern Ireland.

Last year marked the centenary of the United Kingdom in its current form and we were conscious of that while we were doing our work. It was evident to the committee that many tensions existed in the UK and that they posed a series threat to the union but also our democracy as we know it. We are not just talking about tensions in Scotland, Wales and Northern Ireland; there is a devolution problem within England as well. There is a feeling in many parts of England that decisions about people's lives are made in some distant, out-of-touch centre and this does not inspire confidence in our democracy.

The fact is that the UK is exceptionally centralised. We heard evidence from the Conservative chair of the Local Government Association, who told us very bluntly that there is unanimous agreement that current arrangements are far from optimal. The UK is one of the most centralised countries in the modern developed world. He was very clear and many others supported what he was saying. There is a general belief that this overcentralisation is holding back the UK in economic and development terms, but also in terms of dealing with social policies.

Some of the reasons for individuals feeling cut off from decision-making are to do with the pace of change in the modern world—new technology, the information revolution, the problems of climate change and even the pandemic. However, there are issues, especially with our withdrawal from the EU, that have tested our system of government, and Brexit itself has undoubtedly led to greater tensions between the devolved institutions and Whitehall.

We have to acknowledge that part of this is due to political differences, but as the committee pointed out, there are measures that can be taken to improve working relationships. However, we say in the report that the arrangements and attitudes pre-Brexit did not put us in a good position to face those challenges.

Similarly, in dealing with Covid, at times the Government were provocative and damaged relationships unnecessarily. In the earliest stages of Covid, the Prime Minister included First Ministers in the COBRA meetings, quite sensibly, but then decision-making moved to the Cabinet Office and First Ministers, the devolved representatives, were excluded. That was unreasonable, given that it is obvious that pandemics do not respect boundaries and that joint working would have been beneficial.

I mention this because, although the committee made specific recommendations about some of the formal factors such as the regularity of formal meetings, we concluded that it is still the case that attitudes, perhaps on all sides but certainly in Whitehall, need to change—hence the relevance of our report's title, *Respect and Co-operation*. I have seen the Government's response to that report and the recent correspondence from the

Secretary of State for Levelling Up to my noble friend Lady Drake, the current chair of the committee. The tone of some of it suggests a calmer and more reasonable approach. If so, that is to be welcomed, although some people might think that the past few days have called this into question. The real test of relationships in future will be how much institutions and individuals are willing to embrace the principles and spirit of respect and co-operation. I must flag up the retained EU law Bill, which will test those very significantly.

The committee made some positive and constructive proposals. I cannot deal with all of them in the time available, but I want to raise some key points. The first issue is the working of the Sewel convention and the process of legislative consent. We felt that the legislative consent process generally worked well from 1999 but political change and implementing Brexit has put it under considerable strain. We did not recommend that the courts should be involved, as we believe that this is a matter for Parliament and something we must take on board, but we did recommend a strengthening of the way in which this House scrutinises Bills which require, or could be considered by the devolved institutions to require, legislative consent.

I know that the Procedure Committee is looking at this issue; I hope there can be progress here because I note that the Government's response said:

“We will carefully consider the Committee's recommendations”.

Personally, I take that as meaning the long grass and that little in the Government's attitude may change. If that is the case, it is even more important that Parliament steps up its game in ensuring that it is fully aware of problems arising from legislation when there is a question about legislative consent. Moreover, I share the concern of many people in this House that the Government are increasingly looking to use secondary legislation as a means of avoiding the legislative consent process that is required for primary legislation.

I turn to devolution in England. Bearing in mind the evidence of Councillor Jamieson about us being the most centralised country in Europe and the developed world, we were told that local government has been the sector of public service delivery most affected by job losses throughout the decade of austerity while, at the same time, there has been a growth in Civil Service numbers. There is no doubt that those involved in local and regional government believe that they could deliver more, and do so both effectively and efficiently, if they were given the opportunity.

Personally, I can understand why Ministers—from all parties—want to interfere, want to set targets, believe that they know best and, indeed, want to fulfil their political commitments, many of which derive from a political mandate. I think they find it difficult to say, “We won't interfere or try to micromanage”. However, if we are talking about efficient and effective delivery, we need Ministers to acknowledge that there are problems with the current system and its structures, which cause difficulties in delivery and add up to people feeling alienated from the decision-making process.

We were given significant evidence—it is worth reading—of the problems that confront local authorities when they have to bid and compete with each other for small amounts of money. It can be costly for them to

prepare that bid with no guarantee of success. They often have to go through an elaborate process of box-ticking and, they tell us, are often denied essential data. Councillor Jamieson said:

“The current process is very contractual. It is very much about a deal”—

a deal that is delivered by central government deciding what should happen, which we have seen recently with yesterday’s announcements. We heard more about this issue yesterday in terms of the levelling-up fund and some of the reaction to it. Local authorities’ reaction—I share their concern—was summed up by Andy Street, the Conservative Mayor of the West Midlands, when he said that

“this episode is just another example as to why Whitehall’s bidding and begging-bowl culture is broken ... I cannot understand why the levelling up funding money was not devolved for local decision-makers to decide on what’s best for their areas.”

That confirms what others have said: we really need a proper framework. No one is saying that one size fits all, but we need a proper framework for devolution in England so that we can transfer powers and resources. Those in local government simply do not have confidence that that is the direction of travel at the moment. Again, respect and co-operation should be the theme.

One other point I want to highlight is the potential for improvement in interparliamentary relations. I must place on the record the work done by the Lord Speaker in this respect by encouraging the Interparliamentary Forum to function well and committees to visit. Our committee found our visits to Scotland and Wales extremely useful; I hope that others can build on that work. However, I mention the need for UK Ministers to be willing to attend and appear before the devolved legislatures; this sometimes happens but the Government will not write it into the Ministerial Code. All of us who are members of committees know that it can be difficult to get Ministers to appear; I just have to live in hope on this point.

In conclusion, the attitude at the beginning of the devolution process was “devolve and forget”. I think we have moved on, but Whitehall cannot carry on as if nothing has changed. Both civil servants and Ministers need to accommodate the changes. It is always painful to let go of any power, but it will be damaging if we do not make devolution work because it is important for the success of the United Kingdom and all its component parts. When we devolve, we must apply the principles of respect and co-operation. I beg to move.

12.28 pm

Lord Howell of Guildford (Con): My Lords, I declare an interest: I served with pride on the committee that produced this report. We worked very hard for more than a full year under the excellent chairmanship of the noble Baroness, Lady Taylor, whose fine speech surveying and presenting the report we have just heard. We benefited enormously from having the noble Lord, Lord Dunlop, as a member; we also had the acute observations of the noble Lord, Lord Hennessy. We will hear from both of them shortly. To quote yesterday’s psalm, I think that, as usual, the noble Lord, Lord Hennessy, will come before your Lordships “with a song” that will give us a new perspective on the debate.

Two major themes have come out of all this work. First, in this age of hyperconnectivity, instant communication and heightened identity, a modern union must be based not entirely on the legalisms of history or overly rigid interpretations of our unwritten constitution but on consent and the renewed attractions of belonging to a United Kingdom that fits into the 21st century.

Secondly, we are not talking about saving the union, which sounds backward-looking. We are talking about building a better union for the 21st century and beyond. Scotland is an ancient kingdom of unparalleled talent and influence. The last 300 years or so of British progress have depended heavily—almost entirely—on Scotland and its leadership in almost every sphere. Its international footprint is huge across the planet, with respect and detailed patterns of co-operation between neighbours that are outlined so well in the Dunlop review, which I have referred to. They are the very minimum that we should have been practising in the past, but we clearly have not done so with either Scotland or the other devolved nations.

Much more that is positive and highly beneficial to both partners in the union that is Scotland and England is now required. At the moment, we are struggling in the quagmire between reserved and devolved powers. On present trends, if we leave things unchanged, ahead there stretches a long avenue of bitter disputes as we ceaselessly try to define the limits between reserved powers and devolved powers. It is a struggle that can only ever be settled temporarily, because of a background of very fast-moving conditions with which tidy legal definitions can never hope to keep up.

For example, short of building a wall between Scotland and England, people can never be prevented from travelling and mixing, or families prevented from living between the two neighbouring states. Industry and trade conditions, woven together over centuries, can never be neatly kept apart, as the opposition of Holyrood to the Australian trade agreement implies that they can. It cannot be done. Security can never be split. It must cover every part of the British landmass to operate properly. For these integrated areas of life in the UK to work, there must be a new level of trust and respect and a new understanding, however much it is devolved in law. Throwing the legal book at the parties on either side cannot lead to consent. The only possible mix is one of practical arrangements, constantly being refreshed to meet new conditions, all within our joint, unwritten and highly flexible constitution.

Within that framework, many more powers can be devolved. The sovereignty of the Westminster Parliament can continue to be shared in practice, if not in theory, on the basis of being lent to a second Parliament in Scotland and, if it demands it, in Wales too. In Northern Ireland we already have one, in Stormont, although as we debated in this Chamber an hour or two ago, it is currently mired in local problems. As for the monarchy, that can continue to be shared. Most sensible SNP supporters—all but the extreme separatists—want that. Defence can be shared, foreign policy and external trade policy can be worked out first and shared, far more consensually than in the past, and then pursued by a joint and agreed team. For the rest, respect, real trust, good will and lots of reasonable flexibility can

[LORD HOWELL OF GUILDFORD]

handle all the arrangements and keep our two old nations nicely in constant unison, powerfully reinforcing and renewing the union, to the infinite benefit of both and the other devolved nations as well.

It is all in our report before us today. I am biased in favour of Scotland, but I am also biased in favour of the union. For all the past bitterness, for all the arguments over our relations with our European neighbours and for all the differences, including even the gender ones which are in the news today, this is the formula that commands the real support among the utterly sensible majority of the Scottish people.

The Deputy Speaker (Baroness Healy of Primrose Hill) (Lab): My Lords, the noble Lord, Lord Howarth of Newport, is taking part remotely. I invite the noble Lord to speak.

12.34 pm

Lord Howarth of Newport (Lab) [V]: My Lords, it was a pleasure to listen to my noble friend Lady Taylor of Bolton introduce this debate, just as it was a pleasure as a member of the Constitution Committee to sit under her wise and effective chairmanship.

We know that the union is fragile and at risk. Institutional mechanisms will not successfully maintain the union unless proper care is taken by London. The demand for devolution has been a natural and proper expression of the wish by the peoples of Scotland and Wales to gain, in what should be the maturity of our democracy, a fuller measure of responsibility for their own government. Granted with good grace, as devolution was by the Labour Government in 1998, growing nationalism and separatism need not have followed. Respect and co-operation are not mechanisms but attitudes. For Boris Johnson as Prime Minister to describe devolution as a “disaster” was gratuitously offensive and foolish. For another Prime Minister, Liz Truss, to have publicly dismissed the First Minister of Scotland as an attention-seeker was inexcusably disrespectful to the holder of that office.

During our inquiry, we were struck by how little Whitehall departments were attuned to devolution and by how little officials in Whitehall knew or thought about it. The operation of the common frameworks was desultory. Legislation currently before your Lordships’ House, the Levelling-Up and Regeneration Bill, shows the Government of the UK as having acted less than diplomatically and courteously over issues of consultation, legislative consent and regulation-making powers. Mr Gove is always immaculately courteous and no doubt he will appreciate these considerations. His recent letter to the committee shows that he is taking steps to improve these matters. The Government have handled the intergovernmental aspects of the Trade (Australia and New Zealand) Bill entirely appropriately.

It is good to see that Mr Sunak has observed the proper courtesies towards Ms Sturgeon and Mr Drakeford and has visited Scotland at an early stage in his premiership. Inevitably, the confrontation between the Governments of the UK and of Scotland over gender recognition will impose strain on the relationship, as is no doubt intended by the SNP Government. However,

the constitutional mechanisms to resolve the issue are there. It is regrettable that the First Minister spoke of UK Ministers having

“not one iota of good faith”,

but Ministers should refrain from responding in the same coin.

The committee’s report has an important section on devolution within England. I have long believed that the public’s growing disaffection with our institutions of parliamentary government has one of its principal sources in central government’s repeated assaults on local government. The establishment of mayoral combined authorities was certainly a big step in the right direction, but devolution within England has been grudging and incomplete, characterised by deal-making, inconsistency, laborious and invidious competitive bidding processes, niggardly grants, and a refusal to provide fiscal freedom—which my noble friend referred to and the Mayor of the West Midlands has characterised as Whitehall’s “begging bowl culture”. If we are to revitalise local democracy and thence our national democracy, radical decentralisation is necessary.

12.38 pm

The Lord Bishop of Leeds: My Lords, I thank the noble Baroness, Lady Taylor, and the committee, for an excellent report. I hope that your Lordships will forgive me if I do not go into the detail of the report but offer what might sound a bit of a left-field observation. The report is subtitled *Building a Stronger Union for the 21st Century*. However, an assumption that we often bring to these debates is that what we had in the 20th century and before will automatically persist and that everyone buys into it.

Please forgive me for doing a segue into a different part of the world, but I did a lot of work in Kazakhstan in the noughties. I remember that on one trip, having done quite a lot of media work with young people there, it struck me on returning to the UK via Frankfurt that over there they would forgive corruption and all sorts of things because they were building something that they were investing in. They did not quite know where it was leading but they were building a future of which they were very proud. When I came back to the west, I was struck by the fact that we do not talk about our young people building anything. We have a set of institutions, particularly arising from the post-Second World War settlement, which we expect our young people to inherit and to buy into, but what are they building? You will sacrifice your life for something that you are building, not something that you simply inherit. My concern is about many of the young people, particularly those I have come across from Scotland, who are quite frankly either anti or indifferent to the union.

On the very first page of this report, the first line refers to the committee and then to “we”. It just bugs me; who is the “we” that we keep talking about? My generation cannot construct a narrative. When I came back from Kazakhstan, the concern I had then was about a new narrative for Europe, not one that we simply inherit but one we can build. The only people who can tell us this are the young people who will be around when we are long gone. What are the mechanisms we are building to enable younger generations to explore

and articulate a vision for constitutional settlements that command not just their intellectual assent but their imagination, and into which they will invest their energy? I am afraid I do not have the answer. I puzzled over it in relation to a vision for a new Europe, but I also puzzle over what this might look like in respect of the union. If anything commanded attention and could show some leadership from Parliament in convening conversations that begin to identify how young people see the world and the union, it would have done something very important. I commend that to the Minister and hope that it will be taken seriously.

12.42 pm

Lord Dunlop (Con): It is a great pleasure to follow the right reverend Prelate, and I appreciate very much the tone he struck. I am participating in this debate as a former Constitution Committee member, and I pay tribute to the noble Baroness, Lady Taylor, for the skilful way in which she chaired it in tackling a big subject. I also look forward to hearing the maiden speech of the noble Lord, Lord Verdirame. I know from government colleagues how valuable his legal expertise has been on a range of public policy issues, and he is a great addition to the House.

I want to make just two points. The first is the need to avoid a fatalistic pessimism about the union's future. The Constitution Committee is not blind to the strains besetting the union, but it is confident in its future as a resilient and adaptable asset. Scottish independence is posed as the most immediate threat yet, despite recent turmoil, the independence cause has not achieved the breakthrough its supporters hope for. There are no new credible answers to the currency, borders and fiscal questions that so concerned Scottish voters nine years ago and still concern them today.

Of course, relying on your opponent's weakness is not enough. Unionists must offer their own positive alternative vision, and since 2014 it is unionists, not nationalists, who have been thinking afresh. The Constitution Committee's report promotes a co-operative union, and building a unionist consensus around this idea is more than achievable.

As we have heard, the Prime Minister, unlike his immediate predecessor, shows a welcome willingness to work with devolved Governments. Triggering Section 35 does not invalidate that. Section 35 is part of the devolution settlement—a safety valve, if you like, ensuring that devolved legislation does not inadvertently affect how the law operates across the UK. So, for all the hyperbole, there is no constitutional crisis. There is a legal disagreement that will be resolved.

My second point flows from the first. Let us not overreact to unduly pessimistic assessments of the union's prospects by attempting an overambitious new constitutional settlement. Devolution represented a significant constitutional change. Tony Blair and Gordon Brown admit now that in 1997 insufficient attention was paid to devolution's centrifugal forces and, therefore, to the importance of also strengthening the bonds holding the UK together.

Gordon Brown has produced a new constitutional blueprint that builds on the Constitution Committee's own recommendations, and I agree with much of it.

However, he proposes to increase significantly the role of the courts in resolving disagreements between the UK and devolved Governments. I worry that this will interfere with what should be a process of political dialogue and negotiation and thus inadvertently make our constitution more brittle and less stable. His report also promises yet more powers for Scotland and Wales—what it describes as

“the independence of Scotland and Wales within the UK”.

Devolution is unquestionably an unfinished project, yet the keys to its completion are extending English devolution and reforming the centre and intergovernmental relations, not devolving more powers to already devolved institutions.

More powers will never satisfy those who want full independence. The Brown commission proposes, for example, that the Scottish Parliament be given the power to enter into international agreements. That seems unwise, to say the least. The way to strengthen the union is to demonstrate the value of working better together, not creating new opportunities to drift apart. Scots are already frustrated that the Scottish Government do not focus on the day job without providing them with more scope to trespass on reserved policy and to further develop an independent foreign policy. If the union means anything at all, surely it is the ability to speak clearly with one voice on the world stage. I commend this report to the House.

12.47 pm

Viscount Stansgate (Lab): My Lords, I and the whole House look forward to the maiden speech of the noble Lord, Lord Verdirame—I apologise for my pronunciation. Mind you, having said that, it will not make him feel any better. As the immediately preceding speaker, I can imagine how nervous he will be, so I say that he will feel a lot better once it is over.

I am pleased to take part in this debate even though I was not one of the members of the committee, although I wish I had been. It is a tremendously interesting committee that has had the opportunity to explore and probe some of the most profound issues at the heart of what is still our unwritten constitution, with all the benefits and drawbacks that being unwritten can bring. I congratulate my noble friend Lady Taylor on chairing the committee and on having introduced the debate today, and I congratulate the clerks and all the other members who have made it a very important and timely report.

Why do I say timely? After all, I agree with my noble friend that it is a great regret that reports take so long to be debated in this House. However, when it comes to timeliness, you have to admit that to have the debate on a Friday when Section 35 was triggered on the Monday is about as timely as you could possibly get. I know that today's debate is not about the events of this week—the Gender Recognition Reform (Scotland) Bill and so on—but the fact is that the Bill was passed, and it opens up an aspect of the debate about the future of the union that was not there when the committee was undertaking its discussions, deliberations and report. As was said by the noble Lord, Lord Dunlop, and others, some issues are devolved and others are not. I am sure the current clash will be discussed in the

[VISCOUNT STANSGATE]

courts, and I cannot predict what the outcome will be, but what does it tell us about the strength of the union and the basis of what it will be like over the next 25 years, given the way that it has evolved over the last 25?

The starting point for many of your Lordships is that we live in this unique union of four nations, which has developed over the centuries, and many would like to find a way to continue to do so. I ought to point out at this stage that I am one of those who hope that the union remains. In many families, people have relations all over the country and across borders. I do not know how many do but, in my own case, one of my grandmothers was born and bred in Scotland. For her entire life, she was identifiably Scottish to the end. My Dad, as a result, was half-Scottish and tremendously proud of his Scottish ancestry. It was a great privilege for him to be invited to address the Scottish Parliament in one of his pre-session moments of reflection. He was of course very concerned at the thought that Scotland would vote for independence, although that did not turn out to be the case.

Turning to the committee's report, it is tremendously good analysis. It outlines the pressures that have built up over the years, including the financial crash, the information and technology revolution, the effects of climate change, the impact of Brexit—which is not by any means yet at an end—and the Covid pandemic and, of course, the new and emerging threats that we are now living through as a result of the invasion of Ukraine. It also draws wonderful parallels between constitutions and poetry and plumbing. I do find that a wonderful analogy.

The report has many excellent features and I have time to mention only two, which have almost been mentioned by others. First, there is the codification of the occasional practice whereby UK Ministers can and do appear before committees of devolved legislatures. That would be an excellent idea and it could be incorporated into the next edition of the *Cabinet Manual*, which we were discussing only a short time ago. The committee also calls for a new interparliamentary forum, which would bring Members of the legislatures of the UK Parliament and the devolved Parliaments together on an equal basis. That would also be an extremely good thing; the EU Bill coming towards us has been mentioned and that is a very good basis for it. Perhaps the Minister could tell the House whether there are, as I understand it, plans for such an initial meeting to take place in this House before very long.

I want to mention one thing very briefly, which was understandably not in the report: the consequences for the union if it were to be dissolved. I think of the international consequence for the UK. It just seems unthinkable that whatever remained—the rump—would be able, for example, to retain its seat on the Security Council as a permanent member. Although these wider considerations do not often play a part in our discussions, it would also be a tremendous loss of what we call soft power were we to find ourselves in that position.

My time is up but I commend the committee on its excellent report. Had I had longer to do so, I would have continued to commend it in further ways than I have been able to do.

12.52 pm

Lord Verdirame (Non-Afl) (Maiden Speech): My Lords, I am honoured to speak for the first time in this House on such an important topic and in a debate that sees the participation of so many distinguished noble speakers. I begin by expressing my gratitude for the professional and patient support that I have received from officers and staff of the House, especially the doorkeepers, who, among other things, helped make my introduction a wonderful occasion for me and for my family, who travelled from Reggio Calabria, the city in southern Italy where I was born and grew up. I was very lucky to have as supporters two dear friends: the noble Baroness, Lady Finn, and the noble and learned Lord, Lord Etherton.

The future of the union may seem an unusual topic for someone who moved to Britain only after his 23rd birthday. I have now spent most of my life in Britain. My career as a barrister, and as an academic specialising in international law with a wider interest in political philosophy, has been almost entirely here. Britain welcomed me and gave me opportunities that few other countries would afford newcomers. It was just over a decade ago that I naturalised as a British citizen. I suspect that means I am newer to being British than most of your Lordships.

I say this because millions of Europeans with settled status are now becoming eligible to apply for British citizenship, and they should be encouraged. The absorption of this large number of new citizens will be an extraordinary event in the life of our country. We should celebrate it as it will show, once again, the strength and enduring appeal of the United Kingdom. A key strength is that, as a multinational state, we are a polity defined by pluralism. We do not feel threatened by multiple, complex identities.

It is true that some regard multinationalism as a vulnerability. A number of multinational states in European history have failed, but I congratulate the report of your Lordships' committee on, among other things, challenging the idea that there is some inevitable law of historical destiny that the union is up against. This does not mean that we should be complacent, but it does mean defending the union—all its constituent parts included—without accepting the premise of those who want to see its demise. The idea of a union of peoples across different islands, built on common purpose and founded on laws, may be old but it is certainly not outdated. On the contrary, this idea of statehood is better suited to modern values and identities than the alternatives being proposed.

On constitutional reform, there is no abstract model that can give the answers we need. As the report suggests, solutions must continue to be found in specific and practical proposals, subject to two caveats. First, like the report's authors, I believe that this is no time for more transactional solutions or—as the noble Baroness, Lady Taylor, pointed out—quick fixes, but rather for an approach that is constitutionally more coherent and principled. The second caveat is that we should not, whether by accident or design, move towards some weak association of separate entities which are slowly drifting apart from one another. We should not dilute the union into a loose confederal arrangement. That would, I fear, jeopardise its future.

If the United Kingdom were to dissolve, we would all be diminished—not just in these islands but across the European continent. There are probably no political certainties in European history, but the stability, reassurance and moral leadership provided by the United Kingdom to people across Europe in times of conflict and turmoil comes closest to one. The war in Ukraine has shown this once again.

I am optimistic about the future of the union. I have confidence in the resilience of our institutions and in their ability to continue to bind us together, but we need to hone our constitutional sensibility. To be sustainable, constitutional reforms require thoughtful argument and broad support. Your Lordships' House plays a vital role in promoting both. It is the greatest privilege to have joined your Lordships as a Member of this House and I look forward to contributing to its work as best I can.

12.57 pm

Lord Hennessy of Nympsfield (CB): My Lords, it is a great honour to follow a fellow historian, the noble Lord, Lord Verdirame, to welcome him to your Lordships' House and to praise his lustrous maiden speech. His learning, experience and scholarship take him deep into one of the crucial, perpetual questions of our time: the sustenance of liberty, which is now under threat in ways and places that would have been unimaginable even a decade ago. I await with relish the book on which he is currently working, *Can Liberty Last?*—I fervently hope that the answer is yes—and many fine contributions to come in this House. My new noble friend, if I may call him that, brings his powerful intellect and word power to the defence of the things your Lordships' House holds most dear. He is very welcome.

I declare my membership of the Constitution Committee and the advisory council of These Islands and thank the noble Baroness, Lady Taylor, for her leadership of the Constitution Committee. We did a lot of work, but she always made it fun.

When I was young, in the 1950s, we were rather proud of our largely incomprehensible constitution. It brought, so we thought, great flexibility in being unwritten, with very little going wrong that could not be put right by a bit of judicious tweaking by Olympian figures in authority deploying restraint, wisdom and a gift for muddling through. It is not so now. The constitution is still baffling, but very few think it is working well. The union, in particular, has come under serious and protracted strain with the rise of the SNP. And yet, the Constitution Committee has come up with a rarity. The document before us brings a shaft of light amid the thickets of pessimism in which our country seems trapped on so many fronts. The central message of our report is that the union still has vitality and could have still more if somehow a spirit of optimism and mutual respect can be applied to shared problems and future opportunities.

For a short while, I thought this document could have a different distinction—that of the least influential Select Committee report ever—for one of the three 2022 Prime Ministers thought that the solution lay in a single insight: that she should simply ignore the First Minister of Scotland and not talk to her. I have to admit that this was not a possibility that had occurred to your Lordship's committee. In the end, it turned out

to be the only policy of Liz Truss's premiership that was implemented, albeit for only 45 days. Therefore, Mr Sunak's working dinner with Nicola Sturgeon in Bute House last week came as a great relief to me and, I am sure, to many others. Who knows, the Constitution Committee may be in business once more in the ideas market, for it is in everyone's interest, in every part of the kingdom, that the union, in all its devolutionary aspects, works well in both its mechanics and, perhaps above all, its human relationships.

I will finish with a few rather personal words about the union with Scotland. I have been a union man since I was 10 years old, when I first went to Scotland in a tiny Ford Prefect full of camping gear and family, driven erratically by my father from Finchley to the Isle of Skye. Since then, to adapt the opening lines of General de Gaulle's memoirs, I have always had a certain idea of Scotland—of how we have fought and bled together, taught and read together, invented and manufactured together, politicked and organised together, laughed together and wound each other up, generation upon generation.

My fear is that the road to Scottish independence, if it happens in the coming decade, will be paved by a degree of English indifference for all of the centuries of lives lived together, the intermingling of families and much more. But what a loss it would be for England to lose the intimate companionship of Scotland, whose people have contributed out of all proportion to their numbers, across a mighty range of human endeavours, not just within these islands but across the globe.

The great Walter Lippmann once described public opinion as “maps in the mind”. In my mental map, whatever transpires, there will always be the union. If, as would surely happen, the Anglo-Scottish border eventually became coterminous with the EU's boundary, there would be customs controls at Gretna, Carter Bar and Berwick. But there will never be customs posts in my mind. If dual nationality is on offer, my wife and I will be first in the queue, pleading her mother and my grandmother. If the Constitution Committee's report adds but one ounce to the chances of survival of this most special of all the special relationships, it will be worth every minute we spent preparing it, for it is one of the profoundest questions facing the kingdom to come.

1.02 pm

Lord Bilimoria (CB): My Lords, I note the excellent maiden speech of the noble Lord, Lord Verdirame, which defended the union, followed by the noble Lord, Lord Hennessey, one of our eminent constitutional experts, who revealed that he has been a union man since he was 10 years old. He spoke about the incomprehensible, unwritten constitution.

I remember, when I joined this House 16 and a half years ago, speaking in debates on the reform of the House of Lords. I was encouraged to do so by the noble Baroness, Lady Boothroyd, and I will be eternally grateful to her because participating in those debates taught me about, and gave me an understanding of, our unwritten constitution. It is unique in the world: almost every country has a written constitution, but we have this delicate thread that links back over the centuries. It would be so easy to destroy this unwritten constitution, and one example would be the destruction of our beloved United Kingdom.

[LORD BILIMORIA]

I thank the noble Baroness, Lady Taylor, and her committee for its report, *Respect and Co-operation: Building a Stronger Union for the 21st Century*. It starts by saying:

“This Committee believes in the United Kingdom.”

It also says that it is written in a “spirit of optimism”, and it then talks about the changing world that we live in, which is incredible, looking back over the last 25 years, with the development of the internet and how that has changed our world; with the financial crisis 13 or 14 years ago; with the awareness of climate change; with the withdrawal from the European Union in 2016, which is nearly seven years ago now; and of course with the global pandemic that came out of nowhere, followed by the Ukraine war. There has been one challenge after another, which is why the constitution really matters.

The report continues by describing:

“The United Kingdom’s unique constitutional arrangements”, and its

“multi-national and diverse state which accommodates a range of identities”.

That has not been touched on so far in the debate. What are our identities? I was born and brought up in India. It is a huge country with 1.4 billion people and over 30 states and union territories. Its people are proud of the state they come from, but, first and foremost, they are proud to be Indian. We do not have the term “United Kingdom-ish”; we use the term “British”. So I suggest to people in the United Kingdom that, whether you are from England, Scotland, Wales or Northern Ireland, our identity, first and foremost, is British and we are proud to be British. The union gives us that ability.

The report talks about the importance of both:

“Improving the shared governance of the United Kingdom” and the Sewel convention; about ensuring that “Parliament does not ... legislate on devolved matters without ... consent”;

about intergovernmental and interparliamentary relations; about the governance of England and the devolution within it; and about the funding arrangements. I remember, when I joined the House, that the noble Lord, Lord Barnett, was one of our most active Members, and he would say himself that his formula desperately needed to be reformed. I also think that it needs to be reformed.

In this country, we do not have a federation. India is a perfect example of a federal country, with a centre and devolved states. The United States is also a federal country. As has already been pointed out, the key aspect of the union of the United Kingdom is that foreign affairs, security and defence are central for every part of the union. If you divide them, that will weaken the union hugely. The European Union is not a federation; it does not have a fiscal union or a defence union. The UK is unique in having a union with an unwritten constitution.

I conclude by saying that we are the sixth-largest economy in the world; we have just been overtaken by India. This little country with less than 1% of the world’s population is still at the top table of the world. We are

not a superpower, but we are a global power. The UK has a permanent seat on the UN Security Council, is the number two nation in NATO, is about to join the CPTPP and is a member of Five Eyes—you name it, and we are there. We are a respected global power, and that is thanks to the United Kingdom.

1.07 pm

Lord Cormack (Con): I am very glad to follow that note that was so splendidly outlined by the noble Lord, Lord Bilimoria. It is a great pleasure to speak in a debate where an Italian-British Member of the House of Lords has given us such a fine maiden speech. I welcome and congratulate him. It is also a delight to see the noble Lord, Lord Hennessy, back in our Chamber; he has done so much to advance the cause of democracy and to enlighten people about the history of our great nation.

When I was asked, at a sixth-form conference many years ago in my then constituency, if I would define myself, I said that my identity is English, my nationality is British and my civilisation is European—and I stand by that. I am a member of a mongrel family: my family comes from Scotland; I consider myself English. My eldest son, who lives in and was educated in Scotland, is married to a Scot, has Scottish children and considers himself Scottish. But we all consider ourselves British and members of the United Kingdom of Great Britain and Northern Ireland—a great, even if small, nation.

I am very grateful to the noble Baroness, Lady Taylor, and her committee for giving us this thoughtful and penetrating report. I am sorry that it has taken a year to debate it, although it happens to be an appropriate week to be debating it. But we have to face up to the central dilemma, one that my very dear friend Tam Dalyell and I and others faced up to in the 1970s, when we were arguing against devolution, not out of any spirit of animosity or hostility but because, as Tam defined it, those who were campaigning in Scotland, or many of them—the SNP—did not believe in devolution, because they believed in independence. It is a perfectly honourable belief to hold, but completely contrary to the idea of sharing and devolution. The right reverend Prelate made some very good points in his speech, and we need to reinforce for the younger generation just how vital it is to understand the benefits of devolution.

I would like to see what I would call an internship programme. I have a group of Americans who come over every year for such a programme, and I would like to see British students from England and Scotland interchanging within their Parliaments. I would also like to see a contingent of British Members of the United Kingdom Parliament spend some time in Scotland and, indeed, in Cardiff and Belfast, and have a reciprocal facility for the members of those devolved Parliaments. Where there is ignorance, there is frequently hostility; where there is knowledge, there is frequently friendship. I believe that there is too much mutual ignorance as to the values and virtues of our separate countries within the United Kingdom, and we should try to do something to bridge that gap, particularly for future generations. The right reverend Prelate is right: young people do not just take it for granted, as I did. I was brought up in Scotland, because my father was given a commission

in the RAF when I was six months old—that is where I spent the war years. So I have that built-in affection, but others do not, and it is our duty to try to create a system where they do.

1.12 pm

Baroness Bryan of Partick (Lab): My Lords, the maiden speech of the noble Lord, Lord Verdirame, has demonstrated that he is going to give much support to the discussions in this House. We cannot begin to do justice, in the time that we have been given, to this excellent report so, rather than applaud the many parts that I agree with, I am forced to question the parts that give me concern: first, the notion of sovereignty; and, secondly, the proposed role for the House of Lords.

The establishment of a Scottish Parliament in 1998 was a constitutional response to a political problem. There was such hostility in Scotland to the UK Governments of 1979 to 1997 that it was felt essential to respond to the Claim of Right of 1989, which asserted

“the sovereign right of the Scottish people to determine the form of Government best suited to their needs”.

The sovereignty of the Scottish people was acknowledged through the 1997 referendum and the subsequent establishment of the Scottish Parliament. When looking back at the debates in the Westminster Parliament, it is clear that there was a lack of clarity over the nature of sovereignty. Such a significant change in the constitution should have been recognised as a move towards a federal UK and shared sovereignty, with all the implications for England and the make-up of a second Chamber. Instead, we have found ourselves in a halfway house, with a quasi-federal set-up, without the systems in place to operate it.

While the UK was in the EU, the problem was disguised, as the same EU regulations applied across the devolved areas and England. The report recognises that the Sewel convention has been placed under strain by Brexit. The Scottish Government, not unreasonably, argue that the “unlimited sovereignty” of the UK Parliament

“makes it virtually impossible to guarantee the Sewel Convention”.

The report struggles to find a means of ensuring that the voices of the devolved Administrations are heard when Westminster legislation impacts on their devolved powers. It identifies

“a gap in the legislative process”.

I mean no disrespect to Members of this House, but the House of Lords in its present form is not the appropriate body for dealing with devolved issues. It is unelected, it is overrepresented by London-based Members, and it is not held in high esteem. Support for the current composition of this Chamber is just 12%, according to a Survation poll in 2020. There was a remarkable degree of agreement between those who vote for different parties in that poll.

Instead, it would make sense to recognise the federal nature of the UK and create a second Chamber that had the legitimacy to defend the rights of the devolved Administrations. A Chamber to deal with cross-territorial issues that were previously covered by EU regulations would resolve the “power grab” that has clearly happened.

The unresolved question is how England would be represented. The report makes the case for greater devolution in England and accepts that England should not be confused with London. This supports the argument that regions should have a direct voice in a second Chamber.

We should be aware of British exceptionalism which believes that we are better with an unwritten constitution, that we benefit from having an unelected second Chamber and that we can have quasi-federal systems without sharing sovereignty. I think we are mistaken.

1.17 pm

Lord Balfre (Con): My Lords, I add my thanks to those given to the noble Baroness, Lady Taylor, for this excellent report. I too welcome the noble Lord, Lord Verdirame, who I am sure will make distinguished contributions to this House.

I am sorry that the noble Lord, Lord Kinnock, is not in his place, because it was with him that I had my first dealings with devolution, when in the 1970s we toured various parts of Britain asking, “Would you like to be run by Merthyr Tydfil council?” The answer we got generally was no, but we have come a long way from there and we now have much devolution in this country.

I spent many years in the European Parliament and travelled widely in Europe. My experience was that, with one exception which I shall come to, in every country where they had devolution the people who had got the devolution did not think it was enough and the people who had given it thought it was too much. We therefore need to be careful when we look at how much we devolve. The one country that was the exception was Germany, where they seem to have divided, but there, the second Chamber is concerned particularly with regional policy and the Länder. If we need to look at a second Chamber, it may need to be totally different from this one. It would certainly not have most of us in it, because I doubt that many of us would wish to serve on a regional authority and then be posted to the upper House, let alone at our age stand for another election. If we have a second Chamber, my conclusion is that it has to have a specific job to do; it cannot just be a revising Chamber given basically the job of “sort out the mess they leave behind”.

I would like to move on to that, because we do now have a lot of devolution of course. In my area, we have a police and crime commissioner, unknown and voted for by a handful of people—less than 20%; we have a Mayor of Cambridge, who is resident in Peterborough, so we do not know what he gets up to; we have a district council and we have a county council; and now, of course, we have a number of working parties between all four of them. None of the working parties is elected; no one really knows what they get up to, apart from the fact that they are about to wish a congestion charge on us—although I do not think that it will ever get through because they do not have much support for it. I suggest that the first thing that we should do is to look at the level of devolution that we actually have and see whether any of it needs sorting out.

[LORD BALFE]

The second—and, because of time, final—point that I want to make is in support of what Andy Street said about the devolved powers. The fact of the matter is that Whitehall still has too much power. Can we talk about devolution when the Secretary of State for Levelling Up is deciding whether Great Yarmouth should be given money to renew its pier? Of course not—it is absolutely ridiculous. The first thing that we need to devolve is financial responsibility which, since the days of Jim Callaghan, has been gradually pulled back into Whitehall. If the Labour Party’s devolution proposals are worth the paper they are written on, they have to be accompanied by the financial devolution that will let local authorities set their own financial priorities and raise the tax to pay for them, with a suitable grant from the centre but not one that is tied to whether or not you modernise your pier.

1.21 pm

Lord Wallace of Saltaire (LD): My Lords, I am a mongrel Scots-Englishman, with a father who served in a Highland regiment and a son in Edinburgh, so I am a natural unionist. However, it is clear that, if we are to maintain the United Kingdom, its constitutional arrangements must change. We should face the real possibility that we might not maintain the union.

As I came in today, I was thinking of the conference that took place in Prague in 1990, in which one of the Czechoslovak participants said, “I am Czech but my brother has decided he is a Slovak.” I remember, two or three years later, teaching students from what had been Yugoslavia—many were struggling with deciding whether they were a Bosnian, a Croat or a Serb, and feeling, as one of them said to me, “orphaned” by the collapse of the state.

The electoral system that we have at the moment accentuates the difficulties of holding the union together. We have, based on roughly half the population of Scotland, a phalanx of SNP MPs in the House and an underrepresentation of the other currents in Scottish opinion. We have a Conservative Government dominated by southern England, a Labour Party that represents Wales and the north, and a further party—mine—that hangs on to bits of south-west London, bits of north-east Scotland and wherever else we can manage in our electoral system to get through. That accentuates the problem, and I fear that, if we were to have another five years of Conservative Government, the union would break.

I want to talk briefly about chapter 7, on the governance of England, and chapter 3, on parliamentary sovereignty. This report rightly addresses the problem that England is the most overcentralised state in the democratic world and that it will be increasingly difficult to sustain the balance between England and the three devolved nations unless the governance of England is itself transformed. The political and economic imbalance within England is starkly portrayed by the betrayal of the grandiose promise of levelling up. Small packages of funding, distributed by Ministers according to opaque criteria, offer gestures from the centre without any sharing of power. I agree with the noble Lord, Lord Howarth, that there is a link here with public disillusionment in western politics and a sense of powerlessness, which I hear from friends and neighbours in West Yorkshire,

when they say that “those people down in London” are neglecting Bradford, Leeds and the trans-Pennine rail route. That is all part of the disillusionment with our constitutional democracy.

I have lived between London and Yorkshire for 40 years and have witnessed the widening gap between London and the north, while local government has been weakened and shrunk through successive reorganisations, and local control of finance has shrivelled. The Government’s approach to the reorganisation of local government, as others have said in the debate, has been incoherent, with evident political bias in redesigning the shape and size of the new authorities and the powers that they are given. Almost every authority in Yorkshire and the majority of Yorkshire MPs stated their clear preference to maintain district authorities within a “One Yorkshire” regional authority. The Government nevertheless insisted on four sub-regions, each with an elected mayor but without an elected assembly to hold the mayor to account. London has a regional authority with local governments beneath it; the rest of England is denied that.

The regional centres of government that linked central departments to the concerns of the north-west, the south-west and elsewhere were abolished 12 years ago. The Government now think that sending contingents of civil servants to Durham or Lancashire to continue to carry out the instructions of Ministers in London amounts to some form of devolution. If they were to return to the regions and cities the powers that they held 50 years ago, the civil servants would, of course, naturally follow.

The Conservatives promised in their 2019 manifesto to set up a constitutional commission, but broke that pledge, like many others. I hope that the next Government will address the governance of England as a high priority. We will not succeed in reducing the acute inequalities between the south-east and the rest unless the political imbalance is redressed. As paragraph 267 of the report says:

“The devolution framework should include steps to achieve greater coherence in England’s sub-national governance arrangements to improve democratic accountability. We recommend the development of devolution within England should ensure greater alignment between subnational bodies to create functioning economic geographies which also respect local identities”.

Hear, hear. I agree strongly, and the Government are absolutely failing to do that.

A reformed second Chamber should play its part in this. Interparliamentary relations would work better if Members of the second Chamber were elected, directly or indirectly, on a national and regional basis, and saw it as their job to assert those regional and national concerns against the dominance of London. When I was appointed to this House, I hoped and assumed that I would make the transition from an appointee to an elected representative from Yorkshire when the next stage of reform brought us regional and national representation in the House. But Labour hesitancy on this, as on so many other issues, and Conservative opposition in the Commons, blocked the 2011-12 reform.

Lord Cormack (Con): And a very good thing too.

Lord Wallace of Saltaire (LD): This report reminds us that we will have to return to that, in spite of the resistance of the noble Lord, Lord Cormack.

I welcome the noble Lord, Lord Verdirame. I hope that his expertise as an international lawyer will feed into our debates on the topic of sovereignty and its place in the constitution of a multinational state. Constitutional discussions in the UK are blighted by the undue reverence still given to the views on sovereignty of Albert Dicey, an academic whose interpretation of sovereignty was twisted by his embittered opposition to Irish home rule and his consequent insistence that sovereignty was indivisible and rested in the Government who held the confidence of the Imperial Parliament. Sovereignty in the contemporary world has to be shared—upward and downwards, as the noble Baroness, Lady Bryan, was saying—with other states, and with the constituent bodies of states. The ideologues who deny that sovereignty can be shared with our neighbours are the same people who resist sharing it with Wales, Scotland and Ireland. It is they who threaten to destroy our union, just as their great-grandparents destroyed the union between Great Britain and most of Ireland. That is a real threat, and we have to adapt our constitutional arrangements to prevent it.

1.29 pm

Baroness Hayman of Ullock (Lab): My Lords, I thank my noble friend Lady Taylor for introducing the report and all the members of the committee who worked to produce it. It is particularly welcome to see the noble Lord, Lord Hennessy, in his place and to hear his very wise words. I also congratulate the noble Lord, Lord Verdirame, on his maiden speech. I very much look forward to his future contributions. There has been much discussion about Scotland in this debate, so I should declare that I am half-Welsh, and so represent that side of the union.

I think that all Members of this House who believe in the union will nevertheless accept that a significant proportion of the population have lost faith in it, as has been mentioned by noble Lords throughout the debate. The right reverend Prelate the Bishop of Leeds talked specifically about young people in this respect. We believe the task for unionists now is to make the case for not just the union as it stands but the potential of what it can be.

It is on that basis that I very much welcome the report by the Constitution Committee. Its recommendations build a vision of a more balanced UK, a modern style of governance and a stronger culture of co-operation and partnership. Each of these principles is crucial for the future of the union. The noble Lord, Lord Dunlop, referred to Gordon Brown's report, which I hope shows that we on these Benches are committed to this.

I will focus on the points made on central government. There is a real need to modernise central government so that it becomes dynamic, agile, strategic and focused, and it is on this basis that we believe we need a new constitutional settlement in Westminster. I am pleased that the committee has made recommendations on this and encourage the Government to consider the prospect of new constitutional statutes. I am especially interested in the prospect of guarantees over the autonomy of local government; I would add that people across the UK should be given a clearer idea of what they can expect from government.

Westminster and Whitehall should be driven by clear, measurable objectives focused on the needs of the people of this country. If we are to secure the future of the union, we must tackle geographic economic inequalities. For too long, our economy, public services and communities have suffered from sticking-plaster politics. If we are to deliver and grow the economy for everyone, we must move beyond this short-term mindset.

We also need to look beyond the responsibilities of Westminster, which is why I welcome the proposal of a principled devolution framework for England. In the other House, my Labour colleagues have recently announced plans for a new devolution Act to oversee the biggest transfer of power from Westminster in British political history. Our intention is that the Act will provide the framework and process for economic devolution to towns and cities right across England, building on the work of the Commission on the UK's Future and forming the cornerstone of Labour's mission to rebuild Britain. By spreading power and the levers of economic policy-making, people closer to the ground with stronger links to local industries and deep knowledge of local assets and skills bases can better tailor interventions and investment to help potential clusters really take off. The Act would give English towns and cities the tools they need to develop credible, long-term growth, with bespoke packages of powers to support prosperity.

New steps must also be taken to support Wales, Scotland and Northern Ireland. The Welsh Government will shortly publish the results of their own consultation on the future powers of the Senedd, which should be considered alongside proposals to broaden the powers available to the Scottish Government. It is similarly important that in Northern Ireland the UK Government support efforts to help restore and strengthen devolution, consistent with the principle of consent and the commitments in the Good Friday agreement. Each of these measures must also be paired with a new emphasis on the spirit of co-operation and intergovernmental relations.

I support the committee's emphasis on interparliamentary relations; my noble friend Lord Stansgate referred to how important these are for new dialogue. The committee is right to call for openness, transparency and accountability in intergovernmental working. I would add that each authority should be able to not only raise concerns with each other but always expect a proper response. As the report and noble Lords have said, this is ultimately an issue of respect and co-operation. It is not enough for Ministers to phone the First Ministers of Scotland and Wales and think that their job is done; we need a new culture of co-operation which means that representatives from each corner of the UK can input and work together effectively.

In conclusion, much as I welcome the Government's response that they will carefully consider the recommendations in this report, I urge them to consider just how fragile the union looks today. People across the UK are crying out for change, and many of the proposals in this report can provide exactly that. As we have heard, Britain remains one of the most centralised states in Europe and it is only through bold proposals to counter this that we can spread power, wealth and

[BARONESS HAYMAN OF ULLOCK]
 opportunity to every part of the UK. Many people have, undeniably, lost faith in politics and its ability to improve their lives. We must take the opportunity to address this, to build a fairer society and a stronger economy where everyone has a voice.

1.35 pm

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, I thank the noble Baroness, Lady Taylor of Bolton, for securing this important debate on the committee's report. I also thank her for her speech today; I look forward to reading it again in *Hansard*. I will consider some further responses to what she has said and will be in touch with her. I also thank the members of the Constitution Committee for their thoughtful inquiry into the union and subsequent report. I apologise that it has been a year before we have had the chance to debate it. I also thank all noble Lords for their contributions today. I welcome the noble Lord, Lord Verdirame—I probably got that wrong—to this House: he is very welcome, and after his maiden speech, I very much look forward to his further contributions in this House.

We share the spirit of optimism written into much of the committee's report. As reflected by my noble friend Lord Howell of Guildford, while it may be positive, we do need to consider a modern union and continue to build a better union. That is important. I also welcome the noble Lord, Lord Hennessy, back to the House: it is very nice to hear him, and it is wonderful listen to his speeches—they are excellent, and I cannot say anything more than that. What stuck in my mind was that the noble Lord said that the union still has vitality. Yes, it does. It has vitality, but we need to continue to work on that vitality for the future, as my noble friend Lord Howell said.

However, we do share the spirit of optimism in the committee's report, which I thank it for. The United Kingdom is the most successful political and economic union the world has ever seen, as mentioned by the noble Lord, Lord Bilimoria, and is the foundation on which all our businesses and all our citizens are able to thrive. This is why the United Kingdom is committed to protecting and promoting the combined strength and values we share, building on hundreds of years of partnership and shared history. It is clear that when we work together as one United Kingdom, we are safer, stronger and more prosperous; we are better able to draw on the institutions that unite us, such as the National Health Service, the Armed Forces and our world-class education system. Crucially, as the committee noted, we are able to tackle the big problems, from supporting families with the cost of living, to leading the international responses to the illegal Russian war in Ukraine, and to being a world leader in offering the vaccine to our citizens. I do not agree with the noble Baroness, Lady Taylor, that Covid was not a good example of close working. I think that this Government worked strategically with the devolved Administrations to save jobs and support communities and to bring out the vaccine programme that helped our country get through the pandemic. That was at administrative but also at official level. So I actually think it was a good working of the union at the time.

The UK Government are committing to delivering the best possible outcomes for people in all parts of the UK, ensuring that all four corners of the UK feel the benefits of the union. This is what the people of the United Kingdom want and expect. From the £55 billion we are spending this year to help families and businesses across the UK with their energy bills to the ambitious vision that is set out in the levelling-up White Paper to improve living standards and create opportunities in every part of the UK and the spending review in 2021 setting the largest annual block grant in real terms of any spending review settlement since the devolution Acts in 1998, this Government's commitment to ensuring all parts of the United Kingdom feel the benefits of the union is clear.

As the committee recognised, effective working across all levels of government in the United Kingdom is critical to our ability to deliver better outcomes for our people and our communities. Citizens rightly want their Governments working together to deliver for them. This is why the Government ensure that every department makes it a priority in their work; for example, new structures and processes for engagement—this was brought up by the noble Viscount, Lord Stansgate—agreed through the intergovernmental relations review provide solid foundations for continued constructive engagement. From January to September 2022, there were more than 200 ministerial meetings between the United Kingdom Government and the devolved Governments on a huge range of issues.

Somebody mentioned the Prime Minister. The Prime Minister made it his priority to speak to the First Ministers of Scotland and Wales on his first day in office. He also chaired the first meeting of the Prime Minister and heads of devolved Governments council on 10 November 2022, just three weeks after coming into office, focusing on critical issues such as the cost of living, the impact of rising inflation and our shared challenges in supporting the NHS.

We have worked constructively with the devolved Governments to deliver practical benefits for people across the United Kingdom. This includes welcoming Ukrainians through the Homes for Ukraine scheme and growing local economies through freeports and city and growth deals, investment ensuring that everyone, no matter where they live in this United Kingdom, has access to opportunities, skills and jobs for the future. We will continue to work together to deliver for all people of the United Kingdom.

As we set out in our response to the committee's report, we share its ambition for informative, detailed reports on intergovernmental relations. We continue to evolve the regular transparency reports to allow more pertinent scrutiny and public engagement. We welcome opportunities, such as today, to discuss these relationships more. Co-operation across the United Kingdom is valuable in its many forms, and we will continue to support the interparliamentary forum and initiatives which facilitate collaborative working across devolved legislatures.

I welcome noble Lords' ongoing support in strengthening the things that connect us across the United Kingdom. Our commitment to effective inter-governmental working exemplifies this Government's

commitment to devolution, a sentiment the committee shared in its report. Through devolution, policies can be tailored to support the needs and priorities of the different parts of the United Kingdom within the framework of the United Kingdom. It allows decisions to be taken closer to communities that they affect, all the while still benefiting from the broad shoulders that the union provides by drawing on a shared resources.

The committee noted the importance of the Sewel convention, and we recognise that importance. We remain fully committed to the convention and will continue to seek legislative consent and work with the devolved Administrations on all Bills that engage the legislative consent process. Our commitment is evident through the 28 legislative consent Motions secured across 17 Acts of Parliament during the last legislative Session, including the Health and Care Act 2022 and the Advanced Research and Invention Agency Act 2022.

A number of noble Lords talked about the governance of England, including the noble Baroness, Lady Taylor, and the noble Lords, Lord Wallace and Lord Howell. We are bringing forward the levelling-up Bill—we have had its Second Reading, and we will have Committee after the Recess. Our commitment to devolution and our plans for further devolution are very clear. We have announced the biggest ever transfer of powers away from Westminster to local areas in England in that Bill and in the White Paper that preceded it, with devolution at the heart of our plans to increase economic growth and level up the whole country. We have made significant progress in recent months, including through an expanded deal for the north-east and the first county deals, which will establish directly elected leaders in Norfolk and Suffolk. These deals were not imposed by the Government; they were designed and set up with the local authorities involved. Taken together, deals signed last year will mean that 5 million more people can directly elect a mayor or leader to represent them about local issues in the future.

We are focused on ensuring that devolution works effectively across the United Kingdom, including making sure that an understanding of devolution and the union is core to all United Kingdom government departments. That is why we have progressed the recommendations made by my noble friend Lord Dunlop—I thank him for his positive contribution today—in his review of UK government capability to improve how the UK Government can deliver for all their citizens. For example, we have established and regularly convene a Cabinet committee focused on the union; Sue Gray was appointed as Second Permanent Secretary with responsibility for the union; and each UK government department now has a nominated non-executive director with responsibility for the union. In addition, we have an ambitious capability programme to enhance the devolution knowledge and intergovernmental working skills of civil servants, enabling them to deliver more effectively for the whole of the United Kingdom.

Before I finish, I want to respond to the right reverend Prelate the Bishop of Leeds. His contribution was extremely interesting, and I would like to think on it further. Young people are the future—and they are the future of the union. Their views must be heard, and we must work with them. I thank him for his contribution, and I will give it some thought.

Lord Howell of Guildford (Con): In my ignorance, I am not totally sure which department my noble friend is closest to; she seems to answer on every conceivable subject these days. Will she tell her friends in the Foreign, Commonwealth and Development Office to give particular attention to the knotty problem of giving Scotland a greater voice in our external affairs, treaty arrangements and international repositioning with all the other countries of the world? That is where a lot of our fate will be decided. One of the most bitter feelings the committee heard from our witnesses was that Scotland was an ancient nation which did have an international footprint but appeared to have no real say in deciding our international position. Could she give a push in that direction, please?

Baroness Scott of Bybrook (Con): I thank my noble friend for that, and I certainly will. I do not do anything with the Foreign Office, but I will certainly take that back. I am in the Department for Levelling Up, Housing and Communities, but we also do some of the work on the union.

I thank noble Lords once again for their contributions today, and I particularly thank the noble Baroness, Lady Taylor, for moving the debate and for her speech. I look forward to continuing this important discussion and working collaboratively on all the issues raised by noble Lords today.

1.50 pm

Baroness Taylor of Bolton (Lab): My Lords, I thank everyone who has taken part in this relatively brief debate on these significant issues. I am sure we will return to them on many occasions in this House, whether we are discussing the future of local government, in the way the noble Lord, Lord Balfe, was suggesting, or some of the suggestions made by my noble friend Lady Bryan, with whom I disagree on virtually everything—from her view on House of Lords reform to fatalism. I am sure we will have some significant debates in future.

I congratulate the noble Lord, Lord Verdirame—we will get the name right eventually. I am sure he feels very comfortable in this House and will make many contributions in future.

We have heard from many colleagues who served on the Constitution Committee. My noble friend Lord Stansgate will not be surprised to learn that it was the noble Lord, Lord Hennessy, who coined the phrase “poets and plumbers”. Today the noble Lord demonstrated why his particular lightness of touch is of such value to committees. The welcome he got in the House today reflects the esteem in which the House holds him, and it is good to see him here. The speeches we have heard demonstrate why it was such a pleasure to chair that committee. The word that the noble Lord, Lord Hennessy, used was “fun”. I am not sure I would go so far as to say it was fun, but it was a productive and enjoyable experience. Again, I thank all the committee members.

The noble Lord, Lord Dunlop, who has done as much work on one aspect of this report as anyone else, emphasised that the committee has confidence in the union and certainly in the potential for its future, but we all agreed that there is an element of fragility, as my

[BARONESS TAYLOR OF BOLTON]

noble friend on the Front Bench said, and we cannot be complacent about the future. There is a lot of opportunity, but a lot of work still needs to be done.

I return to the title of the report, *Respect and Co-operation*, because that is the key to getting these relationships right and getting the balance of power and the delivery of services that we would all like to see. Again, I thank everyone who has been involved in the debate, and I beg to move.

Motion agreed.

Net Zero (Industry and Regulators Committee) *Motion to Take Note*

1.54 pm

Moved by Lord Hollick

That this House takes note of the Report from the Industry and Regulators Committee *The net zero transformation: delivery, regulation and the consumer* (1st Report, Session 2021-22, HL Paper 162).

Lord Hollick (Lab): My Lords, I am pleased to introduce this debate. I thank our team, Matthew Manning, Holly Woodhead, Dominic Cooper and Itu Osupeng, for their valuable contribution to the work.

Our work started 18 months ago and our report was published a year ago, just as Russia invaded Ukraine, sparking an energy bills crisis and showing what can happen when a country chooses to weaponise its energy exports. The impact of that invasion on energy security and prices strengthens the need to accelerate the transformation to a net-zero energy system that increases domestic production and reduces our reliance on importing fossil fuels from authoritarian countries. It will also lead to a material reduction in our ongoing energy costs.

The Government have set out a number of ambitious targets, including achieving net zero by 2050 and a decarbonised energy system by 2035, which will require a wholesale transformation of our entire energy system. The Climate Change Committee told us that, to achieve these targets, the level of investment will need to increase from £10 billion a year in 2020 to £50 billion a year from 2030 to 2050. Funding the cost of meeting these targets will rely heavily on the appetite of pension funds, overseas investors, the private sector and individuals to invest, and that depends on the Government putting in place policies to encourage and provide certainty for businesses to make these investments.

We asked the Government to set out a road map to deliver the energy mix they envisage for meeting their targets in a secure way, including setting out the funding structures and business models they aim to rely on. We called for clarity from them on the business model for hydrogen and its role in heating; business models for carbon capture and storage, long-duration storage technologies and small modular reactors; funding to support the energy efficiency of homes and the installation

of heat pumps; and a review of the infrastructure challenges to deploying offshore wind. Given the potential for technology to develop in unforeseeable ways, this road map needs to be dynamic and adaptable.

We were told that gas will be needed as an energy source up to 2050. We asked the Government to explain the role they intend for gas in the future energy system, including from our own domestic resources. In their response, they promised a range of initiatives and guidance in 2022, few of which have materialised. We wrote to the Secretary of State in December requesting an update on the progress on 14 of those initiatives, to be provided in time for consideration in today's debate. Unfortunately, Davos intervened and delayed the response until next week, but the evidence to hand shows that delivery is taking place at a snail's pace—and this against a background of long lead times to build critical elements of the new energy system. Offshore wind infrastructure can take up to nine years and nuclear power stations can take 15 years or longer.

Then, there is the big question: who pays for the huge upfront capital cost of the transformation in order to provide certainty for businesses and households to budget? Currently, much investment in decarbonising the energy system is funded through charges on bills, including the costs of upgrading the grid and building new nuclear power stations. This funding is regressive, bearing down most heavily on those households that are least able to pay. We urged the Government to consider the full range of funding options, including the UK Infrastructure Bank, the British Business Bank, carbon pricing, co-investment, investment subsidies, investment tax relief and contracts for difference. We called on the Government to reconsider their opposition to the use of government borrowing, given its suitability for financing investments with high upfront costs that are to be followed by attractive returns over the following decades.

We found that the scale of the transformation requires urgent action across the economy and across a range of government departments and public bodies, including regulators. Currently, there is insufficient focus and co-ordination, as well as an absence of decisive leadership in government. We proposed creating an expert task force, following the example of the Vaccine Taskforce, that could take responsibility for strategic planning, departmental co-ordination and the monitoring of delivery by all government departments, agencies and business partners; the USA recently appointed a net-zero tsar to a similar role. We believe that this approach avoids unnecessary bureaucracy and provides the decisive leadership to deliver in a rapidly changing environment. The task force will need to address politically sensitive matters, including public spending commitments, so it must be at the heart of government and report directly to the Prime Minister.

Ofgem, the energy regulator, has an important role to play through its regulation of energy networks and suppliers and, of course, in setting prices for customers. Witnesses told us that Ofgem was overly cautious and slow to approve investments to make the energy system ready for the transformation. We therefore recommend that Ofgem's duties be amended to include explicit reference to the Government's net-zero target.

Ofgem must satisfy three main objectives of energy policy: keeping bills affordable, maintaining the security of supply and decarbonisation. Finding a balance between these three sometimes contradictory objectives comes down to questions of priorities and trade-offs that only a Government can decide. Since 2014, the Government have repeatedly promised, but so far failed to deliver, a strategy and policy statement to provide strategic guidance to Ofgem. Earlier this week, the Minister told us that it was “upcoming”, but when will it come?

The Government and Ofgem have the responsibility to inform and provide incentives to the public about the changes that they must make to their domestic energy systems. Consumers will want to spread the high upfront costs of heat pumps, for example, on a long-term contract basis, similar to mobile phone contracts. Electric vehicle batteries and other domestic appliances can be set automatically to operate when electricity is at its cheapest. The provision of these new products should form part of the drive to bring about greater competition between energy suppliers to provide added services.

Ofgem’s recent calamitous attempt to introduce competition between suppliers to promote switching has landed a surcharge on all customers to cover the liabilities, now estimated at £3 billion, of the failed new entrants. Fresh from that debacle, Ofgem has recognised the need to add financial and operational oversight to its regulatory duties, but its regulation must become more flexible to allow innovative products and services into the market. These products will help customers to reduce their energy demand, retrofit their homes—which could reduce energy usage by up to 20%—and introduce low-carbon heating, requiring financial support from the Government. Government needs to take the lead and clearly set out what it expects of the public and energy suppliers and what financial support it will provide to help to pay for the necessary changes and investment in our homes.

The *Mission Zero* review, chaired by former government Minister Chris Skidmore, was published a week ago. It echoes many of our conclusions, including the urgent need for the Government to develop and publish an overarching net-zero delivery and financial strategy and to establish an office for net-zero delivery. Chris Skidmore calls net zero

“the economic opportunity of the 21st century”

and proposes 129 recommendations to turbocharge the nation’s climate action. More than half of these recommendations need to be acted on this year. He notes that the UK Government are

“not matching world-leading ambition with world-leading delivery”, and we agree.

The US, China and the EU are investing heavily in net-zero technology and manufacturing. By contrast, our Government have yet to produce their net-zero industrial strategy. A modest number of investments have been made, but much more is required. Without that investment, we will remain importers of net-zero technology and miss out on the opportunity to create a domestic industrial sector, as the bulk of the significant demand created in the economy to source the new energy system will be spent abroad, only to widen our

trade deficit still further. As the Committee on Climate Change noted in its last progress report to government, “important policy gaps remain” and

“Tangible progress is lagging the policy ambition”, with “little concrete progress” on “cross-cutting enablers” of the transition.

The most important conclusion of these three reports—ours, Chris Skidmore’s and the Climate Change Committee’s—is that action is needed today. There are only 27 years left to undertake a fundamental change in the way that our economy works and to secure our energy supply at significantly lower prices, to the great benefit of all citizens and to provide a welcome boost to economic growth and social investment. The lack of a clear and consistent strategy and policy and the sluggish pace of delivery will lead to delay and missed opportunities. I beg to move.

2.04 pm

Lord Reay (Con): My Lords, it is an honour to follow the noble Lord, Lord Hollick, in a debate on our committee’s inaugural report. I thank him for his chairing of the committee and for this report, which highlights the significant challenges of meeting the Government’s target of net zero by 2050.

Although the UK has been more successful than most industrialised nations in reducing territorial emissions, and has done so by 28% since 2010, it is clear that a transformation in heating and travel, as well as substantial investment in new technologies, will be required. Equally, to cater for the anticipated manifold increase in electricity demand, the capacity and resilience of the grid will need to be significantly strengthened. To facilitate this and to help us meet the challenges of achieving net zero, the report recommends, as the noble Lord, Lord Hollick, has mentioned, the creation of an energy transformation task force. The task force, based within the Cabinet Office, would determine strategy, improve co-ordination across government departments and ensure effective implementation of decarbonisation policy.

For this vital new body to fulfil its mandate, detailed Treasury costings on achieving net zero should be sought. At present, forecasts vary significantly. The Climate Change Committee estimates costs of approximately £1 trillion by 2050. The national grid on the other hand, with figures covering only the decarbonisation of energy, estimates £3 trillion. The Treasury needs to come up with an independent view. Likewise, the consumer deserves to understand how these costs will be funded. How will the burden of cost be distributed? What will be required of the taxpayer and what of the consumer? What will be the sacrifices and the benefits? Without consumer buy-in, net zero stands little hope of success.

Quite rightly, the report stresses the key role that gas will continue to play in our economy. The International Energy Agency forecasts that by 2050 over 20% of our energy requirements will still be provided by fossil fuels. Further gas and oil exploration in the North Sea, our backyard, should be encouraged. Unfortunately, it is coming under twin attack. First, due to the net-zero and ESG commitments of commercial banks and insurance companies, finance for new exploration projects has been withdrawn. Secondly, as a result of

[LORD REAY]

the imposition of windfall taxes, investment has been discouraged—note, for example the recent announcements by Total and Harbour Energy about backing out of North Sea projects. It follows that investment in significant renewables projects is likewise threatened.

Russia's invasion of Ukraine and the ensuing dramatic rise in energy prices highlighted the fragility of our energy system. We rely excessively on overseas supplies. On top of that, the UK system of calculating wholesale electricity prices relies on the cost of gas. This means that, at consumers' expense, renewables producers and nuclear firms are currently receiving a windfall. The Government appear to have recognised the need to adjust this price calculation mechanism. I urge that reform is brought forth with speed.

Finally, as the House is aware, Ofgem's role is to regulate the sector and protect the consumer. In the last 18 months, Ofgem has not covered itself in glory. Over 30 energy companies have failed, and these failures have cost the taxpayer £9.2 billion. This includes the £6.5 billion rescue of Bulb. Inexplicably, the terms of Bulb's subsequent acquisition by Octopus remain shrouded in secrecy. Furthermore, why, in a recent review, did Ofgem decide not to introduce the ring-fencing of customer credit balances? Failing companies have been misusing these balances and surely Ofgem should act on this. I put it to noble Lords that Ofgem should reassess its persistent focus on switching—a once valid but now often self-defeating system.

Net zero by 2050 is an important target for the UK. It is essential that we march towards this goal with all our ducks in a row. The co-ordinating body, forecasts, funding, regulation and consumer protection should all be tightly in order so that the success of the project is as achievable as possible.

2.09 pm

Baroness Donaghy (Lab): My Lords, it is a pleasure to follow my fellow committee member the noble Lord, Lord Reay, and to thank the committee's chair, my noble friend Lord Hollick, for his comprehensive introduction and his constructive and collegiate approach to our committee's work. When you are planning something which has to happen in seven and 27 years' time, and construction and operation take between five years, such as in the case of a battery factory, and 15 to 20 years for nuclear installations, that brings it home how urgent some of the decision-making is and how challenging those decisions are for any Government contemplating a general election within two years.

I will concentrate on our recommendation for a high-level task force to start the transformative changes needed, as already mentioned by the noble Lord, Lord Reay, what pump-priming, if any, the Government are prepared to support, and how the tension between the Treasury and BEIS can be solved. The Treasury focuses on new charges and revenue, whereas the Minister at BEIS has said that tax rises are not inevitable and that the priority is to bring people along with us.

First, a task force following the example of the vaccine task force is essential if there is to be any chance of reaching the net-zero target. A substantial majority of the witnesses who contributed to our inquiry were

sceptical that the Government had in place the necessary strategic infrastructure. The Government's disappointing response, saying

“Our current governance arrangements are effective”,

and then referring to the

“Government Priorities Delivery Committee (GPDC), chaired by the PM”,

just does not cut it. Will the Minister ask the Cabinet to think again?

Secondly, although it is apparent that there are plenty of willing investors around, there are some areas where the returns are not so obvious. The Government seem content to leave it to the private sector, with the honourable exception of some nuclear development which they have supported. It is important to create some strategic map to identify key areas of energy security or innovation where investors are not queuing up and where the state should intervene, at least in the short term—for instance, gas storage, interconnectivity, carbon capture, battery manufacturing and hydrogen, along with encouraging the development of the heat pump industry so that consumers have supportive infrastructure. At the moment, those costs need to be brought down.

This industry will not progress unless consumers are convinced that they will get servicing support, but housebuilders are not necessarily helping here. A relative of mine who bought a new-build house showed me an airing cupboard which was not an airing cupboard—it was full of machinery—and a garden shed which was not a garden shed but was the pump itself, taking up a considerable amount of garden space. How are the Government going about approving, if your Lordships will excuse the pun, these pump-priming projects?

Thirdly, what is the Government's thinking on the use of government borrowing, as recommended in our report and referred to by my noble friend Lord Hollick, and the need to set out explicitly the distributional consequences for any funding proposals? The recent energy cost crisis revealed the limitation of consumer resilience.

Finally, applications for the 33rd UK offshore licensing round closed last week. Can the Minister indicate when announcements are likely to be made?

2.13 pm

Lord Burns (CB): My Lords, I too thank the noble Lord, Lord Hollick, for chairing the committee during the investigation and for his introductory remarks. I also thank the Government for their detailed reply to many of the questions that were put by the committee and for their description of the Government's approach. However, as has been mentioned, this still leaves us without a clear road map of the major decisions that remain to be taken, the degree of uncertainty that surrounds the plans or how the changes are to be funded.

I accept the Government's broad ambitions and the general principles of how to reach them. If we are to reach net zero, we will need a much larger decarbonised electricity system, well in advance of 2050. Increased amounts of wind power and solar energy will be required, as will alternative capacity to deal with intermittency issues. Unless developments with carbon capture and long-duration storage are unexpectedly successful, we will

need natural gas for some time. In addition, a viable nuclear power industry will have to make an important contribution.

The system's operator will be the body tasked with ensuring that local power grids can handle this increased variety of sources and uses of clean energy. It will also be required to keep the system in balance continuously, which I suspect will not be straightforward. Persuading households and companies to move to low-carbon methods of transport and heating could be equally complicated; they will respond to taxes, subsidies and signals about whether these new technologies will be successful.

We already see concerns about the inability to purchase cars powered by petrol or diesel after 2030, and, similarly, about the prohibition of new gas boilers after 2035. There are concerns about the lack of rapid chargers for cars and about whether ground source pumps work as well as gas or oil boilers work now. I also note the concerns about the shortage of engineers for installing and maintaining heat pumps and that we are not improving the energy efficiency of older houses as quickly as is necessary. That range of concerns, it seems, could easily lead people to postpone decisions. If we want to see a major switching to electricity-based vehicles and heating systems, as well as improving the energy efficiency of older houses, we need to see a convincing campaign and strategy about the practicalities of switching and fitting, and refitting, and the performance and economics of these technologies.

The Government's response to the committee's call for a detailed road map is that decarbonising the economy requires new technology and an energy mix that we do not know yet. Instead of a road map, they offer an annual update with progress reports and a description of what has changed. I understand those uncertainties and accept that any road map would have to be dynamic and would have to adjust and respond to events, possibly frequently. But that should not prevent the Government being much more adventurous in setting out scenarios, with timings, of how this drive to decarbonise might develop and the mitigations that could be available if some of the plans they have do not survive contact with reality.

Those uncertainties and complications are why the committee called for a transformation task force within government to act as both a co-ordinator and monitor of progress. The Government's response is to say that existing governance arrangements are effective and that the path to net zero should be via ministerial forums, with established governance at official level. I have my doubts; it seems that, like the vaccine task force, this is a job for a focused team whose sole task is to deliver that policy and to help households through the transition. It is complicated, it will take time and it could be costly. From time to time, there will be setbacks; some of the plans will require adaption and there will be noisy opposition to some of the proposals. This is not business as usual, so the governance of this transformation should not be considered business as usual either.

2.18 pm

Lord Whitty (Lab): My Lords, I thank my noble friend Lord Hollick for the report. I remember that, when it first came out, I was deeply impressed by it.

Since then, we have had a global energy crisis, and in this House we have considered, but have yet to complete, two enormous and constantly changing energy Bills to try to set out government policy more clearly.

Regrettably, those Bills do not answer many of the problems which the report originally raised. That includes, as others have said, the storage of gas and the production of renewable energy; the early deployment of carbon capture and storage; our much clearer nuclear strategy, including the role of small modular reactors; and the question of whether hydrogen will play any role in the heating of housing and other buildings, and the business model needed to support hydrogen. No decision has been made on the connectivity of the various arrays of offshore wind, the funding for heat pumps or the enhanced money for energy efficiency in homes to ensure that energy efficiency both benefits consumers and reduces the use of gas in our homes. There is also the question of how that will be paid for, whether by private or public funding, and in which way that will be delivered.

Those strategic questions have yet to be answered. The two Bills we have had since then have done some useful things, many aspects of which I agree with, but they have not answered many of these fundamental questions, including the role of the regulator as we go forward. This report focuses very much on the regulator and we do not yet have a clear indication about the relationship between Ofgem's central role of looking after consumers and the net zero strategy. In Committee on the current Bill that is still going through—Committee has not yet finished—I tried to add a commitment where the role of Ofgem is extended to the consumers of heat networks. This is much needed, I agree with that, but we need to write into the terms of reference of Ofgem and other regulators the need to support and not to undermine the Government's net zero strategy.

Like other regulators in the wake of privatisation, Ofgem was given the responsibility of looking after consumers, quite rightly, but that has to be expanded. We have to be clearer than we are in the current regulations and the Bill that is now going through about the relationship between Ofgem and the proposed future systems operator for the energy sector. It is important that not only Ofgem but the rest of our regulators have a relationship with the net zero strategy. Ofcom and Ofwat, in particular, need to have a relationship with net zero, as, frankly, do the financial regulators, to ensure that we are deploying finance and our whole financial system to support the overriding importance of net zero. Although this report rightly relates to Ofgem, we need to take the wider lessons on how regulation now operates in this day and age.

We also need to take up the point of cross-government co-ordination. That was repeated in the report just recently received from Chris Skidmore, and I hope that, while he may not be able to give a reply today, the Minister will be able, by the time the noble Baroness, Lady Hayman, has her QSD on Thursday, to give us an indication of how the Government will respond to Chris Skidmore's report.

2.22 pm

Lord Bilimoria (CB): My Lords, I thank the noble Lord, Lord Hollick, and his committee for *The Net Zero Transformation: Delivery, Regulation and the Consumer*.

[LORD BILIMORIA]

I note that the date it was ordered to be printed was 23 February, the day before the sad war in Ukraine started last year, from which the global energy crisis resulted. In its report on net-zero transformation, the committee has said right up front that the current plans lack the necessary level of policy detail, and it makes lots of recommendations.

It should be noted that in 2021, after the Government had legislated in 2019 for a net-zero emissions target by 2050, they set two additional interim targets: a net-zero power system; and emissions reduced by 78% by 2035. Some 113 countries and over one-third of the world's largest companies, including our FTSE 100 companies, have also set net-zero targets. The Government have set various policies, including: ending the sale of new petrol and diesel cars; the use of sustainable aviation fuel; investing in clean electricity and hydrogen production; providing funding for households to switch to low-carbon heating systems—the noble Lord, Lord Burns, spoke about that; incentivising farmers to use low-carbon farming methods; and planning to triple the rate of woodlands creation in England. They talk about bold commitments to meet these ambitions; energy technology policies, including long-duration storage technologies; a business model for carbon capture, usage and storage; and the potential for new nuclear, including small modular reactors.

I have asked time after time, like a stuck record: why are these small modular reactors not starting? Rolls-Royce says that it can produce reactors producing 500 megawatts for just under £2 billion. They would power about a million people, versus large Sizewell C for £22 billion and 3,200 megawatts. What is the delay? Rolls-Royce says that it can produce 16 of these clean, sustainable, low-cost, repeatable and scalable SMRs. Can we please start these as soon as possible?

Can the Minister also update us on the Cadent pilot that is taking place on using hydrogen to heat homes? One of my proudest moments at COP 26, when I was there as chancellor of the University of Birmingham and as president of the CBI, was the HydroFLEX. The University of Birmingham developed the world's first retrofitted hydrogen-powered train and that was up and running. I chaired a meeting of transport leaders on that train in conjunction with business and government. That was universities, government and business working together.

Funding is addressed by the report, as is institutional architecture. It suggests an energy transition task force. What about a national centre for the decarbonisation of heat? This proposal is centred at the University of Birmingham in the West Midlands to implement the Government's heat strategy. I chaired the heat commission when I was president of the CBI. The report also talks about price controls. The government response, which came pretty swiftly on 27 May, talks about SMRs moving three projects to a final investment decision. Have those decisions been made? Regarding gas, the Government stated that in meeting net zero by 2030, the UK might still need a quarter of current gas use, but this is a very important point. This is a transition. It is not an on/off switch.

This transition will create hundreds of thousands of jobs around the country and this is great news. The point that is not addressed in the report is: what about the potential for cross-border collaboration in this area, particularly with countries such as India, that are world leaders in solar power and solar technology? Should we not aim for much more cross-border collaboration in this area?

2.27 pm

Lord Birt (CB): My Lords, the on-the-button report that we are discussing today, and the more recent Skidmore review, with its 1,112 granular paragraphs and 129 detailed recommendations, well illuminate a true scandal. As a nation, we have declared a widely supported net-zero goal and then, in effect, walked off to the pub, leaving behind a black hole where detailed policy and a plan of implementation ought to be in place. The Government's response to the committee is not that plan.

There are scores of challenging issues, many already mentioned, that remain unresolved. These include: creating a reliable, accessible EV charging network; decarbonising the heating of homes and buildings; incentivising insulation; reconfiguring the electricity grid to create greater capacity to deliver locally and to enable access for local generation and stored power; a major transformation identifying the precise mix of generating technologies, including nuclear, wind and solar and how to store that surplus power for intermittency; pinning down the as-yet unsettled economics of hydrogen and carbon capture and storage; taxing carbon more coherently; setting out a strategy for our extensive national gas network; and many more.

Valuable as it is to have the Skidmore review, it was an extraordinary act for the Government to commission it. Doing so was, in effect, an overt declaration that the Government were not wrestling with and resolving the host of unsettled issues that the Skidmore review identifies. Both reviews make similar recommendations, which we have heard echoed today, of what the Government now must do; namely, to create effective machinery in the Cabinet Office to co-ordinate policy-making and action across Whitehall and the country at large.

Short of running a war, net zero is the biggest issue that government will ever have to manage. I suggest that what is needed—again, echoing others to a degree—is a dedicated unit in the Cabinet Office with a professional project management team; the capacity to frame policy where more than one Whitehall department is involved; political leadership, I suggest from the Deputy Prime Minister chairing a committee of all relevant Ministers; critically, a Minister of State for net-zero delivery, with no other responsibilities; and, finally, formal annual reporting of progress towards net zero, what policy issues have been resolved and what are yet to be resolved—there will be many.

The Minister performs a heroic job in this House representing BEIS on these matters, but I hope that he will be able, in due course, to report to us that fit-for-purpose machinery will indeed be put in place—we have heard that plea from all sides of the House—to supercharge the whole of government to meet our existential net-zero goals.

2.31 pm

Baroness Hayman (CB): My Lords, I join others in congratulating the noble Lord, Lord Hollick, and his committee on a powerful and compelling report. I declare my interests as set out in the register, particularly as a co-chair of Peers for the Planet.

It is a pleasure to follow the rallying cry of the noble Lord, Lord Birt. Like him, I think that the theme that has emerged from the debate today is around strategic leadership, both on policy and resolving very knotty policy issues, and on delivery and a focus on a vehicle that will be successful in not only resolving issues but co-ordinating across departments. At the moment, Bill after Bill comes to this House without any net-zero lens being applied to it. From the Back Benches, we try to put that right, but it is ridiculous that this should be done on such a haphazard basis. This is an area on which the committee report really focuses and on which the Government should really focus.

We have gone backwards on this. I accept the idea of a task force as a delivery engine but, in their response to the report, the Government said that there were in fact two Cabinet committees, one led by the Prime Minister which would push forward the policies on net zero. We do not have two Cabinet committees; we have one domestic committee now, which is one of only three that is not chaired by the Prime Minister. That focus at ministerial level has gone, which is dangerous.

There are issues in the report that are legislative opportunities for the Government. On Ofgem's remit and responsibility, there is a proposed amendment to the Energy Bill, which we spoke about at length in Committee, but obviously not persuasively as far as the Minister was concerned. I hope that he changes his stance given the support that there is throughout—from civil society, the industry itself, this committee, the Skidmore review—for Ofgem's crucial role in this, which should be made explicit in its objectives, duties and responsibilities.

There are other opportunities on the Energy Bill, with the amendments on having the Government bring forward a strategic policy on energy efficiency and home insulation. We all know that these things are no-brainers, and yet we have stop-go policies that are inadequately funded. Year after year, we go on wasting money and energy because of the failings in our housing stock.

The last thing I will speak about are the costs. The committee and the report are very clear that there has to be transparency about costs, and there are very substantial costs involved. No one can deny that. However, less often mentioned are the costs of not taking action, in terms of lost opportunities and the huge costs of adapting and responding to the events that will happen if climate change is unabated. The OBR set that out very clearly a couple of years ago. The costs are also there for our children and our grandchildren, both economically and in terms of the lives that they will live. We boomers have been a very privileged generation.

I am stopping now, but I think it is really important that we take on our responsibilities here and move forward in the way the report shows us. In the terms of this Motion, I hope that the Government take very careful note of this report.

2.36 pm

Baroness Northover (LD): My Lords, I, too, congratulate the House of Lords Industry and Regulators Committee for its work and the noble Lord, Lord Hollick, for opening this debate so compellingly. It is a pleasure to follow the noble Baroness, Lady Hayman, who is seeking to make such a difference in this area as chair of the excellent Peers for the Planet.

It is excellent, of course, that the UK put in place the first Climate Change Act, committing Governments to change. That Act has been the model for elsewhere, and so has the Climate Change Committee, which scrutinises what the UK is doing and measures it against what needs to happen. The UK has made some impressive commitments, including ending the sale of new petrol and diesel cars by 2030; ending the sale of gas boilers, theoretically, from 2035; and reaching net zero by 2050.

If there was one positive thing to come out of Liz Truss's brief tenure in Downing Street, it was surely commissioning Chris Skidmore to review how we were doing in meeting those commitments. It is all very well having these ambitions, but are the "guard-rails" in place—as he puts it—to deliver this? This is where a far less positive theme emerges, and it is echoed throughout this paper. The Government do not seem to have an effective strategy for delivering what they promise, as all noble Lords have said. As the committee says:

"We are not persuaded that the necessary level of policy detail is in place to achieve these commitments."

The committee goes on:

"Given the scale of change involved in transforming the energy system by 2035, the Government must act urgently to make the necessary decisions and set out the detailed policies and funding models to allow investment to flow into the sector."

As the noble Lord, Lord Reay, emphasised, this requires a major increase in funding. As the noble Baroness, Lady Donaghly, said, it also requires a transformation in planning and strategy. The noble Lord, Lord Birt, aptly described the Government going "off to the pub" on this.

The noble Lord, Lord Hollick, laid out some specifics of what is required, including a transformation task force within government and amending Ofgem's duties to include explicit reference to having due regard to the net-zero target—something which Chris Skidmore's review also recommends. The noble Lord, Lord Burns, emphasised that financial and strategic commitment is vital if investment and development are to be stepped up. The noble Lord, Lord Birt, the noble Baroness, Lady Hayman, and others emphasised that political leadership is vital.

As we have heard, the committee urged clarity and speed in a number of different areas, including long-term storage technologies; funding mechanisms for small modular reactors and carbon capture and storage; funding for energy efficiency and heat pumps; and that by the end of 2024 the Government should set out

[BARONESS NORTHOVER]

a road map of what they envisage the net-zero energy mix of the future to consist of. I am a member, as is the noble Lord, Lord Whitty, of the Environment and Climate Change Committee, which is looking at heat pumps. It is already very clear that ambition and reality are at huge variance.

This report was concluded almost a year ago. The Government published a weak response in 2022, mentioning reports that have not yet appeared. The committee followed up in December with a list of questions on specific areas which must be delivered at speed if net zero is to be realised and, as the noble Lord, Lord Hollick, mentioned, if we are not to fall behind the EU and the US. The collapse of Britishvolt does not augur well. The committee requested a response before this report was debated. As of yesterday when I looked, it was not forthcoming, so I gather it has not been produced. The noble Lord, Lord Hollick, told us that Davos intervened. The invasion of Ukraine might not have been anticipated, but Davos surely should have been.

There was a successful legal challenge to the Government over their not being on course to deliver net zero or their obligations under the Climate Change Act. The judge in that case required that the Government update their strategy by this spring. As the noble Lord, Lord Burns, said, it cannot be business as usual: strategy and commitment are urgently required, so the strategy had better not be warm words and plans alone. The committee's report makes it clear that transformative actions are urgently required. I hope that the Minister will give some specific answers in his response; if he does not, it will further illustrate what the committee has been saying. I noticed that during the speech by the noble Lord, Lord Hollick, the Minister seemed to find either the speech or something else rather amusing. So, when the noble Lord, Lord Hollick, asks for a strategy—promised since 2014—I hope the answer will not be “soon” or “in due course”.

I might say this, might I not? But when Vince Cable put in place an industrial strategy which emphasised and, more to the point, supported the UK's biomedical sector, having analysed the strengths and weaknesses of the UK's industrial sector, it helped to lay the groundwork for our global position on vaccine development when the pandemic struck. It very much built on our academic strengths, to which the noble Lord, Lord Bilimoria, referred.

We are now facing an even bigger challenge. Do we have evidence of a strategic approach here? I am afraid that we do not. Maybe the Minister's amusement, as also expressed during the speeches by the noble Lords, Lord Whitty and Lord Bilimoria, means that he will confound us when he replies with a solid strategy, backed by the Treasury, with specific answers to what this committee has rightly demanded. This is too important just to be met with warm words.

2.43 pm

Baroness Blake of Leeds (Lab): My Lords, I add my thanks to my noble friend Lord Hollick and the members of the Industry and Regulators Committee for their work. It was very interesting to hear the contributions

from the noble Lord, Lord Reay, and my noble friend Lady Donaghy about what they think of this important work. The report is very detailed and far-reaching and, I think we all agree, has come up with some very practical suggestions which have been emphasised and built upon in today's debate.

We have heard a great deal about the background, with an inquiry launched in June 2021 and a report published in March 2022. I can only sympathise with members as it must be frustrating, to say the least, to see the lack of progress on their important recommendations. It appears that there is ambition from this Government, as outlined by the noble Baroness, Lady Northover, in her contribution. But the calls that we have heard for urgent action, clarity of purpose, application of common sense and the practical steps needed, as outlined in the recommendations, continue to fall on deaf ears. This is despite the crisis caused by Russia and the wider security implications that has led to and, of course, the ongoing cost of living crisis—not to mention the rapid increase in extreme weather events.

As has been mentioned, we now have the substantial report from the former government Energy Minister, Chris Skidmore, published and ready for debate. It includes an urgent wake-up call that the UK will miss out on huge economic benefits if it does not grip the actions needed to achieve net zero by 2050 with immediate effect. We heard from the noble Lord, Lord Bilimoria, in particular about the creation of quality jobs that that will bring, and the noble Baroness, Lady Hayman, eloquently outlined the costs of lost opportunity. Her comments about the need for strategic leadership could never be more important than today.

How depressing it is therefore that the investments for major government spend through the levelling-up fund announced yesterday do not have a narrative of contributing to achieving net zero running through them—another missed opportunity to add to the very real concerns that they will not help reduce regional inequalities and about the lack of transparency around the decision-making process. Surely every government policy and major spending decision should, by now, have to account for its contribution to this agenda. Every department has a responsibility to assess its contribution to making progress to net zero by 2035 to 2050, recognising the institutional architecture, as discussed in the report, to deliver results.

The discussion about the need to establish the task force, as mentioned in the report, and perhaps to take it further into the heart of government has been very timely. As we have heard, there is a very large gap between the ambitious targets and the intensive investment required from businesses and individuals alike. Given the scale of change involved in transforming the energy system by 2035, the Government must urgently act to make the necessary decisions and set out detailed policies and funding models to allow investment to flow into the sector. We know that some of the technologies we will need are not yet established, but that should not be used as an excuse for delay.

The report clearly lays out that, if the power system is not decarbonised by 2035, reaching net zero by 2050 will be extremely difficult. I note the scepticism from

witnesses to the committee around these targets, but I believe that, with the right commitment and leadership, this journey can be achieved. However, trade-offs will be required, and this needs to be managed at the highest level of government.

The coming decade is crucial to tackling the climate and ecological crises. The latest findings from the independent panel on climate change were the starkest warning yet that the crisis is here right now and is the biggest long-term threat that we face. The extreme weather events of recent months will become more frequent; urgent action is required to drive down emissions and adapt and protect communities from the changes to our climate that are already baked in. Tackling these crises requires not just words but action, political commitment, leadership, implementation and joined-up working between all levels of government.

I do not think that the approval of the new coal mine in Cumbria has been mentioned today, but it is an important issue to raise given the mixed messages that those sorts of decisions give out to the wider world and to communities across the country.

We welcome the change of heart, as we understand it, on onshore wind—we could never understand why that was left to one side—but we need to see more action around energy efficiency, which is discussed at every level.

Many challenges have been outlined today. Through the Energy Bill, the debate goes on, so there is an opportunity on Report for the Minister to respond to the concerns raised during Committee, in particular in relation to the improvements being made around the independent future system operator, ensuring that independence is indeed at the centre of the work.

Ofgem has taken centre stage in many of the points made today, and with good reason. It must learn from its failures, which have had a profound impact on people across this country. We argue that the Energy Bill should contain a remit for net zero. This is an interesting debate, and we think it is time to push as far as we can with Ofgem's role and responsibilities.

The important matter of consumer protection is rightly at the heart of the report. As we go through the serious changes that we will need to bring about, we recognise just how important it is to take consumers and our communities with us. We do not have a sufficient level of communication from government explaining what the challenges are and what the possible actions can be to assist people. In some parts of the country, there has been close partnership working with people in local communities, with quite extensive results. Those examples should be looked at and learned from so that we can have a sensible debate, recognising the challenges from government around future costs and where the trade-offs might be between taxpayers and bill payers.

I think that we all recognise that we are at a serious, pivotal moment. Britain needs to step up to maintain its leading role. I hope that the Minister will be able to demonstrate a step change in the Government's approach, fully recognising the urgency, the relentless focus and the leadership needed to grip the agenda. There is an opportunity to match ambition with action. As I have mentioned, we have the Energy Bill, and we look forward

to some movement from the Government and the proposed amendments coming forward. However, we do not yet have evidence that the action required is about to happen. A starting point would be a positive response to the very sound recommendations laid out in the report of the Industry and Regulators Committee before us.

2.53 pm

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan)

(Con): My Lords, I thank the noble Lord, Lord Hollick, for the report from the committee and for securing this important debate. I am grateful also for many of the other contributions. I start by apologising to the noble Lord that the reply from Secretary of State is not with him. It is with the Secretary of State at the moment, who has been away in Davos this week. Nevertheless, it should not have been beyond the wit of government to get the reply to him by this debate. I am also grateful to members of the Industry and Regulators Committee, and to all those who provided written and verbal contributions, which enabled the preparation of such a thorough report.

Like other Members, I am proud that, under this Government, we were the first major economy in the world to enshrine net zero into legislation. We set out in the net-zero strategy a bold vision for a decarbonised economy by 2050 and a net-zero power system by 2035. That shows that we have not lost any of that ambition.

I was very interested in the contribution from the noble Lord, Lord Burns, particularly given his former position. I am tempted to say it is a shame that he is not still in that position, given some of my recent discussions with that department, but perhaps that is a conversation we should have privately. He rightly focused on a road map to net zero. Although we do not yet know what the exact technology and energy mix will look like in 2050, we have a clear plan and a clear strategy for getting there—and, in doing so, we can manage at least some of the uncertainty he mentioned by forging the future ourselves.

We are working to make our clean energy future a reality with many brilliant and innovative British businesses, to help to industrialise emerging technologies, from British-built hydrogen-fuelled aircraft engines to small modular reactors that could each power 1 million homes. We are building on these success stories in the sectors where we already lead the world. Last year we completed the world's largest wind farm at Hornsea 2, harnessing the high winds of the North Sea to deliver clean, affordable and secure energy for Britain, alongside the second- and third-largest wind farms, which are all in UK territorial waters and all done by us.

In the *British Energy Security Strategy*, we set out a new ambition: to deliver up to 50 gigawatts of offshore wind by 2030, including up to 5 gigawatts of innovative floating offshore wind. With the support of the offshore wind acceleration task force that we set up to drive forward delivery, alongside some of the measures in the Energy Bill to which the noble Lord, Lord Whitty, and others referred, I am confident we will succeed. It will be a challenge, because we have been so successful at rolling it out in this country that now the rest of Europe wants to do the same, which will of course

[LORD CALLANAN]

present some inevitable problems with the supply chain. Nevertheless, it is a challenge that we are determined to meet.

Other noble Lords referred to another key challenge that we face, which, for a secure, cost-effective and low-carbon energy system, is storage. That is why we are committed to deploying enough large-scale and long-duration energy storage technologies to balance our overall energy system. To do that, we are working with industry to develop the best policy to enable investment by 2024. As noble Lords said, we are investing in nuclear, too, to complement the wind, solar, tidal and geothermal energy that we have, and play a vital role in beyond-the-grid applications, including the production of hydrogen and synthetic fuels for future use. Last year, we gave the green light to the development of Sizewell C, with a £679 million investment, which represented the first state backing for a nuclear project in over 30 years. This marks a milestone in a nuclear renaissance for our country as we pioneer new approaches to deliver not just reliable clean energy for Britain but new industries, new skills and, of course, new jobs.

The noble Lord, Lord Bilimoria, pointed to the exciting potential of SMRs, and we are working hard to set up Great British Nuclear and actively engaging industry to develop a delivery model and funding strategy for small modular reactors that addresses market needs, too, providing backing for a technology which, as the noble Lord said, promises to make nuclear quicker, cheaper, and easier to deploy. It is an industry in which the UK is very much at the very cutting edge globally.

My noble friend Lord Reay mentioned the important role of oil and gas. I also recognise, as I have stated many times in this House, the role of our own North Sea gas reserves, to ensure security of supply as we transition to net zero. As other noble Lords mentioned, it is a transition, and we will very much need gas during that transition. This exemplifies our whole-system approach to meeting our net-zero ambitions, where we tackle this most complex of challenges and drive forward technological developments on all fronts. That includes technologies such as carbon capture, usage and storage. The noble Lord, Lord Birt, highlighted the importance of CCUS, which does not just offer a green alternative for our heavy industries and a way of securing our electricity sector through decarbonising natural gas usage but opens up the possibility of delivering negative emissions through greenhouse gas removal.

As the Climate Change Committee has observed, CCUS

“is a necessity, not an option”.

We are determined to deploy it in a way that is designed to drive value for money for taxpayers and consumers. It is a priority for this Government and we are progressing at pace. We will invest up to £1 billion to establish carbon capture and storage in up to four industrial clusters by 2030. The first two clusters have already been selected and, in August, we published a shortlist of associated projects taken forward into the track 1 due diligence phase. Further detail on the track 2 process will be set out later this year.

We are working to deliver the CCUS business models. In November, we published the dispatchable power agreement and, in December, we published the hydrogen and industrial carbon capture business models along with an update on carbon capture and storage network codes. CCUS also provides a way to power up the production of low-carbon hydrogen, a potential fuel of the future where, again, our expertise puts us right at the cutting edge. We have confirmed our intention to proceed with a producer-focused hydrogen business model, which will be critical to unlocking private investment in new low-carbon hydrogen production. We are supporting fuel switching to hydrogen in industry through nearly £400 million in energy transformation funding; we are also working with industry and regulators on hydrogen heating.

The noble Baroness, Lady Northover, noted the role of heat pumps. We are investing here and in the boiler upgrade scheme; I was happy to give evidence on that to the noble Baroness’s committee recently. The scheme provides financial support for the installation of low-carbon heat technology, primarily heat pumps, in homes and small non-domestic buildings to help support the transition away from fossil fuel heating. The scheme offers an upfront grant payment to help customers overcome the high upfront capital cost of low-carbon heating technologies, which will be crucial in the transition away from fossil fuel systems.

This winter has shown us just how important energy efficiency is for bringing down bills for British households. That is why the Government have so far committed to spending £6.6 billion in this Parliament on decarbonising buildings. Much of the work will be led by our new Energy Efficiency Taskforce, further details of which we will announce shortly. This will spearhead a new national effort to reduce energy demand and achieve our ambition to reduce the UK’s final energy consumption from buildings and industry by 15% by 2030.

In his opening speech, the noble Lord, Lord Hollick, recognised the crucial role of investment. Since March 2021, the Government have committed a total of £30 billion of domestic investment for the green industrial revolution. Over the next 15 years, we will work with the private sector to facilitate investment of something like between £280 billion and £400 billion in the power system in technologies such as offshore wind, hydrogen, energy storage and nuclear. Our *Ten Point Plan for a Green Industrial Revolution*, together with the *Net Zero Strategy* and the *British Energy Security Strategy*, are already expected to drive an unprecedented £100 billion of private sector investment and support 480,000 jobs by 2030. Bloomberg New Energy Finance estimates that, in 2021 alone, around £24 billion of new investment was committed in the UK across low-carbon sectors.

Last year, the Government published investor road maps on electric vehicles, hydrogen, CCUS and the aviation sectors. We are committed to publishing a comprehensive update to our *Green Finance Strategy* in the first half of this year. As noble Lords will know, we are also progressing the Energy Bill, which will help to liberate private investment in clean technologies, protect consumers and reform the UK’s energy system so that it is safe, efficient and resilient.

On the strategy and policy statement, as noble Lords would expect, the Government have prioritised work in relation to high global gas prices recently. We are making progress and have now completed the first-stage consultation with the devolved Administrations and Ofgem. Since the change of government, we have restarted work on the statement and are preparing for a public consultation in the spring.

My noble friend Lord Reay highlighted the critical role of Ofgem. The report also recognises Ofgem's important role in enabling the net-zero transition. Its primary statutory duty is to protect the interests of existing and future consumers, which of course includes their interests in the reduction of greenhouse gases. The Government continue to maintain that an additional net-zero duty for Ofgem is not necessary.

I agree with the noble Baroness, Lady Donaghy, and others on the Industry and Regulators Committee, about the importance of effective scrutiny and effective governance arrangements. Our current governance arrangements are effective, and we continue to evolve and strengthen our overall approach, taking into account the recommendations of the committee's report, the Public Accounts Committee, the NAO and other bodies.

I hope that the noble Baroness, Lady Blake, appreciates that I cannot say too much about the Cumbria mine, but I assure the House that I understand the strength of feeling of many Members on that.

The noble Lord, Lord Whitty, commented on energy prices and reflected on how the world has changed since the report was published. Since then, we have stepped in to support the British people and households with unprecedented support to help them to pay their energy bills. On fairness and affordability, the Government's plan to publish a call for evidence was somewhat superseded by the turn of events and the announcements on energy price support over the last six months, including the decision to suspend the so-called green levies through the energy price guarantee.

The noble Lord, Lord Bilimoria, asked about the programme of hydrogen village trials. In May, the Government and Ofgem announced that Cadent and NGN's proposals for potential hydrogen village trial locations in the two shortlisted areas, one in Redcar and one in Whitby, near Ellesmere Port, would be developed in more detail. We expect to make a decision on the location of the selected village trial later this year.

The noble Lords, Lord Whitty and Lord Birt, and the noble Baroness, Lady Blake, commented on and noted the publication of the Skidmore report, which was commissioned and welcomed by the Government. We will of course reply to that later this year. The Government remain committed to achieving net zero by 2050 by pursuing a pro-business and pro-growth approach to meeting our target and ensuring that the costs, as well as the benefits, are shared fairly, protecting consumers, workers and businesses. The target remains a government priority, and, as many Members observed, the net-zero transition will provide huge opportunities for jobs, investment, innovation and exports.

We have already achieved a lot on our road to net zero: between 1990 and 2019, we have grown our economy by 76%, at the same time as cutting emissions by over 44%, decarbonising faster than any other G7 country.

I know that many noble Lords want to go further and faster, but we should recognise that we have already achieved a lot. The Government will carefully consider the proposed recommendations and will respond to the review later in the year.

The noble Lord, Lord Whitty, mentioned the role of the future system operator. Net zero is creating new challenges for our energy system, and it is crucial that the system is managed in a way that promotes a safe and secure energy system and that the best possible advice is available to inform the many crucial decisions that will be needed. The FSO will also have responsibilities in both the electricity and the gas systems, which will bring together the planning of both systems to drive competition and maintain a robust and secure system during the important transition to net zero. The FSO will be regulated by Ofgem and will provide accountability and a known framework for sector engagement. Its funding will be allocated through the price-control process, also managed by Ofgem. It will serve as an expert body, with comprehensive understanding of the system and its inner workings, adopting a holistic view to achieving net zero while maintaining energy security.

The Government are committed to ensuring that the costs of the UK's energy transition are fair and affordable for all energy consumers. Recent rises in wholesale energy prices have added pressure to energy bills. The Government understand the difficulties that households and businesses face, and we have taken comprehensive action to support energy consumers. Our focus continues to be on providing robust support for energy consumers: for households, through the energy price guarantee until March 2024, plus further targeted support for the most vulnerable households, and for non-domestic consumers through the energy bills relief scheme until March 2023, and the energy bills discount scheme for the following year.

The Government are extending the energy price guarantee from April 2023 until April 2024 so that the typical household will pay an average yearly energy bill of £3,000—we emphasise that that is an average, not a cap—and are continuing to support UK businesses through the energy bills discount scheme. Alongside support for households and businesses, the Government are working to ensure that energy bills remain affordable in the long term. Our exposure to volatile gas prices underscores the importance of the plan, which I think the whole House agrees will build a strong, home-grown renewable energy sector. The Climate Change Committee agrees that our net-zero strategy and the British energy security strategy represent comprehensive and viable plans for reaching our world-leading target of eliminating our contribution to climate change by 2050, which we are well on the road to implementing.

This Government have a clear vision and a clear strategy for a transformed clean energy system, and the drive to continue that, delivering for the British people.

3.11 pm

Lord Hollick (Lab): I thank all speakers today for their contributions. There is a theme of “Get on with it. Don't go down the pub”. I think the Government have indicated—the Minister did in his remarks—that

[LORD HOLLICK]

after a regrettable delay, we will receive a letter responding to the queries we made. I hope that will be an opportunity to discuss and debate the responses further.

The Minister also indicated that the strategy and planning document and the fairness and affordability work are under way and that we can expect them shortly. He mentioned that there was a consultation process that included the regions to be involved. One of the things that comes through very strongly from the debate and the work we have done is that this is quite the biggest challenge the country has faced. It is on an enormous scale and is going to last 27 years. It is unlikely, I hope, that the same Government will be in office throughout those 27 years, so it is very important that we build a cross-party coalition for this. That is essential if we are to attract investment

from overseas. Our reputation as a reliable, safe and predictable country to invest in has, over the past few years, taken a bit of a knock, so it is important that when the Government publish their plans, they reach out across Parliament and across the nations and regions of the UK to get buy-in and to make sure that everybody knows that we are all heading in the same direction. Of course, the details will change and technologies will change and develop, but I urge the Government to hurry up and to make sure that they have consulted and got broad support from the nations of the UK and the other parties, but also that they have reached out to consumers and have them on board.

Motion agreed.

House adjourned at 3.13 pm.